
A BILL FOR AN ACT

RELATING TO CRIME.

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

1 PART I.

2 SECTION 1. The legislature finds that over the past
3 several years, it has enacted incrementally stronger measures in
4 an attempt to reduce the incidence of graffiti in our
5 neighborhoods. Specifically, Act 187, Session Laws of Hawaii
6 2005, was enacted as a means to punish those who are repeatedly
7 convicted under low level property damage crimes.

8 The legislature further finds that despite the foregoing
9 measure, graffiti has reached epidemic levels, diminishing the
10 majestic beauty of our State, and creating an atmosphere of
11 lawlessness that could have dire social and economic
12 consequences. Consequently, the legislature finds this blight
13 to be an intolerable attack on the core economic and cultural
14 values of Hawai'i, and finds that virtual elimination of this
15 blight requires taking the following steps simultaneously:
16 dramatically increasing penalties, providing law enforcement the
17 tools they need to catch and prosecute graffiti vandals, or
18 "taggers", and providing the means to eliminate graffiti



1 quickly. Accordingly, the purpose of this Act, which may be
2 known as "The Malama Aina Act", is to take the aforementioned
3 steps simultaneously.

4 SECTION 2. Section 708-822, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§708-822 Criminal property damage in the third degree.**

7 (1) A person commits the offense of criminal property damage in
8 the third degree if by means other than fire:

9 (a) The person recklessly damages the property of another,
10 without the other's consent, by the use of widely
11 dangerous means;

12 (b) The person intentionally or knowingly damages the
13 property of another, without the other's consent, in
14 an amount exceeding \$500; or

15 (c) The person intentionally damages the agricultural
16 equipment, supplies, or products or aquacultural
17 equipment, supplies, or products of another, including
18 trees, bushes, or any other plant and livestock of
19 another, without the other's consent, in an amount
20 exceeding \$100. In calculating the amount of damages
21 to agricultural products, the amount of damages



1 includes future losses and the loss of future
2 production.

3 (2) Criminal property damage in the third degree is a
4 misdemeanor.

5 (3) For a conviction under this section, the sentence
6 shall be:

7 (i) An indeterminate term of imprisonment of up to
8 one year, but not less than 30 days;

9 (ii) A fine of not less than \$1000 but not more than
10 \$2,000;

11 (iii) Restitution;

12 (iv) Forty hours of community service;

13 (v) A surcharge of \$250 to be deposited into the
14 graffiti database special fund as established by
15 section 5 of this Act; and

16 (vi) Suspension of driver's license for two years, or
17 if offender does not have a driver's license, two
18 year prohibition from obtaining a driver's
19 license."

20 SECTION 3. Section 708-823, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§708-823 Criminal property damage in the fourth degree.

2 (1) A person commits the offense of criminal property damage in
3 the fourth degree if by means other than fire, the person
4 intentionally or knowingly damages the property of another
5 without the other's consent.

6 (2) Criminal property damage in the fourth degree is a
7 petty misdemeanor."

8 (3) For a conviction under this section, the sentence
9 shall be:

10 (i) An indeterminate term of imprisonment of up to 30
11 days, but not less than 10 days;

12 (ii) A fine of not less than \$500 but not more than
13 \$1,000;

14 (iii) Restitution;

15 (iv) Twenty hours of community service;

16 (v) A surcharge of \$150 to be deposited into the
17 graffiti database special fund as established by
18 section 5 of this Act; and

19 (vi) Suspension of driver's license for two years, or
20 if offender does not have a driver's license, two
21 year prohibition from obtaining a driver's
22 license."



1 SECTION 4. Section 708-823.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§708-823.5 Aggravated criminal property damage. (1) A
4 person commits the offense of aggravated criminal property
5 damage if the person by means other than fire:

6 (a) Intentionally damages the property of another without
7 the other's consent; and

8 (b) Has been convicted two or more times of an offense
9 under section 708-822 or 708-823.

10 (2) For purposes of this section, "convicted two or more
11 times" means that, at the time of the instant offense, the
12 person had previously entered a plea of guilty or no contest or
13 a judge or jury had previously returned a verdict of guilty
14 against the person for two or more offenses committed on
15 separate occasions.

16 (3) Aggravated criminal property damage is a misdemeanor.

17 (4) For a conviction under this section, the sentence
18 shall be:

19 (i) An indeterminate term of imprisonment of up to
20 one year, but not less than 90 days;

21 (ii) A fine of not less than \$1,000 but not more than
22 \$2,000;



- 1 (iii) Restitution;
2 (iv) Eighty hours of community service;
3 (v) A surcharge of \$800 to be deposited into the
4 graffiti database special fund as established by
5 section 5 of this Act; and
6 (vi) Suspension of driver's license for two years, or
7 if offender does not have a driver's license, two
8 year prohibition from obtaining a driver's
9 license."

10 SECTION 5. There is established within the department of
11 the attorney general the graffiti database special fund to
12 assist in the funding of the operations of a database of
13 information for law enforcement officials to use in identifying
14 and apprehending creators of graffiti, also known as "taggers".
15 Proceeds from the fund may be used for acquisition of computer
16 software and hardware, surveillance equipment, recording
17 equipment such as digital cameras or still cameras, funding of
18 positions, and other costs associated with the maintenance of
19 the graffiti database.

20 SECTION 6. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$ or so much



1 thereof as may be necessary for fiscal year 2008-2009 into the
2 graffiti database special fund created by this Act.

3 SECTION 7. There is appropriated out of the graffiti
4 database special fund the sum of \$ or so much thereof as may
5 be necessary for fiscal year 2008-2009 for the purposes of this
6 Act.

7 The sum appropriated shall be expended by the department of
8 the attorney general for the purposes of this Act.

9 PART II

10 SECTION 8. The legislature also finds that timely, or near
11 immediate, removal of graffiti deprives vandals of peer
12 recognition and the power to impose their "aesthetic" upon
13 others. Studies show that prompt removal of graffiti is the
14 single most effective component of any successful eradication
15 program. This has been best accomplished in other jurisdictions
16 with abatement crews that deal with designated areas.

17 The legislature also finds that graffiti is not limited to
18 public property, but affects private property as well. In order
19 to remove graffiti in a timely manner, the ability to enter
20 private property for the limited purpose of eradicating graffiti
21 as well as qualified immunity from liability when entering
22 private property for that purpose would be very helpful in



1 addressing the problem of graffiti. Accordingly, the purpose of
2 this part is to provide funding for abatement crews and granting
3 the right to enter private property for the purpose of
4 eliminating graffiti and qualified immunity when doing that.

5 SECTION 9. Graffiti abatement crew members may enter
6 private property for the limited purpose of eradicating graffiti
7 located on private property. No member of a graffiti abatement
8 crew shall be liable to any private landowner for any injury or
9 damage caused in connection with entry onto private property to,
10 or work in connection with, a graffiti eradication program or
11 project, except for injury or damage resulting from the gross
12 negligence or wanton acts or omissions of the graffiti abatement
13 crew.

14 No private landowner shall be liable for any injury or
15 damage sustained to a member of a graffiti abatement crew in
16 connection with entry onto private property to, or work in
17 connection with, a graffiti eradication program or project,
18 except for injury or damage resulting from the gross negligence
19 or wanton acts of the private landowner.

20 For purposes of this section:

21 "Graffiti abatement crew" means an employee of the
22 department of accounting and general services that administers,



1 manages, or otherwise engages in graffiti eradication programs
2 or projects.

3 "Private landowner" means an individual, company,
4 corporation, partnership, community group, or other legal entity
5 that owns private property.

6 SECTION 10. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$ or so much
8 thereof as may be necessary for fiscal year 2008-2009 for the
9 creation of graffiti abatement crews pursuant to this Act.

10 The sum appropriated shall be expended by the department of
11 accounting and general services for the purposes of this Act.

12 SECTION 11. New statutory material is underscored.

13 SECTION 12. This Act shall take effect on July 1, 2008.

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INTRODUCED BY:

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[Signature]



Report Title:

Graffiti

Description:

Increases penalties for graffiti. Establishes graffiti database special fund and graffiti abatement crews. Provides immunity for graffiti abatement crews when entering private property to eliminate graffiti.

