

A SURVEY OF ADULT PROTECTIVE SERVICES AND ELDER ABUSE IN HAWAII AND NATIONWIDE

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FOREWORD

This study was prepared in response to House Concurrent Resolution No. 188, House Draft 2 (2007). The Concurrent Resolution requested the Legislative Reference Bureau to study other states' adult protective services laws, gather data on elder and adult abuse incidence in other states, analyze possible changes to Hawaii's laws to conform to those of other states, and estimate the predicted effects of those changes on the caseload of Hawaii's Dependent Adult Protective Services.

The Bureau extends its appreciation to the staff of the Department of Human Services, the staff of the Dependent Adult Protective Services section, the adult protective services personnel in other states contacted for this study, and to various other professionals who assisted the Bureau in this study.

Ken H. Takayama
Acting Director

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FACT SHEET

In responding to House Concurrent Resolution No. 188 (2006), the Bureau researched national data on elder and adult abuse, surveyed statutes from other states relating to adult protective services, and briefly surveyed staffing practices from selected adult protective services programs. The salient findings of the survey are highlighted below:

I. Elder Abuse Nationwide and in Hawaii

- States vary widely in their adult protective services statutes and practices. This makes it difficult to gather and succinctly summarize comprehensive national data on elder and adult abuse.
- Based upon available data, Hawaii has a relatively low level of adult abuse reports (per 1,000 adults) compared generally to other states and to other states of comparable population size.
- Caregiver neglect/abandonment, self-neglect, and financial exploitation are the three leading types of abuse reports that are investigated nationally and in Hawaii.
- Seventy-four percent of the reports investigated by the Department of Human Services, Dependent Adult Protective Services (DAPS) branch involve a victim age 60 or older. Forty-four percent of investigations involve a victim age 80 or older.

II. Overview of Adult Protective Services in Hawaii

- On Oahu, DAPS is staffed by five adult protective service workers who investigate reports of abuse, two registered nurses, two social services assistants (IV), one supervisor, one secretary, and one clerk-typist. The department also has one auditor (III) on staff to investigate reports of financial abuse and exploitation. Each of the Neighbor Island counties has one adult protective service worker and one social service assistant (IV). Lana'i, Moloka'i, and Ka'u each are assigned a half-time social worker.
- The estimated investigation caseload of the Oahu DAPS office is 30 or more cases per worker at any given time.

III. Dependent Adult" and Eligibility for Services

- Hawaii is among four states that use the term "dependent adult" as a threshold for eligibility for adult protective services.
- States use a variety of terminology and definitions to establish threshold eligibility for protective services. The most common term is "vulnerable adult." However, there is no solid evidence that suggests that the use of "vulnerable adult" vis á vis another term that

includes a dependence requirement has resulted in a significant difference in the number of abuse investigations.

IV. Reporting and Investigating Abuse

- Hawaii is one of only two jurisdictions that have abuse reporting and investigation laws that can be interpreted to require both abuse and the imminence of further abuse to qualify for an investigation.

V. Protection for Elder Adults

- Eighteen states distinguish between elder adults and other adults for the purposes of reporting, investigating, and providing protective services. These states have established the threshold age for "elders" at either 60 or 65 and older. Thirteen of these states allow investigations based solely upon the victims age and the report of abuse. Five of these states allow investigations based upon the victims age, coupled with the existence of an impairment, and the report of abuse.
- In 2000, the Hawaii Governor's Committee on Elder Abuse recommended establishing a threshold age of 60 for older adults. More recent proposals have raised this threshold age to 75.
- There appears to be valid concern over the effect that establishing an "elder" classification in Hawaii would have on the DAPS caseload. Although the exact amount of the increase is unpredictable, it seems clear that there will be a significant increase in the number of cases that would be subject to DAPS investigation.

VI. Financial Exploitation

- Financial exploitation comprises the third highest number of adult abuse investigations in Hawaii. The vast majority of the victims in those investigations are older adults.
- Last year, the Legislature passed a law that requires financial institutions to report suspected financial abuse of persons over age 62. This is expected to increase the number of financial abuse reports to be investigated by DAPS.
- Lapsed funding has left Hawaii DAPS with only one auditor statewide to investigate cases of financial abuse.

VII. Adult Protective Services Staffing Issues

- Selected programs were contacted for this study based upon a combination of population size, similarity to Hawaii adult protective services laws, and similarity to recently proposed amendments.

- Of the programs that were contacted, Oahu DAPS's current caseload per worker was higher than all but two.
- Oahu DAPS current caseload per worker is higher than caseloads recommended in a national survey of adult protective service programs.
- Current staffing levels would seem insufficient to deal with the expected increase in financial abuse reports.
- If the Legislature decides to make changes to the adult protective services laws that are expected to result in increased abuse reports or investigations, then DAPS should be provided with the additional resources necessary to handle the increased workload effectively.
- DAPS should consider alternatives to its current staffing model that would maximize the efficient use of any additional resources that may be allocated to it.

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Chapter 1

INTRODUCTION

Nature of the Study

During the Regular Session of 2007, the Legislature adopted House Concurrent Resolution 188, entitled "Requesting the Legislative Reference Bureau to Study Other States' Adult Protective Services and Compare Them to Hawaii's Adult Protective Services" (hereinafter "Resolution"). A copy of the Resolution is attached as Appendix A. The Resolution notes that there is no national reporting system for documenting the number of older Americans who experience abuse and that each state varies in its approach to determining eligibility for adult protective services. The Resolution also estimates that there are approximately 84,000 adults in Hawaii who are age 75 or older and predicts this number to increase. There is interest in evaluating Hawaii's approach to adult protective services to ensure that this frequently vulnerable segment of the population is adequately protected from abuse and exploitation. This report responds to the Resolution's request that the Legislative Reference Bureau review other states' laws regarding adult protective services, analyze possible changes to Hawaii's laws to conform to those of other states, and estimate the predicted effects of those changes on the caseload of Hawaii's Dependent Adult Protective Services program. A copy of the resolution is included as Appendix A.

Scope and Organization of the Study

Adult abuse and elder abuse come in many forms, including physical abuse, neglect, and financial exploitation. The elderly are the most frequent targets of these kinds of abuses. Adult abuse and elder abuse are not exclusive to Hawaii; they affect the adult and elderly population of all states. However, because there are no national reporting standards for adult and elder abuse, it is difficult to gauge the extent of the problem nationwide. This problem is compounded by the differences among states' statutory and administrative structures for addressing adult and elderly abuse.

This study will focus on providing comparative data on the incidence of elder abuse nationwide and in Hawaii. It will also look at other states' statutes that address reporting and investigation of adult abuse. Finally, the study will highlight selected states' administrative approaches to processing adult abuse caseloads.

The remainder of this report is organized as follows:

- (1) Chapter 2 provides background information on adult and elder abuse and presents data from Hawaii and other states;
- (2) Chapter 3 provides information on Hawaii's statutes that address adult abuse and background information on the agency that processes and investigates reports of adult abuse;

- (3) Chapters 4 and 5 look at other states' threshold criteria to qualify for an investigation of an abuse report;
- (4) Chapter 6 addresses the issue of additional protection for elderly adults and other states' approaches to reporting and investigating abuse cases involving the elderly;
- (5) Chapter 7 reviews selected states' protective service agencies' approaches to managing their caseloads for adult abuse reports and investigations;
- (6) Chapter 8 explores the growing problem of financial exploitation of the elderly in Hawaii; and
- (7) Chapter 9 offers conclusions and recommendations.

Chapter 2

ELDER ABUSE NATIONWIDE AND IN HAWAII

Before beginning a discussion of elder abuse and adult protection law and policy, it is important to understand what these terms encompass. Vulnerable adults are subject to various forms of abuse, exploitation, and neglect. A disproportionately high number of these instances occur among older adults. Sadly, as the number of elderly members of society increases, both in Hawaii and nationally, the number of cases of abuse, exploitation, and neglect are expected to grow.

A. Adult and Elder Abuse Generally

Abuse of elders and vulnerable adults encompasses a variety of actions and situations. The specific requirements for various types of abuse that may trigger state action vary by definition from state to state. Because of these variations, it may be helpful to take a broad look at the more common forms of abuse, exploitation, and neglect that are generally described in state statutes as "abuse."

Physical abuse is the use of physical force on a vulnerable adult or elder that results or may result in physical injury, pain, or impairment.¹ In addition to physical violence toward the victim, physical abuse includes the deprivation of basic needs so as to create pain or injury. Physical abuse also includes the inappropriate administration of drugs or physical restraints, force-feeding, and physical punishment.² Physical abuse may also be associated with domestic violence from a relative.³

Emotional or psychological abuse is the infliction of mental or emotional pain or distress through verbal or non-verbal acts. It may include humiliation, intimidation, and harassment. In addition, it includes the enforced social isolation from friends, family, or regular activities.⁴

Sexual abuse is non-consensual sexual contact with any person who lacks the mental capacity to consent. It includes rape, molestation, fondling, prostitution, obscene photographing or filming, and other forms of sexual exploitation.⁵

Neglect takes several forms, but generally it occurs when a caregiver fails to provide the necessary care for a vulnerable adult or elder or otherwise fails to fulfill an obligation or duty to provide care or services. This includes not only physical and medical needs, but also providing

¹ National Center on Elder Abuse, *available at*:

http://www.ncea.aoa.gov/NCEARoot/Main_Site/FAQ/Basics/Types_Of_Abuse.aspx.

² *Id.*

³ National Committee for the Prevention of Elder Abuse, *available at*:

<http://www.preventelderabuse.org/elderabuse/physical.html>.

⁴ National Center on Elder Abuse at the American Public Human Services Association. *The National Elder Abuse Incidence Study*, at 3-3 (Sept. 1998).

⁵ *Id.*

financially for necessary care services. Those most at risk are elders with extensive physical or mental health care needs and who depend upon others for their care. **Active neglect** is the intentional withholding of care. The reasons for this may include financial motivation or conflict with the victim. **Passive neglect** occurs where the caregiver, usually a relative or spouse, is unable to provide necessary care. Passive neglect generally occurs when the caregivers themselves are affected by a physical or mental ailment that prevents them from providing adequate care. Finally, **self-neglect** occurs where persons are unable to provide the necessary care for themselves.⁶

Self-neglect is a broad category of neglect that is characterized by behavior that endangers one's own health or safety.⁷ Self-neglect includes the inability or failure to provide essentials, such as food, clothing, shelter, or medical care, as well as the inability to obtain goods or services necessary to maintain one's health or safety. Self-neglect may also include the failure to manage one's financial affairs in a manner that adequately provides for one's own care. Self-neglect is frequently associated with people who suffer from mental health problems or other disabilities, including dementia, diminished capacity, or substance abuse issues.⁸

Abandonment is the desertion of an adult or an elderly person by one who has assumed responsibility for providing care or who has physical custody.⁹

Financial abuse, or financial exploitation, encompasses a variety of illegal or improper activities that are intended to exploit vulnerable adult or elder victims for their financial assets. Financial abuse may include cashing checks without permission, stealing money or possessions, coercing or deceiving a person into signing a legal document such as a contract or will, or the improper use of conservatorship, guardianship, or power of attorney.¹⁰ Adult protective service workers often find that financial abuse accompanies cases of neglect because the victim's assets are being misused by the perpetrator of the abuse instead of being used to provide for the victim's care.¹¹

B. National Incidence of Abuse

Nationally, the number of elder Americans who have been victims of abuse is unclear. Although evidence suggests that many thousands have been victims of abuse, there are no definitive national statistics. Reasons for this include differences among states in their definitions of abuse, differences in reporting requirements, and the absence of data collection on a national basis. Differences among the states' adult protective services statutes also account for variations in documentation of abuse reports and investigations.¹² The data that is currently available has been accumulated largely from independent sources.¹³ According to a national

⁶ National Committee for the Prevention of Elder Abuse, *available at*:

<http://www.preventelderabuse.org/elderabuse/neglect.html>.

⁷ *Supra* note 4.

⁸ *Supra* note 6.

⁹ *Supra* note 4.

¹⁰ *Id.*

¹¹ Telephone interview with DHS staff (Sept. 13, 2007).

¹² Jogerst, *et al.*, *Domestic Elder Abuse and the Law*. AM. J. PUBLIC HEALTH 93:2131-2136 (2003).

¹³ National Center on Elder Abuse, *Elder Abuse Prevalence and Incidence Fact Sheet*, *available at* http://www.ncea.aoa.gov/ncearoot/Main_Site/pdf/publication/FinalStatistics050331.pdf.

survey ("2004 Survey") of adult protective services (APS) from fiscal year 2003, which was conducted by the National Center on Elder Abuse (NCEA), adult protective services agencies nationwide received a total of 565,747 reports of abuse of adults age 18 and older.¹⁴ (See Table 2.1.) This figure represents a 19.7% increase in abuse reports from a similar earlier survey of national APS data conducted by the NCEA in 2000.¹⁵ Of the total number of cases reported nationally in FY 2003, 472,813 reports resulted in an investigation.¹⁶ Of the number of reports of abuse that were investigated in FY 2003, 191,908 cases were substantiated.¹⁷

Table 2.1 APS Reports and Investigations by State (FY 2003)¹⁸

State	Cases Reported	Cases Investigated
AK	1587	1587
AL	4842	4691
AR	3078	3078
AZ	10273	8041
CA	99860	81025
CO	9776	6022
CT	14748	3055
DC	712	642
DE	563	*
FL	36661	34655
GA	12000	*
GU	108	108
HI	1443	599
IA	1832	1832
ID	3571	2740
IL	7672	6794
IN	17600	13874
KS	6250	6250
KY	20699	20699
LA	5430	4364
MA	15266	8502
MD	4825	4669
ME	2898	1918
MI	10632	*
MN	14486	984
MO	14772	14772

State	Cases Reported	Cases Investigated
MS	2027	1393
MT	2505	2505
NC	6531	6531
ND	527	527
NE	2458	2259
NH	1946	1626
NJ	7450	4321
NM	10125	5217
NV	3266	3266
NY	29000	29000
OH	11104	11104
OK	21355	16728
OR	*	*
PA	13591	13591
RI	2400	2400
SC	4082	4082
SD	414	414
TN	7329	6675
TX	73611	71178
UT	3368	2301
VA	11949	11949
VT	1883	1883
WA	12648	10195
WI	3853	3818
WV	7561	5142
WY	883	180

* Data unavailable

Source: Unpublished data used in the creation of the 2004 survey.

¹⁴ Teaster, et al., *The 2004 Survey of State Adult Protective Services: Abuse of Vulnerable Adults 18 Years of Age and Older*, Report of the National Center on Elder Abuse, at 16 (March 2007) [hereinafter *2004 Survey*]. (The *2004 Survey* included all 50 states, Guam, and the District of Columbia.)

¹⁵ *Id.* (The earlier survey documented 472,813 reports of abuse nationwide).

¹⁶ *Id.* (49 states reporting).

¹⁷ *Id.* (42 states were able to provide both the number of reports investigated and substantiated.)

¹⁸ Unpublished survey data collected by the National Center on Elder Abuse and used in the creation of the *2004 Survey*. Provided to Legislative Reference Bureau by the National Center on Elder Abuse (Aug. 7, 2007).

The total number of abuse cases reported in fiscal year 2003 equate to a national average of 2.70 reports of abuse per 1,000 adults age 18+ in the United States.¹⁹ (See Table 2.2.) Among individual states, the median abuse reporting rate was 2.15 reports per 1,000 adults age 18+.²⁰ Oklahoma had the highest reporting rate of 8.35, and South Dakota had the lowest reporting rate of 0.75.²¹

Table 2.2 Abuse Reporting Rates (per 1,000 population age 18+)²²

State	Abuse Reporting Rate	State	Abuse Reporting Rate
AK	3.64	MS	0.98
AL	1.46	MT	3.73
AR	1.54	NC	1.07
AZ	2.73	ND	1.09
CA	4.06	NE	1.95
CO	3.05	NH	2.10
CT	5.75	NJ	1.18
DC	1.56	NM	7.73
DE	0.96	NV	2.20
FL	2.97	NY	2.03
GA	1.99	OH	1.31
GU	1.08	OK	8.35
HI	1.58	OR	0.89
IA	0.84	PA	1.45
ID	3.86	RI	3.00
IL	0.84	SC	1.36
IN	3.91	SD	0.75
KS	3.16	TN	1.71
KY	6.79	TX	4.92
LA	1.67	UT	2.22
MA	3.15	VA	2.24
MD	1.22	VT	4.08
ME	2.98	WA	2.89
MI	1.45	WI	0.96
MN	3.99	WV	5.38
MO	3.54	WY	2.42

Source: National Center on Elder Abuse, *The 2004 Survey of State Adult Protective Services: Abuse of Vulnerable Adults 18 Years of Age and Older* (March 2007).

Researchers analyzing the complete data that was collected for the *2004 Survey* were able to infer that, nationwide, there were 381,430 reports of abuse of adults age 60 and older.²³

¹⁹ *2004 Survey*, *supra* note 14, at 16. The NCEA researchers used population data from the 2000 Census to calculate the abuse reporting rate.

²⁰ *Id.* The NCEA researchers used population data from the 2000 Census to calculate the "per-1000" abuse reporting rates.

²¹ *Id.*

²² *2004 Survey*, *supra* note 14, at 17.

²³ Teaster, et al., *The 2004 Survey of State Adult Protective Services: Abuse of Vulnerable Adults 18 Years of Age and Older*, Report of the National Center on Elder Abuse, Administration on Aging, at 15 (Feb. 2006). Thirty-two states that responded to the *2004 Survey* were able to separate APS reports where the victim was age 60 or older.

Among individual states for which data was available, there was a median abuse reporting rate of 5.71 cases per 1,000 adults age 60 and older.²⁴ (See Table 2.3.) Connecticut had the highest reporting rate of 24.51, and Oregon had the lowest reporting rate of .040.²⁵

Table 2.3 Abuse Reporting Rates (per 1,000 population age 60+)²⁶

State	Abuse Reporting Rate	State	Abuse Reporting Rate
AK	*	MS	*
AL	*	MT	10.97
AR	4.71	NC	*
AZ	*	ND	*
CA	14.09	NE	*
CO	*	NH	6.64
CT	24.51	NJ	*
DC	*	NM	*
DE	3.48	NV	10.74
FL	*	NY	5.31
GA	*	OH	5.27
GU	6.67	OK	*
HI	4.87	OR	0.40
IA	1.65	PA	5.59
ID	9.52	RI	12.54
IL	3.91	SC	*
IN	*	SD	2.14
KS	6.79	TN	4.81
KY	8.35	TX	14.55
LA	5.73	UT	5.53
MA	8.66	VA	*
MD	4.12	VT	*
ME	*	WA	*
MI	4.60	WI	4.25
MN	10.72	WV	13.23
MO	11.50	WY	1.51

* Data unavailable.

Source: National Center on Elder Abuse, *The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older* (Feb. 2006).

Footnote continued from previous page.

From the reports from these 32 states, there were 253,426 reported cases of abuse of adults age 60 and older. This represented a national average of 8.3 abuse reports per 1,000 adults over age 60. This data supplied by the 32 states was analyzed along with other available statistical and demographic data to infer the national number of reported abuse cases for adults age 60 and older.

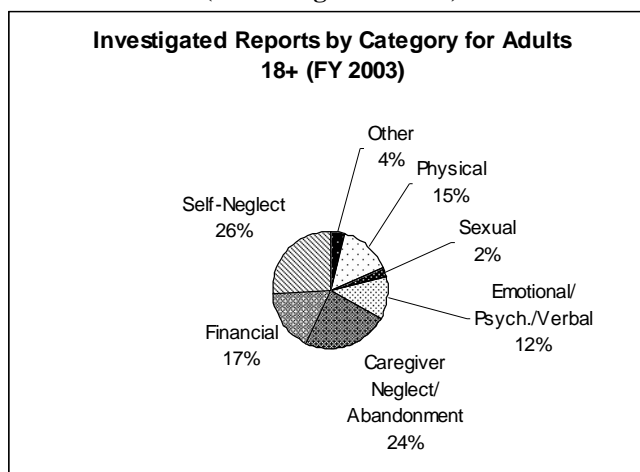
²⁴ *Id.* NCEA researchers used population data from the 2000 Census and the responses from the 32 states that responded to the *2004 Survey* with abuse reporting information for adults age 60+ to calculate the "per -1000" reporting rates.

²⁵ *Id.*

²⁶ Teaster, et al., *The 2004 Survey of State Adult Protective Services: Abuse of Vulnerable Adults 60 Years of Age and Older*, Report of the National Center on Elder Abuse, Administration on Aging, at 15 (Feb. 2006).

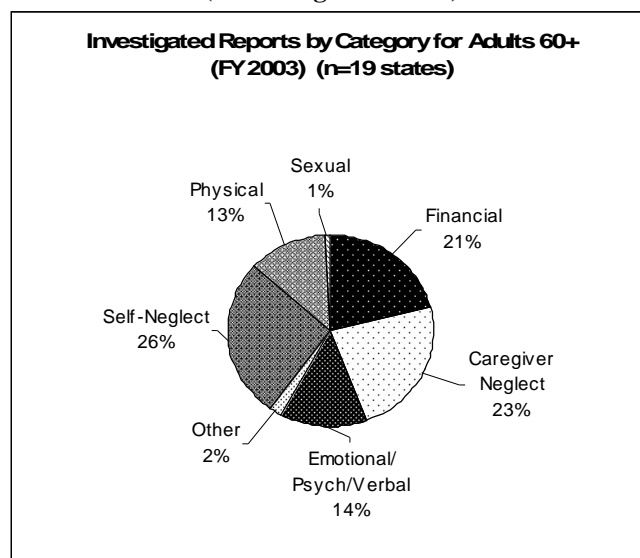
Nationally, of the abuse reports that were investigated for both adults age 18+ and adults age 60+, self neglect was the most common type of abuse investigated, followed by caregiver neglect /abandonment and financial exploitation. Note, too, financial exploitation made up a greater percentage of the total abuse investigations among adults age 60+ than among adults age 18 and up.²⁷ (See Figure 2.1 and Figure 2.2).²⁸

Figure 2.1 Investigated Reports by Category for Adults 18+ (FY 2003)
(Percentages rounded)



Source: National Center on Elder Abuse, *The 2004 Survey of State Adult Protective Services: Abuse of Vulnerable Adults 18 Years of Age and Older* (March 2007).

Figure 2.2 Investigated Reports by Category for Adults 60+ (FY 2003)
(Percentages rounded)



Source: National Center on Elder Abuse, *The 2004 Survey of State Adult Protective Services: Abuse of Vulnerable Adults 18 Years of Age and Older* (March 2007).

²⁷ 2004 Survey at 25.

²⁸ *Id.* at Table 7.

Despite the number of cases reported, the actual incidence of adult abuse that takes place may be even greater. One national study estimated that, for every case of elder abuse, neglect, exploitation, or self-neglect that is reported to authorities, five more incidents are not reported.²⁹ Many times, victims do not report incidents of abuse against them, especially when the perpetrators are family members. Reasons for this include embarrassment, feelings that abusive treatment is ordinary, or belief that help is unavailable. In some situations, isolation or caregiver control may prevent victims from making a report.³⁰

C. Incidence of Abuse in Hawaii

1. Comparison to National Data

Based upon available data, Hawaii appears to have a lower-than-average number of adult abuse reports as compared to other states. According to data gathered for the *2004 Survey* by the National Center on Elder Abuse, Hawaii had 1,443 reports of adult abuse in fiscal year 2003.³¹ That year, Hawaii's abuse reporting rate per 1,000 adults age 18+ was 1.58.³² This placed Hawaii below the national average of 2.70 reports per 1,000 adults age 18+, and below the national median among individual states of 2.15 reports per 1,000 adults age 18+. Among states with a similar population, Hawaii had the lowest abuse reporting rate per 1,000 adults age 18+. ³⁴ (See Table 2.4.)

**Table 2.4 Comparison of States
with Populations Similar to Hawaii (± 25%)**

State	Population*	Abuse Reporting Rate (per 1000 pop. age 18+)†
RI	1,048,319	3.00
HI	1,211,537	1.58
NH	1,235,786	2.10
ME	1,274,923	2.98
ID	1,293,953	3.86

*Source: 2000 US Census

† Source: *2004 Survey*

Among adults age 60+, Hawaii's abuse reporting rate was 4.87 per 1,000 adults age 60+. Hawaii's rate was below the national median among individual states of 5.71 reports per 1,000

²⁹ National Center on Elder Abuse at the American Public Human Services Association. *The National Elder Abuse Incidence Study*, at 4-1 (Sept. 1998).

³⁰ Moskovitz, *Saving Granny from the Wolf: Elder Abuse and Neglect – The Legal Framework*, 31 Conn. L. Rev. 77, at 100 (1998).

³¹ See Table 2.1.

³² See Table 2.2.

³³ *2004 Survey* at 16.

³⁴ For consistency, the comparisons in Table 2.4 were made using 2000 Census population data because NCEA relied upon the 2000 Census population data in preparing its "per 1,000 adults" reporting rates for the *2004 Survey*.

adults age 60+. ³⁵ Among states with a similar population percentage of adults age 60 and older and that also reported abuse rates for adults age 60+, Hawaii's abuse reporting rate was the third lowest, and below the average of 5.52 reports per 1,000 adults age 60+ ³⁶ within this group of states. (See Table 2.5.)

**Table 2.5 Comparison of States
with Population of Adults 60+ Similar to Hawaii ($\pm 0.25\%$)**

State	Total Population *	Population 60+ *	Percent 60+	Abuse Reporting Rate (per 1000 pop. Age 60+)†
NY	18,976,457	3,204,331	16.89%	5.31
KS	2,688,418	454,837	16.92%	6.79
WI	5,363,675	907,552	16.92%	4.25
AZ	5,130,632	871,536	16.99%	*
HI	1,211,537	207,001	17.09%	4.87
DE	783,600	133,925	17.09%	3.48
NJ	8,414,350	1,443,782	17.16%	*
MA	6,349,097	1,096,567	17.27%	8.66
OH	11,353,140	1,963,489	17.29%	5.27
NE	1,711,263	296,151	17.31%	*
AL	4,447,100	769,880	17.31%	*

*Source: 2000 US Census

† Source: 2004 Survey of State Adult Protective Services: Abuse of Adults 60 years of Age and Older.

2. Current Hawaii Data

The most current data available on adult abuse in Hawaii is from fiscal year 2006-2007. That year, Hawaii Dependent Adult Protective Services (DAPS) received 1,387 reports of abuse of dependent adults. ³⁷ Of that number, 575 reports, or 41.5%, were accepted for investigation. ³⁸ Of the reports investigated, 118 reports were confirmed as abuse. ³⁹ (See Table 2.6).

³⁵ Teaster, et al., *The 2004 Survey of State Adult Protective Services: Abuse of Vulnerable Adults 60 Years of Age and Older*, Report of the National Center on Elder Abuse, Administration on Aging, at 15 (Feb. 2006).

³⁶ For consistency, the comparisons in Table 2.5 were made using 2000 Census population data because NCEA relied upon 2000 Census population data in preparing its "per 1,000 adults" reporting rates for the 2004 Survey. The comparisons in Table 2.5 should be viewed cautiously as four of the states listed in the table did not provide data to NCEA on abuse reports for adults age 60+.

³⁷ Department of Human Services, Adult Abuse & Neglect Registry, "Total # of Intake Calls Received (Fiscal Year to Quarter)" KFJQ1B002 (July 18, 2007).

³⁸ Department of Human Services, Adult Abuse & Neglect Registry, "Number of Intakes Accepted (Fiscal Year to Quarter)" KFJQ1B002 (July 18, 2007).

³⁹ Department of Human Services, Adult Abuse & Neglect Registry, "# of Accepted Intakes w. Confirmed Problem (Fis. Yr-to-Qtr)" KFJQ1B002 (July 18, 2007).

**Table 2.6 Number of Hawaii DAPS Abuse Intakes
Reported/Investigated/Confirmed (FY 06-07)⁴⁰**

	Reported				Investigated				Confirmed*			
Age	Unk.	18-59	60+	Total	Unk.	18-59	60+	Total	Unk.	18-59	60+	Total
Oahu	71	196	711	978	7	99	335	441	0	16	79	95
Kauai	4	15	61	80	0	4	30	34	0	0	6	6
E. Hawaii	12	54	97	163	2	21	32	55	0	1	4	5
W. Hawaii	2	4	17	23	1	4	13	18	1	0	5	6
Maui	7	44	84	135	0	5	20	25	0	1	4	5
Molokai	1	1	6	8	0	1	1	2	0	0	1	1
Lanai	0	0	0	0	0	0	0	0	0	0	0	0
STATEWIDE	97	314	976	1387	10	134	431	575	1	18	99	118

*One problem per intake.

a. Reports Not Investigated

Of the 1387 abuse reports that were received by DAPS in FY 06-07, 808 reports, or 58.3%, were not accepted for investigation.⁴¹ At the time of this study, no detailed information was available from Department of Human Services as to the reasons why these cases were not investigated, other than the cases did not meet the statutory criteria that would permit an investigation to proceed.⁴²

Among the reports received by DAPS that were not accepted for investigation, both among all ages of adults and adults age 60+, reported incidents of "neglect by others" made up the largest percentage and reported incidents of "poor self-care" made up the second largest percentage.⁴³ (See Figures 2.3 and 2.4.)

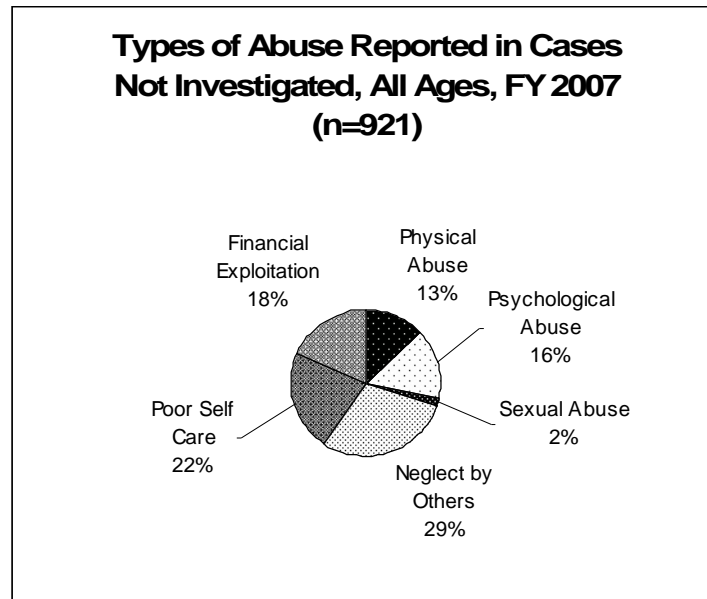
⁴⁰ Department of Human Services, Adult Abuse & Neglect Registry, "Total # of Intake Calls Received (Fiscal Year to Quarter)" KFJQ1B002 (July 18, 2007); "Number of Intakes Accepted (Fiscal year to Quarter)" KFJQ1B002 (July 18, 2007); "# of Accepted Intakes w. Confirmed Problem (Fis. Yr-to-Qrtr)" KFJQ1B002 (July 18, 2007).

⁴¹ Department of Human Services, Adult Abuse & Neglect Registry, "Annual Report for Calendar Year and State Fiscal Year" KFJQ1C003, at Table 1 (August 30, 2007).

⁴² DHS is expected to make more detailed information available in the near future on intake reports that were not accepted for investigation.

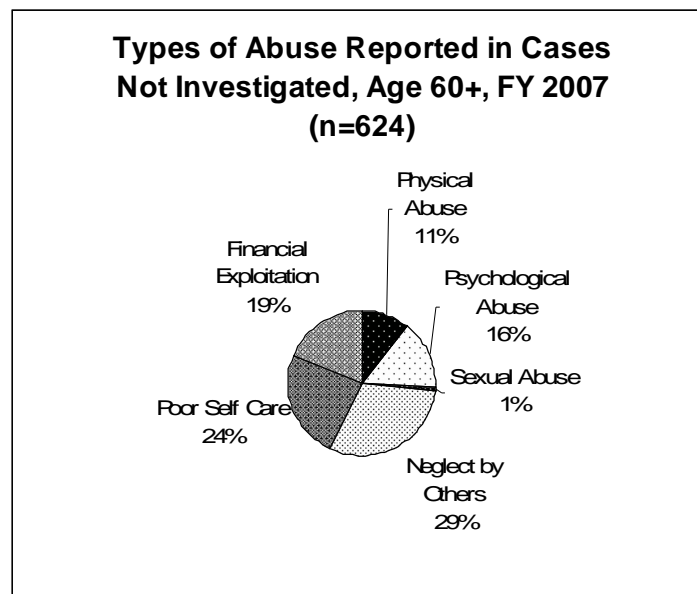
⁴³ Department of Human Services, Adult Abuse & Neglect Registry, "Annual Report for Calendar Year and State Fiscal Year" KFJQ1C003, at Table 12 (August 30, 2007).

**Figure 2.3 Types of Abuse Reported
in Cases Not Investigated, All Ages, FY 06-07**



Source: Hawaii Department of Human Services, Adult Abuse & Neglect Registry.

**Figure 2.4 Types of Abuse Reported
in Cases Not Investigated, Age 60+, FY 06-07**

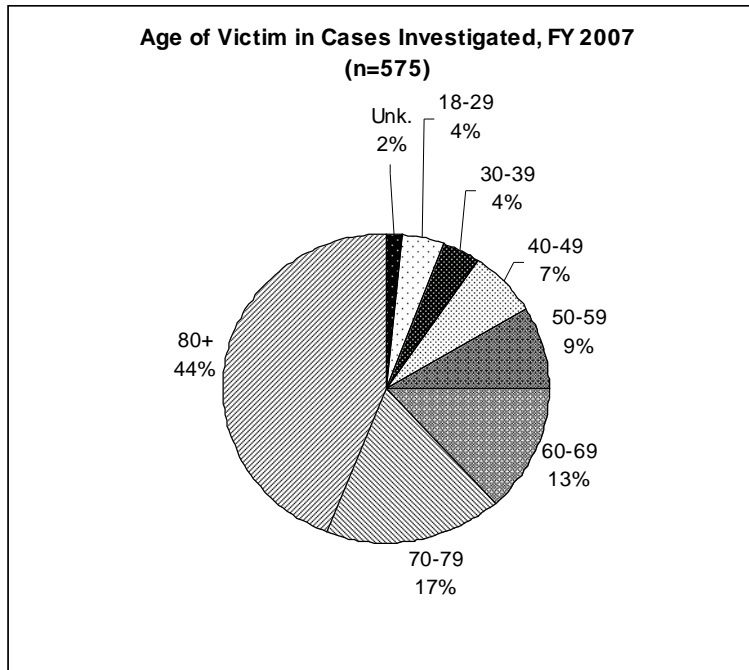


Source: Hawaii Department of Human Services, Adult Abuse & Neglect Registry.

b. Reports Selected for Investigation

Of the 575 abuse reports that were accepted for investigation in FY 06-07, 74% involved an adult age 60 or older.⁴⁴ Further, 254 abuse investigations, or 44%, involved a victim age 80 or older.⁴⁵ (See Figure 2.5) If one compares this data to Hawaii's population data, one would observe that abuse investigations among adults age 60+ are disproportionate to the percentage of that age group in Hawaii's population.⁴⁶

Figure 2.5 Age of Victim in Cases Investigated, FY 06-07



Source: Hawaii Department of Human Services, Adult Abuse & Neglect Registry.

Among the reports of adult abuse investigated by DAPS in FY 06-07 both among all ages and among adults age 60+, "neglect by others" made up the majority of cases, followed by "poor self care."⁴⁷ (See Figures 2.6 and 2.7.)

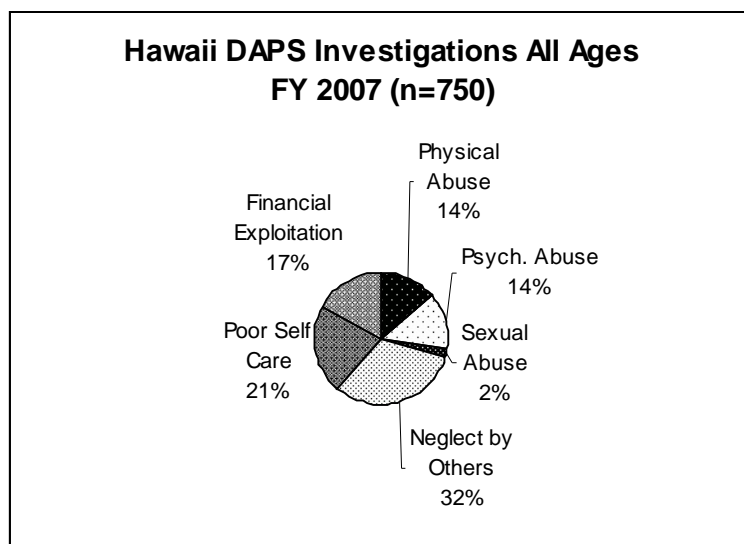
⁴⁴ Department of Human Services, Adult Abuse & Neglect Registry, "Age of Victims on Cases Reported" KFJQ1C003, at Table 1 (July 18, 2007).

⁴⁵ *Id.*

⁴⁶ U.S. Census Bureau, available at www.census.gov. The most recent estimate from the U.S. Census Bureau indicates, that on July 1, 2006, the population of Hawaii adults ages 18+ was 987,417. That population of adults was divided as follows: Age 18-29= 22%, Age 30-39 = 18%, Age 40-49 = 19%, Age 50-59 = 17%, Age 60-69 = 11%, Age 70-79 = 8%, Ages 80+ = 6%.

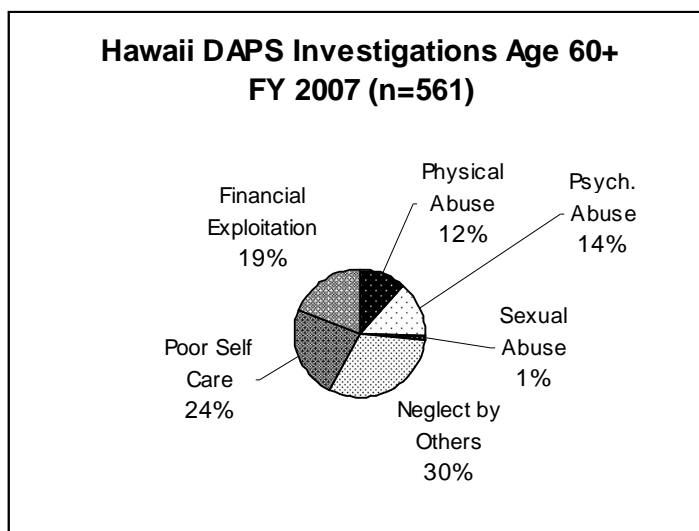
⁴⁷ Department of Human Services, Adult Abuse & Neglect Registry, Annual Report for Calendar Year and State Fiscal Year, "All Problems by Area" KFJQ1C003, at Table 12 (July 18, 2007). This would appear to be the inverse of the national trend found in the 2004 Survey, where self-neglect made up the majority of reports investigated, followed by caregiver neglect; also see Figures 2.1 and 2.2.

Figure 2.6 Hawaii DAPS Investigations, All Ages, FY 06-07⁴⁸



Source: Hawaii Department of Human Services, Adult Abuse & Neglect Registry.

Figure 2.7 Hawaii DAPS Investigations, Age 60+, FY 06-07⁴⁹



Source: Hawaii Department of Human Services, Adult Abuse & Neglect Registry.

⁴⁸ Total incidents of abuse (n=750) differ from reports investigated (n=575) because it includes reports where the subsequent investigation reveals multiple types of abuse or multiple incidents of abuse involving the same victim.

⁴⁹ Total incidents of abuse (n=561) differ from reports investigated (n=431) because it includes reports where the subsequent investigation reveals multiple types of abuse or multiple incidents of abuse involving the same victim.

Chapter 3

OVERVIEW OF ADULT PROTECTIVE SERVICES IN HAWAII

A. Part X, Chapter 346, Hawaii Revised Statutes

Adult protective services in Hawaii are addressed in part X, Chapter 346, Hawaii Revised Statutes (HRS).¹ Although the law is to apply to the protection of all adults, section 346-221, HRS, establishes that a primary intent of the law is to protect elders who are mentally and physically impaired, as this group is most vulnerable to abuse.² The core provision for the enforcement of part X is found in section 346-227, HRS, which requires the Department of Human Services to investigate an abuse report when the report meets the following specific criteria:³

- (1) The reported victim is a dependent adult;
- (2) Abuse has occurred; and
- (3) There is imminent risk for re-abuse.

If an intake report to Dependent Adult Protective Services ("DAPS") meets these three criteria, then DAPS will accept the report for investigation and initiate the investigation.⁴ The three criteria are central components of DAPS enforcement in Hawaii, and their importance will be explained in greater detail in later sections of this study that compare them to requirements in

¹ Part X includes many provisions relevant to dependent adult protective services, including a considerable number of procedural provisions that are outside the scope of this study. This study will focus on the reporting and investigation requirements for adult abuse in Hawaii.

² HAW. REV. STAT. § 346-221:

§346-221 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, 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 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.

³ HAW. REV. STAT. § 346-227:

§346-227 Investigation. Upon receiving a report that abuse of a dependent adult has occurred and is imminent, the department shall cause an investigation to be commenced in accordance with this part as the department deems appropriate.

⁴ HAW. REV. STAT. § 356-227; HAW. ADMIN. R., Dept. of Human Services § 17-1421-6; Hawaii Dependent Adult Protective Services, *Hawaii Adult Protective Services Intakes Not Accepted for Investigation in 2005, A Statistically Significant Review*.

other states. For now, though, it is important to remember that each criterion has a specific definition, as discussed below.

"Dependent adult." Section 346-222, HRS, defines a "dependent adult" as "any adult who, because of mental or physical impairment is dependent on another person, a care organization, or a care facility for personal health, safety, or welfare."⁵ A closer look at this definition reveals that initial eligibility for dependent adult protective services relies upon the person's:

- Age – the person must be an adult, age 18 or older;
- Condition – mental or physical impairment; and
- Function –the impairment must result in dependency on another.⁶

It is important to note that the definition of "dependent adult" does not distinguish between adults and elder adults above a certain age threshold and that an adult is considered to be anyone over eighteen years old.

"Abuse." Section 346-222, HRS, defines abuse as the "actual or imminent physical injury, psychological abuse or neglect, sexual abuse, financial exploitation, negligent treatment, or maltreatment as further defined in this chapter."⁷ The definition then offers further sub-definitions and indicators of the various types of abuse of dependent adults that may trigger DAPS action. (See Table 3.1.) For an investigation to take place, a dependent adult must have been subjected to one or more of the forms of abuse or neglect described in the statute.

Table 3.1 Definitions and Examples of "Abuse" in HRS § 346-222

TYPES OF ABUSE (applicable to "dependent adults")	EXAMPLES IN STATUTE
(1) Physical injury and psychological abuse -AND- <ul style="list-style-type: none"> • The injury is not justifiably explained; or • The history is at variance with the severity or type of injury; or • Circumstances indicate that the injury is not an accident. 	<ul style="list-style-type: none"> • Skin bruising or internal bleeding • Skin injury with substantial bleeding • Malnutrition • Burns • Poisoning • Bone fracture • Subdural hematoma • Soft tissue swelling • Extreme physical pain • Extreme mental distress (characterized by a pattern of threats, insults, or harassment that humiliate, provoke, intimidate, confuse or frighten)
(2) Non-consensual sexual contact	<ul style="list-style-type: none"> • Sexual assault, molestation, sexual fondling, incest, or prostitution • Obscene or pornographic photographing, filming, or depiction • Sexual exploitation
(3) Neglect (encompasses self-neglect)	Failure to provide adequate and timely food, clothing, shelter, psychological care, physical care, medical care, or supervision

⁵ HAW. REV. STAT. § 346-222.

⁶ American Bar Association Commission on Law and Aging, *Statutory Provisions Authorizing and Defining Threshold Eligibility for Adult Protective Services, By State* (2006).

⁷ HAW. REV. STAT. § 346-222.

TYPES OF ABUSE (applicable to "dependent adults")	EXAMPLES IN STATUTE
(4) Administration of drugs	Administering dangerous, harmful, or detrimental drugs (unless pursuant to doctor's direction or prescription)
(5) Failure of a caregiver to exercise an appropriate degree of care	Failure to: <ul style="list-style-type: none"> • Assist with personal hygiene • Provide necessary food, shelter, or clothing • Provide necessary health care or prescribed medications • Protect from health or safety hazards • Protect from 3rd party abuse
(6) Exposure to danger	<ul style="list-style-type: none"> • Lacks understanding or capacity to make or communicate responsible decisions -AND- <ul style="list-style-type: none"> • Appear to be exposed to situation with imminent risk of death or injury
(7) Financial and economic exploitation	Wrongful or negligent taking, withholding, misappropriation, or use of money, real property, or personal property. Includes: <ul style="list-style-type: none"> • Breach of fiduciary relationship such as power-of-attorney or guardianship • Unauthorized taking of personal assets • Misappropriation, misuse, or transfer of money from a personal or joint account Failure to use assets to provide for necessary support and maintenance

"Imminent abuse." Section 346-222, HRS, defines "imminent abuse" as "reasonable cause to believe that abuse will occur within the next ninety days."⁸ Therefore, before an investigation may take place, DAPS must determine if there is a significant risk of abuse within the next ninety days following the initial occurrence of abuse.

Upon investigation of a reported abuse, the Department has broad discretion to act to prevent further abuse. The Department may choose from several courses of action, including informal resolution, right of entry, or seeking an immediate protection order or restraining order.⁹

B. Dependent Adult Protective Services

In Hawaii, the Dependent Adult Protective Services ("DAPS") program is maintained within the Department of Human Services. On Oahu, DAPS is staffed by five adult protective service workers that investigate reports of abuse.¹⁰ Oahu staff also consists of two registered nurses, two social services assistants (IV), one supervisor, one secretary, and one clerk-typist.¹¹ The department also has one auditor (III) on staff to investigate reports of financial abuse and exploitation.¹² Five intake workers receive and process reports of abuse, but these intake workers are not counted among DAPS staff because they perform shared duties with other

⁸ HAW. REV. STAT. § 346-222.

⁹ HAW. REV. STAT. § 346-228.

¹⁰ Department of Human Services, Legislative Briefing (Sept. 27, 2006).

¹¹ *Id.*

¹² In correspondence with LRB, DHS staff reported that prior to February 8, 2007, the Oahu DAPS office maintained a three-person financial exploitation team as part of the federally-funded Financial Exploitation Project. Since that time, funding has ceased, and only one auditor remains on staff. (Aug. 24, 2007).

branches within the Department of Human Services.¹³ Each of the Neighbor Island counties has one adult protective service worker and one social service assistant (IV). Lana'i, Moloka'i, and Ka'u each are assigned a half-time social worker.¹⁴ Statewide, DAPS has access to a clinical medical consultant, but has no access to a psychiatric consultant for psychiatric evaluations. For complex medical cases, the department has a working relationship with the University of Hawaii medical school, which it hopes to rely upon for help with competency evaluations for suspected abuse victims.¹⁵

When reports of abuse on Oahu are first received, the intake personnel, who are social workers themselves, screen each report to determine whether all statutory criteria have been met.¹⁶ If the criteria are met, then the case is accepted for investigation and assigned to an adult protective service worker.¹⁷ On the Neighbor Islands, due to staff coverage, adult protective service workers fulfill the duties of receiving the reports, screening, and conducting investigations.¹⁸ Statewide, all incidents of dependent adult abuse or neglect, whether or not accepted for investigation, are also reported to the Department of the Attorney General – Medicaid Investigation Division.¹⁹ In addition, all incidents of dependent adult abuse or neglect, whether or not accepted for investigation, that may involve a crime are reported to the police and the county prosecutor's office.²⁰ DAPS staff sometimes will use informal internal procedures, in addition to formal procedures, to prioritize reports for investigation and action; and cases in which there is immediate danger to the victim often are handled first.²¹ If a report is not accepted for investigation, DAPS may provide information or referrals to other services that may be available.²²

DAPS estimates that the average caseload per adult protective service worker on Oahu at any given time is thirty or more cases.²³ At times, caseload may be even greater for the auditor that investigates financial abuse reports.²⁴ Internal guidelines emphasize that the decision whether to proceed with an investigation must be made within sixty calendar days.²⁵ DAPS confirms that staff generally meet the 60-day deadline.²⁶

Upon investigation by a DAPS investigator, if an abuse report is substantiated, the investigator will work with the Department to take appropriate action, including seeking protection orders or obtaining social services for the victim. DHS notes that confirming whether or not abuse or neglect has occurred is, in practice, secondary to making sure that victims receive

¹³ Telephone interview with DHS staff (Sept. 13, 2007).

¹⁴ *Supra* note 10.

¹⁵ Information provided in correspondence from DHS staff to LRB (Aug. 24, 2007).

¹⁶ HAW. ADMIN. R., Dept. of Human Services § 17-1421-6(b).

¹⁷ *Id.* at § 17-1421-6(c).

¹⁸ Telephone interview with DHS staff (Aug. 10, 2007).

¹⁹ DAPS procedures manual, §17-1421-8, issued Sept. 03, 2003.

²⁰ HAW. ADMIN. R., Dept. of Human Services § 17-1421-8; DAPS procedures manual, § 17-1421-8, issued Sept. 3, 2003.

²¹ Interview with DHS staff (June 7, 2007).

²² DAPS procedures manual, §17-1421-6(c), issued Feb. 7, 2003.

²³ Telephone interview with DAPS staff (Oct. 12, 2007).

²⁴ Telephone interview with DHS staff (Sept. 13, 2007).

²⁵ DAPS procedures manual § 17-1421-7, issued Feb. 7, 2003.

²⁶ Telephone interview with DHS staff (Aug. 10, 2007).

the care and supervision they need at the time of the DAPS intervention.²⁷ Situations occasionally arise where there is not enough evidence for an investigator to substantiate a report of abuse, but the circumstances appear sufficiently dangerous that the investigator will contact Department authorities to rectify the dangerous situation. Such situations frequently arise in cases of self-neglect where DAPS must arrange for the provision of personal care services in the home, getting the victim medical attention, or if necessary, placing the victim in an assisted living or long-term care facility.²⁸ The amount of time from substantiation of an abuse report to completion of the case is dependent upon the type of action taken to resolve the abusive situation. DAPS supervisors work to process these cases at a reasonable pace relative to the individual needs of the case.²⁹

²⁷ Correspondence from DHS staff (Nov. 1, 2007).

²⁸ *Id.*

²⁹ Correspondence from DHS staff (Aug. 10, 2007).

Chapter 4

"DEPENDENT ADULT" AND ELIGIBILITY FOR SERVICES

Across the country, there is no standard definition of an adult who is eligible for protective services. Hawaii's adult protective statutes have been criticized in the past for being "the most restrictive in the country, mainly because it requires the alleged victim to be dependent on others for care."¹ A look at other states' statutes reveals that the terms used by states to denote those at risk vary widely and include "vulnerable adult," "impaired person," "endangered adult," and "dependent adult." Hawaii uses the term "dependent adult," and it is not unique in its use of "dependent adult" as a threshold definition of eligibility for adult protective services. Furthermore, a majority of states' definitions of eligible adults include references, implicit and explicit, to the need for assistance or dependence in providing for one's own needs. Four states, including Hawaii, specifically use the term "dependent adult" in their adult protective services statutes.² (See Table 4.1) Although these four states use the term "dependent adult," Iowa, California, and Maine's definitions as written do not appear to require actual dependence. Rather, they require the adult to be impaired, restricted, or needing assistance from others. Hawaii's definition of "dependent adult," on the other hand, is the only one of the four that specifically requires an adult to be "dependent upon another."

Table 4.1 Statewide Definitions of "Dependent Adult"

State	"Dependent Adult" Defined
Hawaii	"[A]ny 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." ³
Iowa	"[A] person eighteen years of age or older who is unable to protect the person's own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or as defined by departmental rule." ⁴
Maine	<p>"[A]n adult who has a physical or mental condition that substantially impairs the adult's ability to adequately provide for that adult's daily needs. 'Dependent adult' includes, but is not limited to, any of the following:</p> <ul style="list-style-type: none"> A. A resident of a nursing home licensed or required to be licensed under section 1817. B. A resident of a facility providing assisted living services licensed or required to be licensed pursuant to section 7801; or C. A person considered a dependent person under Title 17-A, section 555."⁵ <p>[NOTE: Title 17-A, section 555, Me. Rev. Stat. Ann., is a criminal neglect statute that defines "dependent person" as "unable to perform self-care because of advanced age or physical or mental disease, disorder or defect."</p>

¹ Perez, R., *Isles' Adult-Protection Law Called the Nation's Most Restrictive*, Honolulu Advertiser (May 21, 2006).

² American Bar Association Commission on Law and Aging, *Statutory Provisions Authorizing and Defining Threshold Eligibility for Adult Protective Services by State* (2006).

³ HAW. REV. STAT. § 346-222.

⁴ IOWA CODE ANN. § 235B.2.

⁵ ME. REV. STAT. ANN. tit. 22, § 3472(6).

State	"Dependent Adult" Defined
Cal. [†]	<p>"[A]ny person between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.</p> <p>(b) "Dependent adult" includes any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24 hour health facility...."⁶</p>

*Maine also provides services for "incapacitated adults."⁷

†California provides a separate definition for "elder" as any person age 65 and older.⁸

Thirty-two other states use a term other than "dependent adult" for a person eligible for adult protective services, but have definitions that indicate that the adult is incapable or impaired in the ability to provide for the person's own care or meet daily needs.⁹ Logically, these definitions would imply the need for some level of dependency on others for care. A common example of this language comes from South Carolina, which defines a "vulnerable adult" as "a person eighteen years or older who has a physical or mental condition which substantially impairs the person from adequately providing for his own care or protection."¹⁰

Ten of these states' definitions specifically refer to the need for assistance from others in providing for an adult's own needs.¹¹ An example of this language comes from Kentucky, which defines an "adult" as:

[A] person eighteen (18) years of age or older who, because of mental or physical dysfunctioning, is unable to manage his own resources or carry out the activity of daily living or protect himself from neglect, exploitation, or a hazardous or abusive situation

⁶ CALIF. WELF. & INST. CODE § 15610.23.

⁷ ME. REV. STAT. ANN. tit. 22, § 3472(10) ("Incapacitated adult" is defined as "any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that that individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that individual's person, or to the extent the adult cannot effectively manage or apply that individual's estate to necessary ends.").

⁸ CALIF. WELF. & INST. CODE § 15610.27.

⁹ ALA. CODE § 38-9-2(2); ALASKA STAT. § 47.24.900(16); DEL. CODE ANN. tit 31, § 3902(6); FLA. STAT. ANN. § 415.102(26); IND. CODE ANN. § 12-10-3-2(a); KY. REV. STAT. ANN. § 209.020(4); LA. REV. STAT. ANN. § 14:403.2(B)(5.1); MD. CODE ANN., FAM. LAW § 14-101(q); MASS. GEN. LAWS ANN. ch. 19C, § 1; MINN. STAT. ANN. § 626.5572, subd. 21; MISS. CODE ANN. § 43-47-5(m); MO. ANN. STAT. § 660.250(5); NEB. REV. STAT. § 28-371; N.H. REV. STAT. ANN. § 161-F:43(VII); N.M. STAT. ANN. § 27-7-16(M); N.J. STAT. ANN. § 52:27D-407; N.Y. SOC. SERV. LAW ART. 9B, § 473-1; N.C. GEN. STAT. § 108A-101(e); N. D. CENT. CODE § 50-25.2-01(16); OHIO REV. STAT. ANN. § 5101.60(B); OKLA. STAT. ANN. tit. 43A, § 10-103(A)(5); S.C. CODE ANN. § 43-35-10(11); S.D. CODIFIED LAWS ANN. § 22-46-1(2); TENN. CODE ANN. § 71-6-102(2); TEX. HUM. RES. CODE ANN. § 48.002(a)(8); UTAH CODE ANN. § 62A-3-301(26); VT. STAT. ANN. tit. 33, § 6902(14); VA. CODE ANN. § 63.2-1603; WASH. REV. CODE ANN. § 74.34.020(13); W. VA. CODE § 9-6-1(4); WIS. STAT. ANN. § 55.01(1e); WYO. STAT. ANN. § 35-20-102(a)(xviii).

¹⁰ S.C. CODE ANN. § 43-35-10(11).

¹¹ ALASKA STAT. § 47.24.900(16); KY. REV. STAT. ANN. § 209.020(4); MASS. GEN. LAWS ANN. ch. 19C, § 1; MINN. STAT. ANN. § 626.5572, subd. 21; N.Y. SOC. SERV. LAW ART. 9B, § 473-1; OKLA. STAT. ANN. tit. 43A, § 10-103(A)(5); TENN. CODE ANN. § 71-6-102(2); VT. STAT. ANN. tit. 33, § 6902(14); WASH. REV. CODE ANN. § 74.34.020(13); WYO. STAT. ANN. § 35-20-102(a)(xviii).

without assistance from others, and who may be in need of protective services [emphasis added].¹²

In all, forty-four states and the District of Columbia include the existence of conditions, such as mental or physical impairment, in their definitions that determine eligibility for adult protective services.¹³

Although Hawaii's statutory definition of "dependent adult" requires that the adult be dependent on others for care, a literal reading would present a logical inconsistency between this seemingly strict requirement and the number of cases that are investigated and confirmed as self-neglect, that is, where adults who are not dependent on others for care have neglected their own self-care. The Department of Human Services confirms that the statutory definition is applied in practice as if "dependent adult" means adults who are dependent, *or* whose physical or mental impairment renders them in a condition where they "should be" dependent, on others for care or assistance.¹⁴

Past proposals would have amended section 346-222, HRS, to replace "dependent adult" with another term and definition that would remove the requirement of dependence. In 2000, the Governor's Committee on Elder Abuse recommended defining "adult" as:

[A]n individual who is:

- (1) Between the ages of 18-59 years who, because of physical or mental impairment, is unable to perform or obtain services necessary for the adult's health, safety or welfare; or
- (2) Age 60 years or older.¹⁵

Later, during the Regular Session of 2007, S.B. No. 1184 S.D. 2 H.D. 3 (2007) would have replaced "dependent adult" with "vulnerable adult" and defined this term as:

¹² KY. REV. STAT. ANN. § 209.020(4).

¹³ ALA. CODE § 38-9-2(2); ALASKA STAT. § 47.24.900(16); ARIZ. REV. STAT. ANN. § 46-451(A)(10); ARK. CODE ANN. § 12-12-1703(8)(A)&(B); CA. WELF. & INST. CODE § 15610.23; COLO. REV. STAT. ANN. § 26-3.1-101(1); DEL. CODE ANN. tit 31, § 3902(6); D.C. CODE ANN. § 7-1901; FLA. STAT. ANN. § 415.102(26); GA. CODE ANN. § 30-5-3(6); HAW. REV. STAT. § 346-222; IDAHO CODE § 39-5302(10); IND. CODE ANN. § 12-10-3-2(a); IOWA CODE ANN. § 235B.2(4); KY. REV. STAT. ANN. § 209.020(4); LA. REV. STAT. ANN. § 14:403.2(B)(5.1); ME. REV. STAT. ANN. tit.22 § 3472(6); MD. CODE ANN., FAM. LAW § 14-101(q); MASS. GEN. LAWS ANN. ch. 19C, § 1; MICH. COMP. LAWS ANN. § 400.11(f); MINN. STAT. ANN. § 626.5572, subd. 21; MISS. CODE ANN. § 43-47-5(m); MO. ANN. STAT. § 660.250(5); MONT. CODE ANN. § 53-3-803(9); NEB. REV. STAT. § 28-371; N.H. REV. STAT. ANN. § 161-F:43(VII); N.J. STAT. ANN. § 52:27D-407; N.M. STAT. ANN. § 27-7-16(M); N.Y. SOC. SERV. LAW ART. 9B, § 473-1; N.C. GEN. STAT. § 108A-101(e); N.D. CENT. CODE § 50-25.2-01(16); OHIO REV. STAT. ANN. § 5101.60(B); OKLA. STAT. ANN. tit. 43A, § 10-103(A)(5); OR. REV. STAT. § 430.735(2); S.C. CODE ANN. § 43-35-10(11); S.D. CODIFIED LAWS ANN. § 22-46-1(2); TENN. CODE ANN. § 71-6-102(2); TEX. HUM. RES. CODE ANN. § 48.002(a)(8); UTAH CODE ANN. § 62A-3-301(26); VT. STAT. ANN. tit. 33, § 6902(14); VA. CODE ANN. § 63.2-1603; WASH. REV. CODE ANN. § 74.34.020(13); W.VA. CODE § 9-6-1(4); WIS. STAT. ANN. § 55.01; WYO. STAT. ANN. § 35-20-102(a)(xviii).

¹⁴ Telephone interview with DHS staff (Aug. 10, 2007).

¹⁵ STATE OF HAWAII GOVERNOR'S COMMITTEE ON ELDER ABUSE, *Final Report on the Work and Recommendations of the Governor's Committee on Elder Abuse*, at 33 (Dec. 2000). See also Appendix C of the Governor's Committee Report.

[A] person eighteen-years-of-age or older whose ability to meet essential requirements for mental or physical health or safety, or to protect the person's self from abuse, neglect, or exploitation is substantially impaired because of a physical, mental, or other disability, or incapacity.¹⁶

"Vulnerable adult" is a common term that is found in the APS statutes of seventeen states, and the definition is analogous to many other commonly found definitions in that it specifies that the adult suffers from a condition that impairs the adult's ability to provide for the adult's essential needs or protection.¹⁷

Although a departure from the term "dependent" has been advocated by some in Hawaii, one would be cautioned that it may have little effect on the actual number of abuse reports and investigations that take place. One comparative study of states' statutes noted that:

Another legal component of 20 state statutes is inclusion of the criterion of adult dependence or vulnerability. It has been suggested that fulfillment of this criterion results in the exclusion of many abused elders who are not considered dependent, thus leading to lower number of investigations and substantiations. This situation was not found in our study. Investigation rates were almost identical between states with and without a dependence requirement.¹⁸

Regardless of what term is chosen, whether "dependent," "vulnerable," or another term, amending the definition that appears in section 346-222, HRS, to clarify the level of dependence that is necessary, if any, may help to resolve any existing confusion over the applicability of the statute to adults who may be in need of protective services.

¹⁶ S.B. No. 1184 S.D. 2 H.D. 3 (2007), at 9.

¹⁷ ALASKA STAT. § 47.24.900 (16); ARIZ. REV. STAT. ANN. § 46-451(A)(10); FLA. STAT. ANN. § 415.102(26); IDAHO CODE § 39-5302(10); MD. CODE ANN., FAM. LAW § 14-101(q); MICH. COMP. LAWS ANN. § 400.11(f); MINN. STAT. ANN. § 626.5572, subd. 21; MISS. CODE ANN. § 43-4705(m); NEB. REV. STAT. § 28-368; N.J. STAT. ANN. § 52:27D-407; N.D. CENT. CODE § 50-25-2.01(17); OKLA. STAT. ANN., tit. 43A, § 10-103(A)(5); S.C. CODE ANN. § 43-35-10(11); UTAH CODE ANN. § 62A-3-301(26); VT. STAT. ANN., tit. 33, § 6902(14); WASH. REV. CODE ANN. § 74.34.0202(13); WYO. STAT. ANN. § 35-20-102(a)(xviii).

¹⁸ Jogerst, *et al.*, *Domestic Elder Abuse and the Law*, AM. J. PUBLIC HEALTH 93, at 2135 (2003).

Chapter 5

REPORTING AND INVESTIGATING ABUSE

As explained in Chapter 3, reported cases of adult abuse in Hawaii must meet three criteria to be accepted by DAPS for investigation: (1) dependency; (2) occurrence of abuse; and (3) abuse is imminent.¹ There is concern that this standard for initiating an investigation is too restrictive and thus prevents many serious cases of abuse from being addressed.² It has been suggested that the statute be amended to relax the criteria and widen the safety net for alleged victims of abuse, neglect, and exploitation. This would potentially increase the number of abuse reports and concurrently result in an increase in the number of cases subject to investigation and persons in need of services. Past proposals would have changed the requirement that an incident of abuse be accompanied by the imminent occurrence of abuse.³ This requirement would be replaced with the requirement that either abuse has occurred *or* abuse is imminent. This would reduce from three to two the criteria for reporting and investigating reports of abuse and neglect: (1) that the victim be a dependent adult; and (2) that abuse has occurred *or* abuse is imminent.

A review of all states' APS statutes regarding reported abuse and investigations of reports reveals that Hawaii is one of two jurisdictions that have reporting and investigation laws that may be interpreted to require both the occurrence of abuse and imminence or continuance of further abuse to trigger an APS response.⁴ Similarly, Colorado "urges" a report by one who has observed the mistreatment or self-neglect of an at-risk-adult or who has reasonable cause to believe that an at-risk-adult has been mistreated or is self-neglected *and is at imminent risk of abuse*.⁵ It is unclear at the time of this study how Colorado adult protective services applies this provision in practice.

The most common provision among all other states' statutes is that the reporter has "reasonable cause" to believe or suspect that abuse has occurred.⁶ Forty-six other states require some variation of suspicion or reasonable cause to believe that abuse has occurred or is occurring

¹ HAW. REV. STAT. § 346-227.

² Perez, R., *Isles' Adult-Protection Law Called the Nation's Most Restrictive*, Honolulu Advertiser, May 21, 2006. (In a follow up e-mail correspondence on Oct. 29, 2007, from Lori Steigel of the ABA Commission on Law and Aging, Ms. Stiegel offered further insight on her comments to the *Honolulu Advertiser*. She explained that changing "and imminent" to "or imminent" in §346-224(a) and §346-227 would make the statute considerably less restrictive.)

³ H.B. No. 811 (2007) and S.B. No. 1184 (2007) proposed amending HAW. REV. STAT. §§ 346-224 (a), 346-227, 346-231(a), 346-232(b), and 346-240 to change "and imminent" to "or imminent." See also, Appendix C of the Final Report on the Work and Recommendations of the Governor's Committee on Elder Abuse.

⁴ Lori Steigel of the American Bar Association Commission on Law and Aging has suggested that Hawaii is the only state that requires the imminence of abuse. Ms. Steigel noted that the Commission on Law and Aging expects to release additional research results on this topic in the near future. In the meantime, however, research in preparation of this study by the Bureau reveals that one other jurisdiction's statutes may be interpreted to require imminence.

⁵ COLO. REV. STAT. § 26-3.1-102(1)(a).

⁶ Roby, J., Sullivan, R., *Adult Protection Service Laws: A Comparison of State Statutes from Definition to Case Closure*, 12 J. ELDER ABUSE & NEGLECT 17, at 30 (2000).

to initiate an abuse report.⁷ A common example of this language comes from Florida, which requires that "any person... who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion..."⁸

The majority of states apply two standards for reporters of abuse: a stringent standard for medical professionals and those who serve the disabled and elderly often called "mandated reporters," and a more relaxed standard for all other people.⁹ Hawaii is no exception to this. Section 346-224(a), HRS, requires mandatory reporting by persons, in the performance of their professional or official duties, who "know or have reason to believe that a dependent adult has been abused and is threatened with imminent abuse."¹⁰ Included in the list of persons subject to the statute are medical and health related professionals, law enforcement personnel, employees of public or private agencies or institutions providing medical or social services, and employees of adult residential care homes.¹¹ On the other hand, section 346-224(d), HRS, provides that "[a]ny other person who has reason to believe that a dependent adult has been abused or is threatened with imminent abuse" has the discretion, but is not required, to report the matter.¹²

Puzzlingly, Hawaii applies different reporting criteria to mandated reporters and discretionary reporters. Mandated reporters must report cases where the dependent adult has been abused *and* is threatened with imminent abuse, but all other discretionary reporters may report cases where the dependent adult has been abused *or* is threatened with imminent abuse. Not only does the law allow the discretionary reporter greater latitude in reporting, even more interesting to note is that the reporting criteria of section 346-224(d), HRS, does not track with the requirements that an abuse report must meet to trigger an investigation pursuant to section 346-227, HRS. Section 346-224(d) results in a more inclusive reporting standard for discretionary reporters (i.e., actual abuse *or* threatened imminent abuse), whereas, section 346-227, uses the reporting criteria for mandated reporters: that abuse has occurred *and* is

⁷ ALA. CODE § 38-9-8; ALASKA STAT. § 47.24.010; ARIZ. REV. STAT. ANN. § 46-454(A); ARK. CODE ANN. § 12-12-1708a(1); CA. WELF. & INST. CODE § 15630; CONN. GEN. STAT. ANN. § 17B-451(a); DEL. CODE ANN. tit 31, § 3910; FLA. STAT. ANN. § 415.1034; GA. CODE ANN. § 30-5-4; IDAHO CODE § 39-5303; ILL. REV. STAT. ch. 320, 20/4; IND. CODE ANN. § 12-10-3-8; IOWA CODE ANN. § 235B.3; KAN. STAT. ANN. § 39-1431; KY. REV. STAT. ANN. § 209.030; LA. REV. STAT. ANN. § 14:403.2; ME. REV. STAT. ANN. tit.22 § 3477; MD. CODE ANN. FAM. LAW § 14-302; MASS. GEN. LAWS ANN. ch. 19C, § 1 & 19A, § 15; MICH. COMP. LAWS ANN. § 400.11(b); MINN. STAT. ANN. § 626.557, subd. 3; MISS. CODE ANN. § 43-47-7; MO. ANN. STAT. § 660.255(1); MONT. CODE ANN. § 52-3-805; NEB. REV. STAT. § 28-372; NEV. REV. STAT. ANN. § 200-5093; N.H. REV. STAT. ANN. § 161-F:146; N.J. STAT. ANN. § 52:27D-409; N.M. STAT. ANN. § 27-7-30; N.C. GEN. STAT. § 108A-102; N.D. CENT. CODE § 50-25.2-03; OHIO REV. STAT. ANN. § 5101.60(H); OKLA. STAT. ANN. tit. 43A, § 10-104; OR. REV. STAT. § 124.060; PA. CONS. STAT. ANN. § 10225.10(a); R.I. GEN. LAWS § 42-66-8; S.C. CODE ANN. § 43-35-25; TENN. CODE ANN. § 71-6-103; TEX. HUM. RES. CODE ANN. § 48.051; UTAH CODE ANN. § 62A-3-305; VT. STAT. ANN. tit. 33, § 6903; VA. CODE ANN. § 63.2-1606; WASH. REV. CODE ANN. § 74.34.035; W.VA. CODE § 9-6-6; WIS. STAT. ANN. § 46.90 & § 55.043; WYO. STAT. ANN. § 35-20-103.

⁸ FLA. STAT. ANN. § 415-1034(1)(a).

⁹ Roby, J., Sullivan, R., *Adult Protection Service Laws: A Comparison of State Statutes from Definition to Case Closure*, 12 J. ELDER ABUSE & NEGLECT 17, at 29 (2000).

¹⁰ HAW. REV. STAT. § 346-224(a). (Note, too, that § 346-224(c) specifies that any of the professionals in subsection (a) are not prohibited from reporting suspected cases of abuse that came to their attention in any private or non-professional capacity.)

¹¹ *Id.*

¹² HAW. REV. STAT. § 346-224(d).

imminent.¹³ DAPS staff, however, report that the statutory definition of "imminent abuse," like the term "dependent adult," is not always given the strict meaning that is stated in section 346-222, HRS (i.e., within the next 90 days).¹⁴ At least one independent researcher has suggested amending the statutes to make the criteria for investigations and mandatory reporters consistent with the criteria for discretionary reporters (i.e., where abuse has occurred *or* is imminent).¹⁵ These changes were among the amendments to chapter 346, HRS, proposed in H.B. No. 811 (2007) and S.B. No. 1184 (2007) and subsequent drafts.¹⁶

There is also anecdotal evidence that social workers in community care programs in Hawaii have neglected in the past to report suspected cases of abuse because of concerns that the report would not meet the statutory criteria of section 346-227 and thus would be denied an investigation. If this is the case, it supports an industry-wide theory that a significant number of incidents of abuse go unreported. Although there is no hard evidence of underreporting abuse, a confidential and statistically significant survey could be conducted in Hawaii to determine if, and to what extent, underreporting takes place, and whether changes to Hawaii's DAPS law may be necessary to encourage reporting abuse or neglect whenever it is suspected.

¹³ HAW. REV. STAT. § 346-227.

¹⁴ Telephone interview with DHS staff (Sept. 13, 2007).

¹⁵ *Supra* note 2.

¹⁶ H.B. No. 811 (2007); S.B. No. 1184 (2007).

Chapter 6

PROTECTION FOR ELDER ADULTS

A. Establishing an "Elder" Threshold Age in Hawaii

Currently, Hawaii law makes no distinction between adults and elder adults in qualifying for adult protective services. Part X, Chapter 346, HRS, applies to any "dependent adult" age 18 and over. A recurring concern is that this does not provide protection to the older segment of Hawaii's population that is shown to be the most vulnerable to abuse. Hawaii Department of Human Services data from fiscal year 2006-2007 shows that 74% of all adult abuse investigations that year were for adults age 60 or older. Forty-four per cent of investigations that year involved a victim aged 80 or older.¹

In 2000, the Governor's Committee on Elder Abuse recommended that part X, be amended to include a definition of "adult" as:

[A]n individual who is:

- (1) between the ages of 18-59 years who, because of physical or mental impairment, is unable to perform or obtain services necessary for the adult's health, safety or welfare; or
- (2) Age 60 years or older.²

This bifurcated definition would have allowed the statutory protections of part X to apply to adults age 60 and older based solely upon their age. It would apply to adults ages 18-59 if they were subject to a physical or mental condition or impairment that prevented them from obtaining necessary services for their health, safety, or welfare.³ The Committee also recommended an investigation of an "adult" meeting these criteria be required upon receiving a report that abuse has occurred *or* is imminent.⁴

The Committee believed that bifurcating the definition of "adult" to single out older individuals would address the need for special protection from abuse within this population.⁵ At that time, however, the Department of Human Services expressed reservations that the proposed amendments would permit governmental intrusion based solely upon a person's age where there is no condition of physical or mental impairment of the older adult. In addition, the Department

¹ See Figure 2.5, Chapter 2.

² STATE OF HAWAII GOVERNOR'S COMMITTEE ON ELDER ABUSE, *Final Report on the Work and Recommendations of the Governor's Committee on Elder Abuse*, at 33 (Dec. 2000). See also Appendix C of the *Final Report of the Work and Recommendations of the Governor's Committee on Elder Abuse*.

³ *Id.* at 26, 32. See also Appendix C of the *Final Report of the Work and Recommendations of the Governor's Committee on Elder Abuse*.

⁴ *Id.*

⁵ *Id.* at 25.

expressed concern that the proposed change would greatly increase the number of referrals to the DAPS branch, which was already understaffed to handle the existing caseload.⁶

Most recently, H.B. No. 811 (2007) and S.B. No. 1184 (2007) proposed amending part X to create a definition of "elder" as an adult age 75 and older. The amendment would eliminate any requirement that an "elder" be affected by a physical or mental impairment or be dependent upon others. Similar to the recommendations of the Governor's Committee on Elder Abuse, elders would be distinguished from younger adults, in this case, ages 18-74.⁷ These younger, "vulnerable adults" would need to be subject to a disability that affects their ability to meet essential requirements. Both bills met with objections, and later drafts removed the "elder" definition.⁸ Ultimately, neither bill was passed by the Legislature, and it seems safe to say that some of the concerns expressed during the hearing process resulted in the Resolution requesting this study.⁹

B. Other States' Approaches

It is not uncommon for other states to create an age-based classification for elder adults that would qualify these individuals for an abuse investigation or protective services. A total of eighteen states have a definition of an adult who is eligible for protective services that establishes a threshold age for older adults. (See Appendix D.) Ten of these states have a separate definition for "elder" that establishes a threshold age, but do not include an impaired physical or mental condition, to meet the threshold eligibility for adult protective services.¹⁰ A common example of this definition comes from California, which defines "elder" as "any person residing in this state, 65 years of age or older."¹¹ Four additional states, Missouri, Ohio, Pennsylvania, and Washington, distinguish eligible older adults but couple advanced age with the requirement that the elder adult also have a functional impairment that prevents the older adult from caring for his or her own needs.¹² An example of this language is found in Washington, where the definition of "vulnerable adult" includes "a person sixty years of age or older who has the

⁶ See Appendix E of the Governor's Committee Report; *see also* Perez, R., *Law Makes It Hard to Protect Isle's Seniors*, Honolulu Advertiser (May 21, 2006).

⁷ H.B. No. 811 (2007) and S.B. No. 1184 (2007) deleted the definition of "dependent adult" in § 346-222, HRS, and replaced it with "vulnerable adult." Under the new definition, a "vulnerable adult" is "a person between the ages of eighteen and seventy-four years whose ability to meet essential requirements for mental or physical health or safety, or to protect the person's self from abuse, neglect, or exploitation is substantially impaired because of a physical, mental, or other disability, or incapacity."

⁸ Later drafts of S.B. No. 1184 (2007) deleted the term "elder" and the age 18-74 requirement from the definition of "vulnerable adult," thus making the term "vulnerable adult" applicable to adults of any age.

⁹ H.B. No. 811, H.D. 1 amended H.B. No. 811 by removing the definition of "elder" as an adult age 75 and over. However, it retained the H.B. No. 811 definition of a "vulnerable adult" as an adult age 18-74. No provision was made in H.D. 1 for adults age 75 and over, and the adult abuse protections of part X, HRS, would have been applicable only to adults ages 18-74. The reason for the omission of adults age 75 and up is unclear and apparently was an inadvertent oversight.

¹⁰ California (65+), Georgia (65+), Louisiana (60+), Massachusetts (60+), Montana (60+), Oregon (65+), Texas (65+), Utah (65+), Virginia (60+), Wisconsin (60+).

¹¹ CAL. WELF. & INST. CODE § 15610.27.

¹² MO. ANN. STAT. § 660.250(5); OHIO REV. STAT. ANN. § 5101.60 (B); PA. CONS. STAT. ANN. tit. 35 § 10225.103; WASH. REV. CODE ANN. § 74.34.020(13).

functional, mental, or physical inability to care for himself or herself."¹³ Arguably, this latter type of definition would address concerns that age alone should not be the deciding factor in authorizing an intrusive investigation by a government agency.

Another approach that some states have taken to address physical and mental impairment that may come with advanced age is to incorporate language into the definition of an eligible adult that establishes "infirmities of aging," "senility," or "advanced age" as a physical or mental condition or impairment that meets the threshold for eligibility for an abuse report, investigation, or protective services.¹⁴ A common example is found in Florida, which does not distinguish elder adults, but defines a "vulnerable adult" as:

[A] person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or *the infirmities of aging* [emphasis added].¹⁵

Tennessee offers a unique definition of an "adult" as:

[A] person eighteen (18) years of age or older who because of mental or physical dysfunctioning *or advanced age* is unable to manage such person's own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others ... [emphasis added].¹⁶

In the next statutory subsection, Tennessee then defines "advanced age" as "sixty years of age or older."¹⁷ Note that Tennessee's approach does not create a distinction between older adults and all other adults. Rather, it includes "advanced age" as a condition of impairment for all adults, and then offers a distinct threshold definition of advanced age. Again, this approach to an age-based threshold arguably would address concerns that age should not be the sole factor in authorizing an investigation.

C. Constitutional Concerns

As indicated above, a number of states make an age-based distinction between elder adults and all other adults. The threshold age in these states is typically 60 or 65 years old and older. Generally these elder adults are not required to be subject to impaired condition or disability to be eligible for an adult protective investigation if suspected abuse is reported; simply being above the age threshold is enough to trigger an investigation into a report of abuse or neglect. H.B. No. 811 (2007) and S.B. No. 1184 (2007), proposing similar changes to Hawaii's APS statute, would have defined "elder" adults as being age 75 and older. Age 75 was chosen by

¹³ WASH. REV. CODE ANN. § 74.34.020(13(a)).

¹⁴ DEL. CODE ANN. tit. 31, § 3902(6); FLA. STAT. ANN. § 415.102(26); ME. REV. STAT. ANN. tit 22, § 3472(6); OHIO REV. STAT. ANN. § 5101.60(B); S.C. CODE ANN. § 43-35-10(11); S.D. CODIFIED LAWS ANN. § 22-46-1(2); TENN. CODE ANN. § 71-6-102(2); VT. STAT. ANN. tit. 33, § 6902(14)(D); WYO. STAT. ANN. § 35-20-103(a)(xviii).

¹⁵ FLA. STAT. ANN. § 415.102(26).

¹⁶ TENN. CODE ANN. § 71-6-102(2).

¹⁷ *Id.* at § 71-6-102(3).

the bill drafters among a variety of proposed ages because it was suggested that this is the age when most individuals seem to experience greater deficits in their ability to protect themselves from abuse.¹⁸ During the course of correspondence with other states' APS programs, the Massachusetts Office of Elder Affairs supported this theory and noted that adults over age 75 are more vulnerable to abuse because they tend to be frailer physically and suffer more cognitive problems.¹⁹ Furthermore, this theory is supported by the high percentage of abuse investigations in Hawaii that involved victims of advanced age.²⁰

These provisions of H.B. No. 811 (2007) and S.B. No. 1184 (2007) drew concern from opponents who expressed that the change would violate the constitutional rights of elder adults. Opponents argued that one should not be subject to government intrusion into one's personal affairs on the basis of advanced age alone.²¹

Contrary to this position, proponents of the "elder" definition expressed the view that the bills were not intended to allow unwarranted intrusion into people's lives; rather, they would offer greater protection to a particularly vulnerable segment of the population. Proponents suggested that the government would not have the authority to act without the consent of the suspected victim, thus providing a protection against unwanted intrusion.²² Language requiring consent currently exists in the DAPS procedures manual; however, there was no language in H.B. No. 811 (2007) or S.B. No. 1184 (2007) that specifically offered an "elder" the option to consent to or refuse an investigation by DAPS.²³

Any proposed amendments that distinguish elder adults should be considered in light of the purpose of Hawaii's adult protection statutes. It is clear that the Legislature recognizes older adults as a group that is particularly vulnerable to abuse, neglect, and exploitation. Section 346-221, HRS, states:

The legislature also recognizes that it is a person's dependency status, 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 become subjects of abuse and neglect.²⁴

This section, however, goes on to place a limit on the level of intrusion that is intended by the State in matters of adult protection:

¹⁸ Correspondence from James Pietsch, J.D. (Sept. 19, 2007).

¹⁹ Telephone interview with Massachusetts Office of Elder Affairs staff (Oct. 31, 2007). The Office of Elder Affairs noted that the average age of elder victims in that state is 78.

²⁰ See Figure 2.5, Chapter 2.

²¹ American Civil Liberties Union testimony before the Hawaii Senate Committee on Human Services and Public Housing (Feb. 6, 2007); American Civil Liberties Union testimony before the Hawaii House Committees on Human Services and Housing and Health (Feb. 12, 2007).

²² Testimony of James Pietsch, J.D. before the Hawaii Senate Committee on Human Services and Public Housing (Feb. 6, 2007) and the Hawaii House Committees on Human Services and Housing and Health (Feb. 12, 2007) (referring to a case argued by the Elder Law Project at William S. Richardson School of Law before the Family Court in which the Court found that the Department of Health may act only with the consent of the victim unless the victim lacks the capacity to consent).

²³ DAPS procedures manual, § 17-1421-9, issued Jan. 31, 2007.

²⁴ HAW. REV. STAT. § 346-221.

[T]he 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.²⁵

Finally, as an added protection against government intrusion, section 346-252, HRS, states: "An individual shall not be involuntarily subjected to the provisions of this part solely based on advanced age."²⁶ It is clear from these sections that the Legislature intended to balance the vulnerabilities of advanced age with the least restrictive intrusion into the rights of individuals. Additionally, language currently exists in section 346-231, HRS, relating to protective orders for dependent adults, which addresses the ability of an adult to consent to actions taken by the Department.²⁷ One possibility for clarifying the issue of consent and addressing constitutional concerns would be to amend section 346-227, HRS, to include a similar provision for consent to be applied to investigations involving "elders."

It is unclear at the time of this study how age-related constitutional issues were addressed during the lawmaking process in other states that have enacted an "elder" age threshold. It is clear, however, that the classification exists in a significant number of other states. Furthermore, there is precedent for age-based classifications, in situations where they are designed to protect a particularly vulnerable group from harm, to be considered constitutional under a rational basis test.²⁸ It should also be noted that special protections from elder abuse based upon age are not without precedent in Hawaii. Most recently, in 2007, the Legislature enacted Act 94, Session Laws of Hawaii 2007, which amends chapter 412, HRS, to require financial institutions to report suspected financial abuse of elders.²⁹ Act 94 defines "elder" as "a person who is sixty-two years of age or older."³⁰

²⁵ *Id.*

²⁶ *See e.g.*, HAW REV. STAT. § 346-252.

²⁷ HAW. REV. STAT. § 346-231 ("If the department believes that a person is a dependent adult and it appears probable that the dependent adult has been abused and is threatened with imminent abuse unless immediate action is taken; *and the dependent adult consents, or if the dependent adult does not consent and there is probable cause to believe that the dependent adult lacks the capacity to make decisions concerning the dependent adult's person*, the department shall seek an order for immediate protection in accordance with this section." [emphasis added]).

²⁸ *Essling v. Markman*, 335 N.W.2d 237 (Minn. 1983) (Statute prohibiting sale of insurance policies to persons age 65 and older which purport to supplement Medicare unless certain statutory requirements are met would be upheld as the age classification was rationally related to achievement of legitimate government purpose of curbing abuses by the insurance industry in selling policies to persons over age 65); In addition, there is a substantial body of case law that addresses the constitutionality of age-based classifications in other contexts.

²⁹ 2007 Haw. Sess. Laws, Act 94.

³⁰ *Id.*

Chapter 7

ADULT PROTECTIVE SERVICES STAFFING ISSUES

A. Current Hawaii DAPS Staffing Levels

During the 2007 Regular Session, discussions of proposed amendments to part X, Chapter 346, HRS, sparked considerable debate on changes in the number of case investigations that would take place if Hawaii's adult protective services laws were amended. Much of the discussion concerned the anticipated increase in cases if "elder" adults age 75 and older were to become eligible for a DAPS investigation based only upon a report of suspected abuse and without any showing of physical or mental impairment or condition. The Department of Human Services estimated that this amendment would increase the number of investigations that its workers would be required to perform by approximately 400%.¹ Should the law change, the Department would need the additional resources necessary to handle the increased caseload. The Department estimated that this change would require the hiring of 87 additional staff, for a total of \$4,492,207 the first year and \$4,316,282 per year thereafter.² The Department provided additional detailed staffing and budget projections should the law be amended to define "elders" as adults age 60 and over and age 80 and over. (See Appendix B.) In the alternative, the Department estimated that replacing the term "dependent adult" with "vulnerable adult" in Chapter 346, HRS, would increase the number of investigations such that eleven new staff positions would be required. DHS estimated the approximate cost of this increase to be \$571,164 for the first year and \$524,524 for each year thereafter.³ At the time, the Department's projections were questioned as being excessive.

As noted in Chapter 3, the DAPS office on Oahu is currently staffed by five adult protective service workers, one auditor (III), two registered nurses, two social services assistants (IV), one supervisor, one secretary, and one clerk-typist.⁴ Each neighbor island DAPS office is staffed by one adult protective service worker and one social services assistant (IV).⁵ DAPS reports that average caseload in its Oahu office is 30 or more cases per worker at any given time.⁶ This caseload appears to remain constant throughout the year with little variation from month to month.⁷ DHS has expressed that the current staffing level in DAPS is sufficient to handle the number of investigations that it currently performs annually.⁸ However, if the law is amended in a manner that increases its caseload, DAPS would require additional staff and resources to handle the additional work.⁹ DAPS has found through experience that its optimum

¹ Department of Human Services testimony before the House Committee on Human Services and Housing, at 3 (Feb. 12, 2007); Department of Human Services testimony before the Senate Committee on Human Services and Public Housing, at 3 (Feb. 6, 2007).

² *Id.*

³ *Id.*

⁴ See note 10 in Chapter 3.

⁵ *Id.*

⁶ Telephone interview with DAPS staff (Oct. 12, 2007).

⁷ *Id.*

⁸ Perez, R., *Law Makes it Difficult to Protect Isles' Seniors*, Honolulu Advertiser (May 21, 2006).

⁹ Telephone interview with DHS staff (Sept. 13, 2007).

supervisor-to-worker is 1:6 and that expanding this ratio over tasks the supervisor and erodes the quality of service that the DAPS investigative unit can provide.¹⁰ Additionally, DHS has expressed that any increases in the number of investigators would necessitate appropriate increases in clerical and support staff, as well as administrative resources such as office space, vehicles, and supplies.¹¹

B. Comparison of Selected States

This section attempts to provide a relative picture of adult protective services staffing in other states. This is intended to provide a snapshot of other states' adult protective services efforts so that *rough* comparisons may be made between them and Hawaii. The methodology for selecting the states for comparison was based upon one or more of the following:

- (1) States similar in population size to Hawaii;
- (2) States that have similar statutory requirements to Hawaii;
- (3) States with a similar percentage of population age 60 and over; and
- (4) States that distinguish between adults and elder adults in their APS reporting statutes.

This examination of other states' APS staffing is based upon informal interviews with other states' adult protective service officials and should not be regarded as a scientific survey of any statistical significance. The reader should bear in mind that there is no national standard for adult protective services, and direct comparisons that the reader may draw from the information in this section should be done with caution.

1. Maine. Maine was chosen because it has an overall population similar to Hawaii.¹² Like Hawaii, Maine's APS statutes use the term "dependent adult" as a threshold for eligibility for adult protective services.¹³ Like Hawaii DAPS, Maine's Office of Elder Services processes abuse reports that come from the community as well as those that come from long term care facilities.¹⁴ According to data collected for the *2004 Survey*, Maine received 2,898 abuse reports in FY 2003, and it investigated 1,918, or 66%, of those reports.¹⁵

Abuse reports are processed through a central intake office and then are distributed to the appropriate regional office. The central intake office has three intake workers and one intake coordinator. The Office of Elder Services confirms that it has 53 case workers distributed across

¹⁰ Telephone interview with DHS staff (Sept. 19, 2007).

¹¹ *Id.*

¹² See Table 2.4 in Chapter 2.

¹³ See Table 3.1 in Chapter 3.

¹⁴ Telephone interview with Maine Office of Elder Services (Sept. 20, 2007). (The Maine Office of Elder Services reported that 73% of the reports it received in FY 2006 involved a victim age 60 or older.)

¹⁵ See Table 2.1 in Chapter 2.

three regions of the state. These case workers are comprised of case workers who conduct investigations and case managers who coordinate protective services. In less populated areas, however, the investigator must often perform both duties. In addition to the 53 case workers, there are eight supervisors, seven case aides, and three regional protective program administrators. The Office of Elder Services estimates that at any given time, its case workers handle an average of 25 cases per worker.¹⁶

2. Idaho. Idaho was chosen because it has an overall population similar to Hawaii.¹⁷ According to data collected for the *2004 Survey*, Idaho received 3,571 abuse reports in FY 2003, and it investigated 2,740, or 77%, of those reports.¹⁸

The Idaho Commission on Aging coordinates the activities of six different adult protective services agencies based in regions throughout the state. The state contracts with the agencies to provide services and staffing varies among the area agencies. The agencies handle all adult protective services reports, including community reports and cases from long-term care facilities. Statewide, there are 28 case workers. However, because each office is contracted differently, some offices handle both adult protection and case management, while others handle only adult protection. Budget constraints prevent Idaho from including nursing staff in its adult protective services programs. Idaho estimates that, in its busiest region (Boise), each worker has an average of 40 open cases at any given time.¹⁹

3. Rhode Island. Rhode Island was chosen because it has an overall population similar to Hawaii.²⁰ Rhode Island's adult protective services statute only applies to adults over age 60.²¹ According to data collected for the *2004 Survey*, Rhode Island received 2,400 abuse reports in FY 2003, and it investigated 2,400, or 100%, of those reports.²²

The Rhode Island Department of Elderly Affairs only handles abuse reports that come from the community, while abuse reports from long-term care facilities are processed by a separate agency. Staff consists of six case workers who investigate reports of abuse, neglect, and exploitation within their assigned region of the state, and one case worker who investigates reported incidents of self-neglect. The Department contracts with six regional agencies to provide case management services. In addition, the Department contracts with one registered nurse to provide medical services and consultation when needed. Although the Department was unable to provide an estimate of the average caseload per case worker, it did estimate that its busiest regional case worker processed 184 cases during 2006.²³

¹⁶ Telephone interview with Maine Office of Elder Services (Sept. 20, 2007).

¹⁷ See Table 2.4 in Chapter 2.

¹⁸ See Table 2.1 in Chapter 2.

¹⁹ Telephone interview with Idaho Commission on Aging (Sept. 20, 2007).

²⁰ See Table 2.4 in Chapter 2.

²¹ R.I. GEN. LAWS. §42-66-4.1(6).

²² See Table 2.1 in Chapter 2.

²³ Telephone interview with Rhode Island Department of Elderly Affairs (Sept. 20, 2007).

4. New Hampshire. New Hampshire was chosen because it has an overall population similar to Hawaii.²⁴ According to data collected for the *2004 Survey*, New Hampshire received 1,946 abuse reports in FY 2003, and it investigated 1,626, or 84%, of those reports.²⁵

New Hampshire's adult protective services law applies to "incapacitated" adults age 18 or older.²⁶ Although "incapacitated" is narrowly defined in statute, the New Hampshire Bureau of Elderly and Adult Services reports that in practice, this term is interpreted broadly to include as many suspected victims of abuse as possible. The Bureau reports that, in fiscal year 2006-2007, 67% of all cases reported involved a victim age 60 or over.²⁷

The New Hampshire Bureau of Elderly and Adult Services reports that it has 42 adult protective service workers (APSW) distributed among 12 district offices throughout the state. Each district office is staffed in proportion to that district's population, with the largest district office consisting of seven APSWs. In New Hampshire, APSWs handle all aspects of adult protective services, including intake, investigation, and case management. The Bureau does not have clinical medical personnel on staff nor does it have a specialized financial exploitation team. The Bureau estimates that the average caseload for each APSW at any given time is 50 or more open cases.²⁸

5. Wisconsin. Wisconsin was chosen for review because it has a bifurcated adult protective services reporting system that is similar to past proposed changes to Hawaii's DAPS framework. In addition, Wisconsin has a similar population percentage of adults age 60 and over.²⁹ Wisconsin law calls for separate reporting standards for adults age 60 and over and adults under age 60.³⁰ However, Wisconsin does not administer its adult protective services at the state level. Instead, each county determines the lead agency for investigating reports of "adults-at-risk" and "elder-adults-at-risk." For this reason, this study reviewed Milwaukee County, an urban area with a population comparable to the City and County of Honolulu.³¹

Adult protective services for adults age 60 and older are handled through the Milwaukee County Department on Aging. The Department's staff consists of eight elder abuse investigators that perform investigations and case management. The Department also has one counselor, one general psychiatric nurse, and one supervisor. A central intake office consisting of eight intake workers processes all reports of abuse. In FY 2006, the Milwaukee County Department on Aging reported receiving 822 reports of elder abuse and conducted 822 investigations.³² Department officials estimated an average caseload of 20 cases per investigator at any given time.³³

²⁴ See Table 2.4 in Chapter 2.

²⁵ See Table 2.1 in Chapter 2.

²⁶ N.H. REV. STAT. ANN. §161-F:43(VII).

²⁷ Telephone interview with New Hampshire Bureau of Elderly and Adult Services (Oct. 4, 2007).

²⁸ *Id.*

²⁹ See Table 2.5 in Chapter 2.

³⁰ WIS. STAT. ANN. §46-90(1); WIS. STAT. ANN. §55-01.

³¹ U.S. Census, *available* at www.census.gov. (The U.S. Census Bureau estimated that in 2006, Honolulu had a population of 909,863 and Milwaukee County had a population of 915,097.)

³² Telephone interview with Milwaukee County Department on Aging (Oct. 19, 2007).

³³ *Id.*

The Milwaukee County Department of Human Services, Disability Services Division processes reports of abuse of adults ages 18-59. This office maintains a staff of three adult protective service workers who investigate cases and provide case management for victims. The office also has one supervisor. At any given time, each caseworker has an average of twelve active cases and several inactive cases.³⁴

6. Massachusetts. Massachusetts was chosen for review because it has a bifurcated adult protective services reporting system that is similar to past proposed changes to Hawaii's DAPS framework. In addition, Massachusetts has a similar population percentage of adults age 60 and older.³⁵

In Massachusetts, reports of abuse and investigations for adults age 60 and older are handled by the Office of Elder Affairs. The Office contracts with service providers to provide investigative and protective services in twenty-two offices throughout the state. The Office reports that it has 169 investigators on staff statewide. It estimates that the average caseload is approximately 20 or more cases per worker.³⁶

The Office reports that it investigates approximately 75% of the abuse reports that it receives. Reports are first assessed to determine eligibility, such as whether a reportable abuse exists, and if eligible, an investigation will take place. If a report is found to be ineligible, but the subject of the report is in need of community services, the Office will refer the case to the appropriate state agency to provide those necessary services. The Office reports that in fiscal year 2006-2007, it received 14,197 abuse reports and investigated 10,600 of them. The majority of those cases involved a victim over age 80, and the average age of victims was 78.³⁷

The Massachusetts Disabled Persons Protection Commission processes reports and conducts investigations in cases involving adult victims ages 18-59. When reports are received, the Commission has the option to investigate the report or refer it to one of three state agencies for investigation: the Department of Mental Retardation, the Department of Mental Health, or the Massachusetts Rehabilitation Commission. These agencies will then investigate the case on behalf of the Commission and report their findings back to the Commission. The Commission has four investigators on staff, and it reports an average caseload of 40 or more cases per investigator at any given time. The Commission also reports that staffing shortages and increased caseloads have contributed to an existing backlog of cases.³⁸

7. Oregon. Oregon was chosen for review because it has a bifurcated adult protective services reporting system that is similar to past proposed changes to Hawaii's DAPS framework. Oregon distinguishes between "elderly persons" age 65 and over and adults age 18-64 who are

³⁴ Telephone interview with Milwaukee County Department of Human Services Disability Services Division. (Oct. 9, 2007).

³⁵ See Table 2.5 in Chapter 2.

³⁶ Telephone interview with Massachusetts Office of Elder Affairs (Oct. 31, 2007).

³⁷ *Id.*

³⁸ Telephone interview with Massachusetts Disabled Persons Protection Commission (Oct. 31, 2007).

developmentally disabled or mentally ill.³⁹ According to the *2004 Survey*, Oregon has the lowest rate of elderly abuse reports per 1,000 residents over age 60.⁴⁰

Oregon's Department of Human Services distributes among its local offices the responsibility for receiving reports and conducting investigations of adult and elder abuse. Some of these offices are operated directly by the state and others are contracted out to municipal agencies or private contractors.⁴¹ There are currently 95 full-time-equivalent adult protective service workers throughout the state.⁴² In many of the smaller local offices, adult protective services workers also receive and screen incoming abuse reports.⁴³

Oregon's largest and busiest adult protective services office is the Multnomah County Aging and Disabilities Service. This office processes and investigates adult abuse cases reported in Multnomah County and the City of Portland.⁴⁴ Together, these municipalities encompass a population roughly three-fourths of the size of the City and County of Honolulu.⁴⁵ Multnomah County has 24 full-time-equivalent adult protective service investigators on staff, and it estimates that the average caseload per worker is 24 cases.⁴⁶ The office received approximately 8,300 abuse reports last year and completed investigations of approximately 3,200 of those reports.⁴⁷

C. Recommended Staffing Standards

Recognizing a need for adult protective services caseload standards, the National Association of Adult Protective Services Administrators ("NAAPSA") created a workload survey of selected state and municipal adult protective services programs.⁴⁸ (See Appendix C.) At the time that the workload studies were completed, reported caseloads varied from 20 cases per worker to 46 cases per worker.⁴⁹ The average reported caseload was 35.5 cases per worker.⁵⁰ The programs that were surveyed recommended caseloads that ranged from 17 cases per worker to 30 cases per worker. The average recommended caseload was 24.6 cases per adult protective services worker.⁵¹ This caseload data and these recommendations should be regarded cautiously because of the age of the study (dates of responses ranged between 1985 and 1994) and because

³⁹ OR. REV. STAT. §§ 124.0505(2), 430.735(2).

⁴⁰ See Table 2.3. in Chapter 2.

⁴¹ Telephone interview with Oregon Adult Protective Services staff (Nov. 5, 2007).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ U.S. Census, *available* at www.census.gov. (The US Census Bureau estimates that in 2006, Multnomah County had a population of 681,454, and Honolulu had a population of 909,863.)

⁴⁶ Email correspondence from Oregon Department of Human Services (Nov. 6, 2007).

⁴⁷ *Id.*

⁴⁸ National Association of Adult Protective Services Administrators, *APS Compilation of Workload Studies and Caseload Data* (1997).

⁴⁹ *Id.* at 2.

⁵⁰ *Id.*

⁵¹ *Id.* at 1.

the average caseloads and average recommended caseloads were computed based upon responses from a dozen or fewer adult protective service programs.⁵²

Currently the Oahu DAPS caseload level (30) exceeds the recommended caseloads (24.6) found in the national survey. In addition, DAPS's caseload level, when compared to the other APS programs that were discussed in this chapter, was higher than all but two. (See Table 7.1) Further, those programs of comparable size that had lower caseloads (Maine, Multnomah Co, and Milwaukee Co.) also had more adult protective service workers and investigators on staff than DAPS.

Table 7.1 Estimated Caseload Comparisons

Program	Estimated Caseload per APS Worker
New Hampshire	50
Boise, Idaho	40
Oahu, Hawaii	30
Maine	25
Recommended Average (NAAPSA survey)	24.6
Multnomah Co., Oregon	24
Massachusetts (Ofc. Of Elder Affairs)*	20
Milwaukee Co., Wis. (Dept. on Aging)	20
Milwaukee Co., Wis. (Dept. of Human Scvs.)	12
Rhode Island	n/a

*Massachusetts Disabled Persons Protection Commission was not included in this comparison chart because it has the option to refer its cases to other state agencies.

However, given the numerous variations among states' APS programs, direct comparisons of these staffing levels should be viewed cautiously.

⁵² *Id.* at 1, 2, and 5. (It is interesting to note that the NAAPSA study contains survey responses from Oahu, Hawaii. Although the date of those responses is unknown, the survey indicates that the Oahu DAPS office had, at that time, an average of 4-5 reports per worker per month, an average of 59 cases per worker per month, an average 6-month case completion time, and a supervisor to worker ratio of 1 to 4.)

Chapter 8

FINANCIAL EXPLOITATION

Financial exploitation of the elderly presents a unique problem for adult protective services agencies. Unlike physical injury, illness, or malnutrition, the signs of financial exploitation are not as easy to detect. Financial exploitation encompasses a variety of offenses including cashing checks without permission, misusing or stealing property or assets, coercion into signing a will or contract, or the improper use of a guardianship.¹ Financial abuse can also be perpetrated by total strangers in the form of mail fraud, fright mail, fraudulent telemarketing, fraudulent charity solicitations, and other forms of consumer fraud.² The elderly are a frequent target for consumer fraud and exploitation. Their vulnerability may be due to a lack of business sophistication, a need for social contact, isolation, or a lack of mobility.³

Financial exploitation makes up a significant percentage of the investigated incidents of abuse both nationally and in Hawaii. One study estimates that, nationwide, 20.8% of all abuse investigations involving a victim age 60+ are financial exploitation.⁴ In Hawaii last year, financial exploitation made up 19% of all abuse investigations involving a victim age 60+. ⁵ In fiscal year 2006-2007, DAPS investigated 130 reports of financial exploitation and 107 of those investigations involved a victim age 60 or older.⁶ It is suspected that, like other forms of abuse, financial exploitation of the elderly in Hawaii is underreported. Theories suggest that many victims are reluctant to report financial abuse, while other victims may not realize that they are being abused or exploited.⁷

Until earlier this year, Hawaii DAPS had a three-person financial exploitation team as part of its staff specifically charged with investigating cases of financial abuse and exploitation. In February 2007, the federal funding for the Financial Exploitation Project ended. The financial exploitation team continued until July when those federal funds were no longer available.⁸ Since then, DAPS has only one auditor (III) on staff. The auditor usually investigates the most

¹ Nat'l Center on Elder Abuse at the American Public Human Services Association. *The National Elder Abuse Incidence Study*, at 3-3 (Sept. 1998).

² Moore and Shaefer, *Remembering the Forgotten Ones: Protecting the Elderly from Financial Abuse*, 41 SAN DIEGO L. REV. 505, at 532 (May-June 2004).

³ Starnes, *Consumer Fraud and the Elderly: The Need for a Uniform System of Enforcement and Increased Civil and Criminal Penalties* 4 Elder L.J. 201 (Spring 1996). (Starnes suggests that education is an important tool in reducing cases of financial exploitation and it should not be overlooked in developing policy. Education increases awareness of potential exploitation schemes and offers information on what to do if confronted with such a scheme.)

⁴ 2004 Survey at 25.

⁵ See Figure 2.7 in Chapter 2.

⁶ Department of Human Services, Adult Abuse & Neglect Registry, Annual Report for Calendar Year and State Fiscal Year, "All Problems by Area" KFJQ1C003, at Table 12 (July 18, 2007).

⁷ Perez, R., *Law Makes It Hard to Protect Isles' Seniors*. Honolulu Advertiser (May 21, 2006). (One statistic suggests that approximately 40,000 seniors in Hawaii have been victims of some type of financial exploitation or consumer fraud targeted toward the elderly.)

⁸ E-mail correspondence from DHS staff (Aug. 24, 2007).

complicated reports of financial abuse, while other, less complicated financial abuse cases may be distributed among the adult protective service workers.⁹

In 2007, the Legislature responded to the growing problem of financial abuse of the elderly by passing measures that require financial institutions to report suspected incidents of financial abuse and that impose additional penalties on those who commit financial crimes against the elderly. Act 94 requires a financial institution to report suspected incidents of financial abuse of an elder to the Department of Human Services.¹⁰ To qualify, an officer or employee of the financial institution must have observed, have knowledge, or have a "good faith suspicion" that financial abuse has occurred or may be occurring.¹¹ The Act defines an "elder" as a person age 62 or older.¹² (See Appendix E.)

Act 95, Session Laws of Hawaii 2007, allows a court or the Commissioner of Securities to impose additional administrative or civil penalties, as applicable, against persons who commit securities violations against persons age 62 and older.¹³ Penalties may be up to \$50,000 for each violation committed. (See Appendix F.) Act 50, Session Laws of Hawaii 2007, imposes a fine of not more than \$10,000 for each violation of Chapter 454, HRS (mortgage brokers and solicitors), committed against an elder, defined as an adult age 62 and older, by a mortgage broker or mortgage solicitor.¹⁴ (See Appendix G.)

⁹ Telephone interview with DHS staff (Sept. 13, 2007).

¹⁰ 2007 Haw. Sess. Laws, Act 94.

¹¹ *Id.* at § 2(a)(2).

¹² *Id.* at § 2(e). (It is unclear from the legislative history the reason for identifying age 62 as the threshold for "elder" adults.)

¹³ 2007 Haw. Sess. Laws, Act 95.

¹⁴ 2007 Haw. Sess. Laws, Act 50.

Chapter 9

CONCLUSIONS AND RECOMMENDATIONS

A. Incidence of Abuse in Hawaii

Conclusion: According to available data, Hawaii has a relatively low number of adult and elder abuse reports per 1,000 adults compared to other states.¹ The number of abuse reports in Hawaii has shown a slight decline since National Center on Elder Abuse (NCEA) conducted its comparative survey in 2003. Although this would seem to indicate a decline in the number of incidents of adult and elder abuse in Hawaii, one must also recognize that the majority of these reports are not accepted for investigation. In fiscal year 2006-2007, only 41% of the abuse reports received by the Dependant Adult Protective Services Section of the Department of Health (DAPS) were investigated.² Presumably, these reports met the statutory criteria for initiating an investigation, while the remaining reports did not.

Recommendation: It has been suggested that the Legislature wishes to expand protection to Hawaii's seniors and adults who are in danger of abuse. One method of accomplishing this may be to consider relaxing the statutory threshold that an abuse report must meet before it qualifies for an investigation.

B. "Dependent Adult" vs. Alternate Terms

Conclusion: Hawaii is among a small minority of states in its use of the term "dependent adult" as a threshold for eligibility for adult protective services. The definition of this term, if strictly applied, requires that an adult victim be dependent upon others. However, it appears that this criterion is applied much less restrictively in practice.³ For this reason, it is unclear whether the use of "dependent adult" and its definition requiring dependency truly impact the number of adult victims that are eligible for and are provided adult protective services in Hawaii.

Recommendation: The Legislature may wish to consider amending part X of chapter 346, HRS, to clarify the term "dependent adult" as a threshold for reporting and investigating abuse. The Legislature may wish to work in conjunction with the Department of Human Services and DAPS in amending section 346-222, HRS, to select a definition or a replacement term, such as "vulnerable adult," that more closely matches the most effective practices of DAPS in applying the statute. If it is anticipated that an increase in the number of abuse reports or investigations will result from the new term

¹ See Table 2.2 and Table 2.3 in Chapter 2.

² See Table 2.6 in Chapter 2.

³ See note 14 in Chapter 4 and accompanying text.

and definition, then DAPS should be provided with the additional resources necessary to meet these demands.

C. Imminence of Abuse

Conclusion: Hawaii is not the only state to require abuse to both have occurred *and* be imminent before a mandated reporter must make a report or before an abuse investigation may begin.⁴ However, Hawaii is in a very small minority of states that require imminence of further harm.

It is likely that removing the requirement that abuse be imminent to trigger an abuse report or an abuse investigation would increase the number of investigations that would be conducted by DAPS. However, it is unclear how many additional abuse reports and investigations will result if "and imminent" is changed to "or imminent" in the relevant sections of part X, chapter 346, HRS. One may draw a cautious comparison to other states of similar population size that also do not require the imminence of further abuse for an investigation to be conducted. In FY 2003, New Hampshire, Idaho, and Maine investigated 84%, 77%, and 66%, respectively, of the adult abuse cases that were reported in those states.⁵ It may be theorized that Hawaii DAPS may be required to investigate similar percentages of abuse reports if the law is amended. At the very least, an increase of some degree should be expected.

Recommendation: If the Legislature wishes to amend Hawaii's law to reflect adult protective services practices in most other states, it should consider amending part X, chapter 346, HRS, to require a mandated report and an investigation where abuse *either* has occurred *or* is imminent. The Legislature should be aware that this change may result in an increase in the number of adult abuse cases that are reported and are subject to investigation. Accordingly, DAPS should be provided with the resources necessary to meet these additional demands.

D. Creating an "Elder Adult" Classification

Conclusion: Seventy-four percent of all dependent adult abuse reports that were investigated in fiscal year 2006-2007 in Hawaii involved a victim age 60 or older. Sixty-one percent of the investigations involved a victim age 70 or older. Forty-four percent involved a victim age 80 or older.⁶ This indicates that elder individuals in Hawaii are more frequent targets for abuse, neglect, and exploitation than younger adults. Accordingly it would seem that this age group is more vulnerable to abuse and neglect and is in greater need of protection.

⁴ See discussion in Chapter 5.

⁵ See Table 2.1 and Table 2.4 in Chapter 2. (In response to the 2004 Survey, New Hampshire reported receiving 1,926 abuse reports and conducting 1,626 investigations; Idaho reported receiving 3,571 abuse reports and conducting 2,740 investigations; Maine reported receiving 2,898 reports and conducting 1,918 investigations.)

⁶ See Figure 2.5 in Chapter 2.

One suggestion has been to establish a separate definition and threshold age for "elder" adults that would qualify them for a DAPS investigation based only upon their threshold age and upon the report of suspected abuse. Although it is impossible to precisely predict the increase in cases that an elder classification would cause, it is highly likely that there would be a significant increase.⁷ If Hawaii adopts an elder threshold age of 75+, as proposed during the Regular Session of 2007, DHS has projected that the number of cases requiring investigation would increase 400% by 2010.⁸ A more immediate illustration may be made using FY06-07 data provided by DHS. Last year, 465 of the abuse reports that were received but not investigated involved adults age 70 and older.⁹ If an elder threshold of 75+ had been in place last year, it may be reasoned that the vast majority of those 465 reports would have required an investigation, nearly doubling the number of investigations conducted by DAPS.

Although an elder classification would not eliminate abuse against the elderly, it would presumably result in increased investigations of abuse reports involving older victims, and hopefully, enable the provision of services to more elder adults that are in need of protection.

Recommendations: If the Legislature wishes to expand protection specifically for older adults in the State, one method would be to establish an "elder" threshold age that would require investigations of abuse reports involving adults above this age. However, the Legislature should be aware that the creation of an "elder" classification is highly likely to result in a significant increase in the number of investigations conducted by DAPS and the amount of services provided. If an "elder" classification is created, it will be crucial to provide DAPS with adequate resources to handle a significantly increased workload statewide.

However, should the Legislature consider an "elder" definition, it would be cautioned to establish a threshold age that would not be perceived as infringing on the rights or sensibilities of elderly individuals. In addition, the Legislature could consider crafting the statutory language in such a way that it is clear that the elder subject of the investigation maintains the freedom to opt out of the investigation or the provision of services. One suggestion would be to model a consent provision after the one found in section 346-231, HRS, relating to protection orders for dependent adults.¹⁰

If there is concern over the efficacy or equity of establishing an "elder" adult threshold, another option would be to enact an amendment with a sunset date. Prior to the sunset

⁷ See discussion in Chapter 6. (In its projection, DHS considers the increase in Hawaii's population of adults age 75 and older.)

⁸ H.B. No. 811 (2007) and S.B. No. 1184 (2007) proposed defining "elder" as an adult age 75 or older. In the interest of remaining well-informed of the mainstream, the Legislature may wish to take note that these proposals, if enacted, would place Hawaii in the unique position of having the highest elder threshold age in the country. Other states that have enacted such a provision have established the threshold at age 60 or 65.

⁹ Department of Human Services, Adult Abuse & Neglect Registry, Annual Report for Calendar Year and State Fiscal Year, "Age of Victims on Cases Reported" KFJQ1COO3, at Table 1 (Aug. 30, 2007).

¹⁰ See discussion in Chapter 6.

date, the Legislature may review the effects of the amendment (i.e., reports, investigations, outcomes) and determine whether the amendment should become permanent.

E. DAPS Staffing and Caseload

Conclusion: Currently, the caseload for DAPS adult protective services workers is 30 or more cases.¹¹ This caseload level exceeds the recommended caseloads found in a national survey of adult protective services programs.¹² In addition, DAPS's caseload level, when compared to other adult protective services programs that were contacted for this study, was higher than all but two.¹³ Although the Department of Human Services maintains that DAPS is sufficiently staffed to handle its current investigatory caseload, evidence indicates that the DAPS caseload may be approaching the upper threshold of what it can effectively handle.

Recommendation: The Legislature may wish to consider allocating additional resources to DAPS to supplement its current investigatory staff. Furthermore, should the Legislature adopt changes to part X of chapter 346, HRS, that would result in an increase to the number of abuse reports and investigations to be processed by DAPS, the need for additional resources becomes even more critical if DAPS is to perform its mission effectively.

In conjunction, DAPS may wish to explore alternatives to its current staffing model that would maximize the efficient use of the resources allocated to it. Options may include gradually expanding the supervisor-to-worker ratio or redefining roles and responsibilities among existing staff.

F. Financial Exploitation

Conclusion: Currently, financial exploitation makes up 19% of the cases that DAPS investigates involving victims age 60 and older.¹⁴ With the passage of Act 94, Session Laws of Hawaii 2007, which requires mandatory reporting by financial institutions of suspected exploitation of adults age 62 and older, it would be reasonable to believe that the number of financial exploitation reports and investigations will increase. DAPS reports that the end of federal funding earlier this year for its financial exploitation team left the agency with limited resources to effectively address the current level of financial abuse exploitation investigations.¹⁵ These already limited resources would be further stretched by an increase in reports and investigations.

¹¹ See note 6 in Chapter 7 and accompanying text.

¹² National Association of Adult Protective Services Administrators, *APS Compilation of Workload Studies and Caseload Data* (1997).

¹³ See discussion in Chapter 7.

¹⁴ See Figure 2.4 in Chapter 2 and discussion in Chapter 8.

¹⁵ See note 8 in Chapter 8 and accompanying text.

Recommendation: Through the passage of Act 94, the Legislature has indicated its willingness to provide additional protection to older adults from financial exploitation. If the Legislature wishes to continue its efforts to protect this vulnerable group, then it should consider allocating more resources to DAPS to restore and improve its capability to address financial exploitation of the elderly.

Appendix A

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

H.C.R. NO. 188
H.D. 2

HOUSE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO STUDY OTHER
STATES' ADULT PROTECTIVE SERVICES AND COMPARE THEM TO
HAWAII'S ADULT PROTECTIVE SERVICES.

1 WHEREAS, the United States Senate Special Committee on
2 Aging has estimated that up to 5,000,000 adults each year are
3 victims of neglect, exploitation, or other abuse; and
4

5 WHEREAS, other studies indicate that up to six per cent of
6 the national population of older adults has experienced some
7 type of abuse, neglect, or exploitation; and
8

9 WHEREAS, there is no national, uniform reporting system to
10 document the numbers of older Americans who experience abuse, so
11 the number of these individuals can only be estimated; and
12

13 WHEREAS, adult protective services are mandated for adult
14 victims of abuse in each of the 50 states and the District of
15 Columbia; and
16

17 WHEREAS, the eligible recipients of these services vary by
18 jurisdiction; and
19

20 WHEREAS, in most states, services are provided to any
21 vulnerable adult, while in other states the services are
22 provided only to individuals age 60 years and older or to
23 younger individuals with disabilities; and
24

25 WHEREAS, results of a recent Elder Abuse Incidence Study
26 shed light on a significant problem of elder abuse and neglect
27 among elders living in their own homes who have gone largely
28 unidentified and unnoticed; and
29

30 WHEREAS, the study noted that only one in five new
31 incidents of abuse, neglect, or self-neglect are reported to
32 adult protective services agencies; and

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1 WHEREAS, here in Hawaii, adult protective services provide
2 crisis intervention, investigation, and emergency services to
3 dependent adults who are reported to be abused, neglected, or
4 financially exploited by others or seriously endangered due to
5 self-neglect; and

6
7 WHEREAS, there are just over 84,000 elders who are 75 years
8 or older in Hawaii; and

9
10 WHEREAS, national estimates of the frequency of abuse
11 towards this population range from five to ten per cent, which
12 suggests that there may be 4,000 or more cases of abuse in
13 Hawaii each year; and

14
15 WHEREAS, however, the Department of Human Services
16 indicates that in 2006, it investigated 514 cases, which
17 suggests a large gap between those receiving services and those
18 possibly experiencing abuse; and

19
20 WHEREAS, according to the University of Hawaii Center on
21 the Family, between 2000 and 2030, the number of adults in
22 Hawaii who will be 60 years and older will increase by 93.8 per
23 cent and those 85 years and older will increase by 174 per cent;
24 this, in turn, will result in a small proportion of children and
25 younger adults in relation to those 60 years and older; and

26
27 WHEREAS, Hawaii's adult protective services law has been
28 described in recent newspaper articles as one of the most
29 restrictive in the nation; and

30
31 WHEREAS, there has also been concern regarding whether any
32 changes to the current Adult Protective Services Law would
33 result in an increased case load and consequential strain on
34 case workers; now, therefore,

35
36 BE IT RESOLVED by the House of Representatives of the
37 Twenty-fourth Legislature of the State of Hawaii, Regular
38 Session of 2007, the Senate concurring, that the Legislative
39 Reference Bureau is requested to study other states' adult
40 protective services and compare them to Hawaii's adult
41 protective services; and

HCR188 HD2 HMS 2007-3820



1 BE IT FURTHER RESOLVED that in completing the study, the
2 Legislative Reference Bureau is requested to:

3
4 (1) Examine the other states' adult protective services
5 laws and their implementation in the respective
6 states; and

7
8 (2) Obtain information regarding:

9
10 (A) The total number of cases reported to the adult
11 protective services of each state and the ratio
12 of cases per capita for each state;

13
14 (B) What changes to Hawaii's adult protective
15 services law would need to be made to make the
16 applicability of Hawaii's law more comparable to
17 those in other states; and

18
19 (C) The estimated increase or decrease in the number
20 of cases that would be reported in Hawaii as a
21 result of those changes;

22
23 and

24
25 BE IT FURTHER RESOLVED that the Legislative Reference
26 Bureau is requested to submit a report of its findings to the
27 Legislature no later than twenty days prior to the convening of
28 the 2008 Regular Session; and

29
30 BE IT FURTHER RESOLVED that a certified copy of this
31 Concurrent Resolution be transmitted to the Acting Director of
32 the Legislative Reference Bureau.



Appendix B

PROJECTION OF APS CASES IN 2010, BY AGE GROUP Including Staffing Requirements and Costs

60+ AGE GROUP

Locale	% of Cases by Locale	New ¹ Cases	Staffing needs										Costs	
			SW V ² SR 24	SW IV ³ SR 23	SW Spv. ⁴ SR 25	RPN SR 22	RPN Spv. ⁵ SR 24	Audit ⁶ SR 20	SSA IV ⁶ SR 11	Sec I ⁷ SR 12	CT ⁷ SR 8	Total Staff Need	1st year cost	Ongoing Annual cost
Admin	-	-	4	-	-	-	-	-	-	1	1	6	\$314,714	\$283,132
Oahu	65%	3,494	-	55	9	16	3	8	16	12	12	131	\$7,278,692	\$6,580,247
Kauai	4%	215	-	3	-	1	-	1	1	-	-	6	\$377,105	\$303,674
East HI	15%	806	-	11	2	4	-	2	4	2	2	27	\$1,556,952	\$1,312,559
West HI	7%	376	-	5	1	2	-	1	2	1	1	13	\$760,259	\$630,990
Maui	8%	430	-	6	1	2	-	1	2	1	1	14	\$816,693	\$681,569
Molokai	1%	54	-	1	-	-	-	-	-	-	-	1	\$76,433	\$50,578
Total:	100%	5,376	4	81	13	25	3	13	25	17	17	198	\$11,180,848	\$9,842,749

5,376 represents 2% of projected 60+ population in year 2010. See table below, 2010 Population By Age Group

75+ AGE GROUP

Locale	% of Cases by Locale	New ¹ Cases	Staffing needs										Costs	
			SW V ² SR 24	SW IV ³ SR 23	SW Spv. ⁴ SR 25	RPN SR 22	RPN Spv. ⁵ SR 24	Audit ⁶ SR 20	SSA IV ⁶ SR 11	Sec I ⁷ SR 12	CT ⁷ SR 8	Total Staff Need	1st year cost	Ongoing Annual cost
Admin	-	-	2	-	-	-	-	-	-	1	1	4	\$192,186	\$172,264
Oahu	65%	1,416	-	26	4	6	1	3	6	6	5	57	\$3,120,294	\$2,835,692
Kauai	4%	87	-	1	-	1	-	1	1	-	-	4	\$264,239	\$202,518
East HI	15%	327	-	5	1	2	-	1	1	1	1	12	\$724,144	\$599,031
West HI	7%	153	-	2	-	1	-	1	1	-	-	5	\$320,672	\$253,681
Maui	8%	174	-	2	-	1	-	1	1	-	-	5	\$320,672	\$253,096
Molokai	1%	22	-	-	-	-	-	-	-	-	-	-	-	-
Total:	100%	2,179	2	36	5	11	1	7	10	8	7	87	\$4,942,207	\$4,316,282

2,179 represents 75- 85+ population (1,554+625=2,179) in year 2010. See table below, 2010 Population By Age Group

85+ AGE GROUP

Locale	% of Cases by Locale	New ¹ Cases	Staffing needs										Costs	
			SW V ² SR 24	SW IV ³ SR 23	SW Spv. ⁴ SR 25	RPN SR 22	RPN Spv. ⁵ SR 24	Audit ⁶ SR 20	SSA IV ⁶ SR 11	Sec I ⁷ SR 12	CT ⁷ SR 8	Total Staff Need	1st year cost	Ongoing Annual cost
Admin	-	-	1	-	-	-	-	-	-	-	-	1	\$61,265	\$55,435
Oahu	65%	406	-	9	1	2	-	1	2	2	1	18	\$991,107	\$894,287
Kauai	4%	25	-	-	-	1	-	1	-	-	-	2	\$151,690	\$119,980
East HI	15%	94	-	1	-	1	-	1	1	-	-	4	\$264,239	\$202,518
West HI	7%	44	-	1	-	1	-	1	1	-	-	4	\$264,239	\$202,518
Maui	8%	50	-	1	-	1	-	1	1	-	-	4	\$264,239	\$202,518
Molokai	1%	6	-	-	-	-	-	-	-	-	-	-	-	-
Total:	100%	625	1	12	1	6	-	5	5	2	1	33	\$1,996,779	\$1,677,256

625 represents 85+ population in year 2010. See table below, 2010 Population By Age Group

¹New cases are based on locale % of total anticipated APS caseload by age group.

²Program staff to administer program statewide.

³Based on current Av. of 72 new cases per worker yearly (New cases + 72).

⁴Six SW per SW Unit will require a SW Supervisor.

⁵Six RPN per RPN unit will require an RPN Supervisor.

⁶One auditor and two SSA per SW unit.

⁷One Secretary and one Clerk Typist for per SW and RPN unit.

Assumptions Used in Preceding Projections

Case Distribution by Locale Based on FY 2006 Actuals		
Locale	# of Cases By Locale	Cases As % of Total Cases
Oahu	332	65%
Kauai	22	4%
East HI	76	15%
West HI	37	7%
Maui	42	8%
Molokai	5	1%
Total:	514	100%

2010 Population By Age Group				
Age Group	2005 ¹ Population	2005 Pop., Breakdown as % of Total	2010 Pop. ² , Breakdown based on 2005 %	2% ³ , Projected APS Cases in 2010 Pop.
60-74	141,511	59%	159,879	3,198
75-84	68,754	29%	77,678	1,554
85+	27,653	12%	31,242	625
Total:	237,918	100%	268,800	5,376

¹ Population number for 2005 is from State Data Book for 2005.

² Population number for 2010 is from EOA report "Profile of Hawaii's Older adults and Their Caregivers," May 2006.

³ Elder abuse incidents range from 2%-10% (National Center on Elder Abuse, 2005). 2% is used in these projections

A P S
Compilation of Workload Studies
and
Caseload Data

1997

National Association
of
Adult Protective Services
Administrators

Collected and compiled by:

Marilyn Whalen, APS Director
Tennessee Department of Human Services

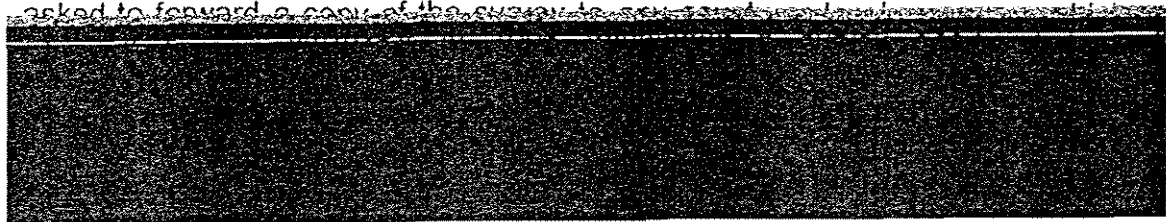
In consultation with:

Carol Lieske, APS Program Coordinator
Nebraska Department of Social Services

Joanne Marlatt, APS Coordinator
Colorado Department of Social Services

With appreciation for the support of the
TENNESSEE DEPARTMENT OF HUMAN SERVICES

The National Association of Adult Protective Services Administrators (NAAPSA) has long recognized the need for caseload standards for Adult Protective Services (APS) programs. These programs include Elder Abuse (EA) programs. In an effort to address the need for recommended standards NAAPSA in 1996 developed a survey designed to collect preliminary information on workload studies completed by APS and EA programs. The surveys were sent to at least one contact person in each state and to selected county and local programs in several states. In all states the contact was asked to forward a copy of the survey to the national office.



The National Association of Adult Protective Services Administrators (NAAPSA) has long recognized the need for caseload standards for Adult Protective Services (APS) programs. These programs include Elder Abuse Protective Services (EA) programs. In an effort to address the need for recommended standards for caseload and program information, only.

The following charts reflect the results of the survey. Programs which have completed studies and have recommendations regarding workload standards are reported together. On the charts on pages 1, 2 and 3 the responses are grouped by programs in which staff at the time of the study covered no more than one (1) county and programs which had APS workers who covered multicounty areas.

Page 1 reports the recommended caseloads and lists the range of numbers of counties which were covered by one worker. The average of the recommended caseloads is computed using the highest numbers contained in the studies.

Page 2 lists the current average caseloads per worker, the supervisor to worker ratios and caseload composition information. Averages are provided.

Page 3 provides information on the average length of time APS cases are open and the degree of specialization within APS programs.

ADULT PROTECTIVE SERVICES

Workload Studies Completed

STATES	STUDY COMPLETED	RECOMMENDED CASELOAD			NUMBER OF COUNTIES COVERED BY 1 WORKER	
		Investigations Only	OnGoing Only	Combined	At time of Study	1996
Colorado *	1989			17	1	1-2
New York *	1984/94	20	30	20 to 30	1	1
North Carolina *	1992	(combined 10	with 15)	25	1	1
South Carolina *	1985			30	1	1
Tennessee *	1990/Updated 1992	(combined 4	with 24)	28	1	1-4
Virginia *	1988 Adjusted 1994	20	16.7	17.5	1	1

Florida	1988	12	35			1-6
Maine *	1985	15	25		1-5	1-5
New Mexico	1994			20	1-2	1-2
Texas	1985			24	1-7+	1-7
Utah *	1993	18	25	use formula to balance	1-5	1-5

DISTRICT OF COLUMBIA AND COUNTIES						
D. C.	1995	10	24		1	1
LA County, CA *	1984 est	15 new reports			1	1
Brown County, WI	1987	not more than 3 per week	30	not to exceed 30		

Average Recommended Caseloads
for APS Workers

15.7	26.5	24.6
Based on 7 Programs	Based on 7 Programs	Based on 9 Programs

* Comments follow charts

STATES	CURRENT AVERAGE CASELOAD PER WORKER	SUPERVISOR TO APS WORKER RATIO	SOME APS WORKERS Carry Mixed Caseload, APS plus other types of Services
Colorado	44		yes
New York		1-5	yes
North Carolina			yes
South Carolina	23-77		yes
Tennessee	46	1-8	no
Virginia	23-27	1-7	yes

Florida	new reports 11 5 per investigator	1-6	yes
Maine	23	1-7	no
New Mexico	28	1-3	yes
Texas	42	1-8	yes
Utah	20	1-6.4	no

DISTRICT OF COLUMBIA and COUNTIES			
D. C.	Investigation 13 or Ongoing 30	1-4	no
L. A. County, California	45	1-7	no
Brown County, Wisconsin	33		yes

35.5	Average 1 - 6.1
12 Programs	10 Programs

35.1
8 Programs with Combined Caseload Data Averaged

STATES	AVERAGE NUMBER OF MONTHS CASES ARE OPEN	APS STAFF Are Specialized in Following Areas with Average Caseloads of:			EACH APS WORKER DOES ALL FUNCTIONS
		Intake	Investigation	OnGoing	
Colorado	6 (estimate)	some locations specialized			most do all
New York		some locations specialized			some locations
North Carolina	2 8	no			yes
South Carolina		no			yes
Tennessee	4 4	specialized			except intake
Virginia	5		est. 16	est. 34	some do all

Florida	1 1 for investigation		12	32	no
Maine	6 (estimate) Invest. 60 days/Protective Case Management 6 mos.-1 yr		22	25	some locations
New Mexico	2 9	no			yes
Texas	1 5	yes			no
Utah	Invest 1.3 Ongoing 36	70	19	21	some do investiga and ongoing cases

DISTRICT OF COLUMBIA and COUNTIES					
D. C.	4 1		13	30	no
L. A. County, California	1.5 (est.)	specialized			yes except intake
Brown Co., Wisconsin	2.9 (est.)	no			yes

COMMENTS:

California, LA County	<p>Study was a time study.</p> <p>The program is crisis intervention only.</p> <p>Current staffing: 50 social workers, 5 intake, and 8 Homeless Project.</p> <p>Number of reports continues to increase. "Cases today are much more intense and complex..."</p>
Colorado	The study used delphi methodology.
Maine	Included in caseload are APS Guardianship cases. APS staff serve as guardians for clients who are public wards and in or have been in a mental health institute.
North Carolina	<p>The study developed a formula using the service elements of the job to determine an average manageable caseload.</p> <p>Some APS staff may carry other adult services cases and child welfare cases.</p>
New York	<p>The quality assurance reviews indicate that APS programs that operate within the staffing guidelines usually perform better than those which exceed the guidelines.</p> <p>Combined caseloads with higher numbers of investigations will be close to 20 cases. If there are fewer numbers of investigations then the combined caseload will be close to 30 cases.</p>
South Carolina	In some counties workers carry APS and Child Welfare cases.
Tennessee	<p>The study used delphi methodology.</p> <p>At the time of the study most staff in APS carried child welfare and APS cases. Staff covered only 1 county. Since 7-96 APS staff have all specialized and have only APS cases. Some staff cover up to 4 counties.</p> <p>There are now 4 intake sites in Tennessee.</p> <p>The study recommendations do not reflect the increased travel time required for 1 person to cover a multi-county area.</p>
Utah	Staff who do intake are located at 3 intake sites in the state.

CURRENT CASELOAD INFORMATION

Based on Data Submitted in Response to Survey

NO WORKLOAD STUDY WAS COMPLETED

States	Average # of Reports Per Worker Per Month	Average # of Cases Per Worker Per Month	Average Time Cases Are Open	Supervisor to Worker Ratio
Alabama	8	52 includes new reports	3 years est.	1 to 10
Arizona				1 to 6 +
Illinois		28	8 mos. for substantiated cases	1 to 4
Indiana	28.9	340	1 day - 3 years	
Iowa	23 (ratio: 20 CPS to 1 APS)		10 days for invest.	1 to 7
Kentucky	15 est.	35 (+ 15 invest.)	12 mos. est.	
Louisiana	12	32	90 days	1 to 3
Massachusetts	8	18 includes new reports		1 to 5
Mississippi	4 (CPS & APS)	25 (+4 invest.)	6 mos. (APS)	1 to 8
Missouri	8	13 (+8 invest.)	12 mos. est.	1 to 8

County/ Island				
Oahu, Hawaii	4 - 5	59	6 months	1 to 4
Milwaukee, WI	12 - 15	24 includes new reports	2 months	1 to 3.5

States	Number of Counties Covered by one Worker	APS Workers Carry Other types of Cases	Comments
Alabama	1	yes	
Arizona	1	no	
Illinois	1 to 5	yes	Study completed in 1993 to determine hours for investigation, casework, etc. Used for county reimbursement decisions. No standards recommended.
Indiana	up to 7	no	Study completed in 1995 to determine actual caseload. Did not recommend standards. APS is in the Prosecuting Attorney's Office in each jurisdiction.
Iowa	up to 4	yes	Most workers have CPS and APS cases with an estimated ratio of 20 to 1.
Kentucky	up to 2	yes	Most workers have child and adult cases.
Louisiana		no	
Massachusetts	1	yes	
Mississippi	1	yes	Except for 2 of the 82 counties, workers perform all aspects of CPS and APS.
Missouri	up to 2	yes	

County/Island			
Oahu, Hawaii	1	yes	Oahu: APS Unit includes 2 nurses and 2 social services assistants
Milwaukee, WI	1	yes	

Appendix D

Adults Eligible For Protective Services (by State)

State	Term Used	Elder Distinction
Alabama	"Adult in need of protective services"	
Alaska	"Vulnerable adult"	
Arizona	"Vulnerable adult"	
Arkansas	"Endangered person or impaired person"	
California	"Dependent adult" and "Elder"	65+
Colorado	"At-risk adult"	
Connecticut	"Elderly person"	60+
Delaware	"Infirm adult"	
District of Columbia	"Adult in need of protective services"	
Florida	"Vulnerable adult"	
Georgia	"Disabled adult" and "Elder adult"	65+
Hawaii	"Dependent adult"	
Idaho	"Vulnerable adult"	
Illinois	"Eligible adult" (applies only to adults 60+)	60+
Indiana	"Endangered adult"	
Iowa	"Dependent adult"	
Kansas	"Adult"	
Kentucky	"Adult"	
Louisiana	"Adult" (definition distinguishes adults 60+ from "disabled person")	60+
Maine	"Dependent adult" or "Incapacitated adult"	
Maryland	"Vulnerable adult"	
Massachusetts	"Elderly person" and "Disabled person"	60+
Michigan	"Adult in need of protective services" (includes definition of "vulnerable")	
Minnesota	"Vulnerable adult"	
Mississippi	"Vulnerable adult"	
Missouri	"Eligible adult" (definition distinguishes adult 60+ from an adult with disability)	60+ and impairment
Montana	"Older person" and "Person with a developmental disability"	60+
Nebraska	"Vulnerable adult"	
Nevada	"Older person"	60+
New Hampshire	"Incapacitated [adult]"	
New Jersey	"Vulnerable adult"	
New Mexico	"Incapacitated adult"	
New York	(N.Y. uses no specific term, but lists the conditions that qualify an individual for protective services)	
North Carolina	"Disabled adult"	
North Dakota	"Vulnerable adult"	
Ohio	"Adult" and "incapacitated person"	60+ and impairment
Oklahoma	"Vulnerable adult"	
Oregon	"Elderly person" or "adult"	65+
Pennsylvania	"Older adult in need of protective services"	60+ and impairment
Rhode Island	"Elderly person"	60+

State	Term Used	Elder Distinction
South Carolina	"Vulnerable adult"	
South Dakota	"Disabled adult"	
Tennessee	"Adult"	
Texas	"Elderly person" and "disabled person"	65+
Utah	"Vulnerable adult" (definition distinguishes "elderly adult" and "adult")	65+
Vermont	"Vulnerable adult"	
Virginia	"Adult" (definition distinguishes adults 60+ and adults 18+ who are incapacitated)	60+
Washington	"Vulnerable adult" (definition distinguishes adult 60+)	60+ and impairment
West Virginia	"Incapacitated adult"	
Wisconsin	"Adult-at-risk" and "Elder adult-at-risk"	60+
Wyoming	"Vulnerable adult"	

Appendix E

ACT 94

S.B. NO. 1400

A Bill for an Act Relating to Financial Abuse.

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

SECTION 1. Reported instances of financial abuse of elders have become increasingly widespread throughout the United States. As one means by which to attempt to curtail this disturbing trend, it is the intent of the legislature to impose on financial institutions a duty to promptly report suspected incidents of financial abuse to local law enforcement agencies or the department of human services, so that those agencies can determine whether further investigation or other action is warranted.

SECTION 2. Chapter 412, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§412: Mandatory reporting of suspected financial abuse of an elder. (a) A financial institution shall report suspected financial abuse that is directed towards, targets, or is committed against an elder to the department of human services if:

- (1) In connection with providing financial services to the elder, the officer or employee of a financial institution:
 - (A) Has direct contact with the elder; or
 - (B) Reviews or approves the elder's financial documents, records, or transactions; and
- (2) The officer or employee, within the scope of employment or professional practice:
 - (A) Observes or has knowledge of an incident the officer or employee believes in good faith appears to be financial abuse; or
 - (B) In the case of officers or employers who do not have direct contact with the elder, has a good faith suspicion that financial abuse has occurred or may be occurring, based solely on the information present at the time of reviewing or approving the document, record, or transaction.

(b) Suspected financial abuse shall be reported immediately to the department by telephone and by written report sent within five business days.

(c) Upon notification by a financial institution of suspected financial abuse, the department, in a timely manner, shall determine whether the department has jurisdiction over the elder involved; and if not, shall notify the financial institution, which shall then notify the proper local law enforcement agency immediately by telephone and forward the written report to the agency within three business days. A financial institution shall not be liable for failing to report suspected financial abuse to a local law enforcement agency in cases in which the department fails to notify the institution of the department's lack of jurisdiction.

(d) Notwithstanding any other state law to the contrary, including but not limited to laws concerning confidentiality, any person, including the financial institution, who:

- (1) Participates in the making of a report pursuant to this section; and
- (2) Believes, in good faith, that the action is warranted by facts known to that person,

shall have immunity from any liability, civil or criminal, that might be otherwise incurred or imposed by or as a result of the making of the report. Any person making the report shall have the same immunity with respect to participation in any judicial proceeding resulting from the report.

(e) For the purposes of this section:

"Department" means the department of human services.

"Elder" means a person who is sixty-two years of age or older.

"Financial abuse" means financial abuse or economic exploitation."

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved May 24, 2007.)

Note

1. Edited pursuant to HRS §23G-16.5.

Appendix F

ACT 95

H.B. NO. 1306

A Bill for an Act Relating to Enhanced Penalties for Securities Violations Committed Against Elders.

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

SECTION 1. Chapter 485, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§485- Additional administrative penalties for securities violations committed against elders. If a person commits a violation under this chapter and the violation is directed toward, targets, or is committed against a person who at the time of the violation is sixty-two years of age or older, the commissioner, in addition to any other administrative penalty, may impose an administrative penalty not to exceed \$50,000 for each violation; provided that this section shall not apply to registered dealers for violations of 485-15(10).

§485- Additional civil penalties for securities violations committed against elders. If a person commits a violation under this chapter and the violation is directed toward, targets, or is committed against a person who at the time of the violation is sixty-two years of age or older, a court, in addition to any other civil penalty, may impose a civil penalty not to exceed \$50,000 for each violation; provided that this section shall not apply to registered dealers for violations of 485-15(10)."

SECTION 2. Chapter 485A, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§485A- Additional administrative penalties for securities violations committed against elders. If a person commits a violation under this chapter and the violation is directed toward, targets, or is committed against a person who at the time of the violation is sixty-two years of age or older, the commissioner, in addition to any other administrative penalty, may impose an administrative penalty not to exceed \$50,000 for each violation; provided that this section shall not apply to registered broker-dealers for violations of 485A-412(d)(9).

§485A- Additional civil penalties for securities violations committed against elders. If a person commits a violation under this chapter and the violation is directed toward, targets, or is committed against a person who at the time of the violation is sixty-two years of age or older, a court, in addition to any other civil penalty, may impose a civil penalty not to exceed \$50,000 for each violation; provided that this section shall not apply to registered broker-dealers for violations of 485A-412(d)(9)."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2007.

(Approved May 24, 2007.)

Note

1. Edited pursuant to HRS §23G-16.5.

Appendix G

ACT 50

H.B. NO. 1336

A Bill for an Act Relating to Sanctions for Violations by Mortgage Brokers and Solicitors
Committed Against Elders.

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

SECTION 1. Chapter 454, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§454- Additional sanctions for violations committed against elders. (a) Any person who, in the course of engaging in conduct that requires a license under this chapter, commits a violation of this chapter or the rules adopted pursuant to this chapter, or commits a violation of chapter 436B, and the violation includes conduct that is directed towards, targets, or is committed against an elder, may be fined an amount not to exceed \$10,000 for each violation in addition to any other fine or penalty.

(b) As used in this chapter, "elder" means a consumer who is sixty-two years of age or older."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2007.

(Approved May 1, 2007.)

Note

1. Edited pursuant to HRS §23G-16.5.