
A BILL FOR AN ACT

RELATING TO CRIME.

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

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

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



1 known as "The Malama Aina Act", is to take the aforementioned
2 steps simultaneously.

3 PART I.

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) The term "damage" as used in this section shall also
4 include the common meaning of doing harm to property, where such
5 harm is done intentionally or knowingly, and/shall also include
6 intentionally or knowingly dumping rubbish, litter, or any other
7 noxious solid or liquid waste products or chemical, which in the
8 aggregate exceeds 20, but is less than 100 pounds, or consists
9 of not less than 10 pieces of any weight, upon the public or
10 private property of another, without a valid permit to do so,
11 and without permission of the owner or the owner's
12 representative.

13 [(2)] (3) Criminal property damage in the third degree is
14 a misdemeanor[.], provided that a person convicted under this
15 section shall be subject to:

- 16 (A) a minimum fine of not less than \$1,000;
- 17 (B) a mandatory minimum sentence of not less than 30
18 days;
- 19 (C) at least 100 hours of community service
20 consisting of the removal of graffiti or
21 illegally dumped rubbish or litter;



- 1 (D) a surcharge of \$500 to be deposited into the
- 2 graffiti database special fund as established by
- 3 Act , Session Laws of Hawaii 2010.
- 4 (E) suspension of a person's driver's license for two
- 5 years, or if the person does not have a driver's
- 6 license, a two year prohibition from obtaining a
- 7 driver's license if a motor vehicle was used in
- 8 the commission of the offense."

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

11 **"§708-823 Criminal property damage in the fourth degree.**

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

16 (2) The term "damage" as used in this section shall also
17 include the common meaning of doing harm to property, where such
18 harm is done intentionally or knowingly, and/shall also include
19 intentionally or knowingly dumping rubbish, litter, or any other
20 noxious solid or liquid waste products or chemical, which in the
21 aggregate exceeds 10, but is less than 50 pounds, or consists of
22 not less than 5 pieces of any weight, upon the public or private



1 property of another, without a valid permit to do so, and
2 without permission of the owner or the owner's representative.

3 [(2)] (3) Criminal property damage in the fourth degree is
4 a petty misdemeanor[.], provided that a person convicted under
5 this section shall be subject to:

6 (A) a minimum fine of not less than \$500;

7 (B) a mandatory minimum sentence of not less than 7
8 days;

9 (C) at least 50 hours of community service consisting
10 of the removal of graffiti or illegally dumped
11 rubbish or litter;

12 (D) a surcharge of \$250 to be deposited into the
13 graffiti database special fund as established by
14 Act , Session Laws of Hawaii 2010.

15 (E) suspension of a person's driver's license for two
16 years, or if the person does not have a driver's
17 license, a two year prohibition from obtaining a
18 driver's license if a motor vehicle was used in
19 the commission of the offense."

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



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

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

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

8 (2) For purposes of this section, "convicted two or more
9 times" means that, at the time of the instant offense, the
10 person had previously entered a plea of guilty or no contest or
11 a judge or jury had previously returned a verdict of guilty
12 against the person for two or more offenses committed on
13 separate occasions. The term "damage" as used in this section
14 shall also include the common meaning of doing harm to property,
15 where such harm is done intentionally or knowingly, and/shall
16 also include intentionally or knowingly dumping rubbish, litter,
17 or any other noxious solid or liquid waste products or chemical,
18 which in the aggregate exceeds 20, but is less than 100 pounds,
19 or consist of not less than 10 pieces of any weight in the case
20 of a conviction under section 708-822, or which in the aggregate
21 exceeds 10, but is less than 50 pounds, or consist of not less
22 than 5 pieces of any weight in the case of a conviction under



1 section 708-823, upon the public or private property of another,
2 without a valid permit to do so, and without permission of the
3 owner or the owner's representative.

4 (3) Aggravated criminal property damage is a
5 misdemeanor[.], provided that a person convicted under this
6 section shall be subject to:

7 (A) a minimum fine of not less than \$1,500;

8 (B) a mandatory minimum sentence of not less than 45
9 days;

10 (C) at least 200 hours of community service
11 consisting of the removal of graffiti or
12 illegally dumped rubbish or litter;

13 (D) a surcharge of \$1000 to be deposited into the
14 graffiti database special fund as established by
15 Act , Session Laws of Hawaii 2010.

16 (E) suspension of a person's driver's license for two
17 years, or if the person does not have a driver's
18 license, a two year prohibition from obtaining a
19 driver's license if a motor vehicle was used in
20 the commission of the offense."

21 SECTION 5. Section 708-829, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§708-829 **Criminal littering.** (1) A person commits the
2 offense of criminal littering if that person knowingly places,
3 throws, or drops litter on any public or private property or in
4 any public or private waters, except:

5 (a) In a place designated by the department of health or
6 the county for the disposal of garbage and refuse;

7 (b) Into a litter receptacle;

8 (c) Into a litter bag; provided that the bag is disposed
9 of properly into a litter receptacle or in a place
10 designated by the department of health or the county
11 for the disposal of garbage and refuse.

12 (2) "Litter" means rubbish, refuse, waste material,
13 garbage, trash, offal, or debris of whatever kind or
14 description, and whether or not it is of value, and includes
15 improperly discarded paper, metal, plastic, glass, or solid
16 waste.

17 (3) Criminal littering is a petty misdemeanor.

18 (4) The court shall sentence any person convicted of
19 committing the offense of criminal littering as follows:

20 (a) For the first offense, the person shall spend [four]
21 eight hours of either picking up litter on public
22 property or performing community service;



1 (b) For any subsequent offense, the person shall spend
2 [eight] sixteen hours of either picking up litter on
3 public property or performing community service; [and]

4 (c) The court shall fine the person convicted of
5 committing the offense of criminal littering at least
6 \$500, but not more than \$1,000[.]; and

7 (d) The court shall order the payment of a surcharge of
8 \$500 to be deposited into the graffiti database
9 special fund as established by Act , Session Laws of
10 Hawaii 2010.

11 (5) It shall be an affirmative defense that the defendant
12 had consent of the owner in control of the property. "

13 PART II.

14 SECTION 6. There is established the graffiti database
15 special fund within the department of the attorney general to
16 assist in the funding of the operations of a database of
17 information for law enforcement officials to use in identifying
18 and apprehending creators of graffiti, also known as "taggers".
19 Proceeds from the fund may be used for acquisition of computer
20 software and hardware, surveillance equipment, recording
21 equipment such as digital cameras or still cameras, funding of
22 full-time equivalent and part-time equivalent positions,



1 including positions for the elimination of graffiti, and other
2 costs associated with the maintenance of the graffiti database.

3 SECTION 7. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so much
5 thereof as may be necessary for fiscal year 2010-2011 for
6 deposit into the graffiti database special fund created by this
7 Act.

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

10 SECTION 8. There is appropriated out of the graffiti
11 database special fund of the State of Hawaii the sum of \$
12 or so much thereof as may be necessary for fiscal year 2010-2011
13 for the purposes of this Act.

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

16 PART III

17 SECTION 9. The legislature also finds that timely, or near
18 immediate, removal of graffiti deprives vandals of peer
19 recognition and the power to impose their "aesthetic" upon
20 others. Studies show that prompt removal of graffiti is the
21 single most effective component of any successful eradication



1 program. This has been best accomplished in other jurisdictions
2 with abatement crews that deal with designated areas.

3 The legislature also finds that graffiti is not limited to
4 public property, but affects private property as well. In order
5 to remove graffiti in a timely manner, the ability to enter
6 private property for the limited purpose of eradicating graffiti
7 as well as qualified immunity from liability when entering
8 private property for that purpose would be very helpful in
9 addressing the problem of graffiti. Accordingly, the purpose of
10 this part is to provide funding for abatement crews and granting
11 the right to enter private property for the purpose of
12 eliminating graffiti and qualified immunity when doing that.

13 SECTION 10. Graffiti abatement crew members may enter
14 private property for the limited purpose of eradicating graffiti
15 located on private property. No member of a graffiti abatement
16 crew shall be liable to any private landowner for any injury or
17 damage caused in connection with entry onto private property to,
18 or work in connection with, a graffiti eradication program or
19 project, except for injury or damage resulting from the gross
20 negligence or wanton acts or omissions of the graffiti abatement
21 crew.



1 No private landowner shall be liable for any injury or
2 damage sustained to a member of a graffiti abatement crew in
3 connection with entry onto private property to, or work in
4 connection with, a graffiti eradication program or project,
5 except for injury or damage resulting from the gross negligence
6 or wanton acts of the private landowner.

7 For purposes of this section:

8 "Graffiti abatement crew" means an employee of the
9 department of accounting and general services that administers,
10 manages, or otherwise engages in graffiti eradication programs
11 or projects.

12 "Private landowner" means an individual, company,
13 corporation, partnership, community group, or other legal entity
14 that owns private property.

15 SECTION 11. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$ or so much
17 thereof as may be necessary for fiscal year 2010-2011 for the
18 creation of graffiti abatement crews pursuant to this Act.

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

21 SECTION 12. This Act shall take effect on July 1, 2010.

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Report Title:

Crime

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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

