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**SUMMARY OF THE "MALAMA AINA ACT"- HB 2986
 & RECOMMENDED AMENDMENTS**

**Important Note: This Summary Contains Provisions NOT INCLUDED IN THIS
 INTRODUCED VERSION (HB2988) ON JANUARY 28 2010
 THEY ARE INCLUDED HERE BECAUSE WE RECOMMEND THEY BE ADDED
 BACK IN BY THE APPROPRIATE COMMITTEES
 AS AMENDMENTS, AND ARE UNDERLINED**

GENERAL PROVISIONS AND PENALTIES
 APPLICABLE TO ALL SECTIONS OF THE ACT.

1. The term "damage" includes any deliberate act of vandalism or damage to property, including illegal dumping of rubbish and creating graffiti.
2. The "value" of damage is determined by the cost of restoring property to its' original state and appearance. <==(RECOMMEND THIS BE PUT BACK BY AMENDMENT)
3. Convicted offenders lose their driving privilege for two years. For those without a driver's license (such as minors) the time when the offender could have obtained their driving privilege would be delayed by two years. <==(RECOMMEND THIS BE PUT BACK BY AMENDMENT)(INTRODUCED VERSION ON 01/28/10 SAYS FOR THOSE WITHOUT A DRIVER'S LICENSE PRIVILEGE IS LOST ONLY IF VEHICLE IS USED IN COMMISSION OF THE CRIME.)
4. Any property owned by a convicted offender, used in commission of the crime is forfeited. <==(RECOMMEND THIS BE PUT BACK BY AMENDMENT)(THIS WILL PROVIDE EXCELLENT DETERRENCE FOR ILLEGAL DUMPERS WHO ARE RARELY CAUGHT, SINCE THE POSSIBILITY OF LOSING THEIR VEHICLE WON'T BE WORTH THE RISK.)
5. In addition to other fines and penalties, offenders are liable to the property owner for three times the cost of restoration and repair, whether or not the owner is an individual or the government. <==(RECOMMEND THIS BE PUT BACK BY AMENDMENT)
6. Offenders who vandalize "culturally sacred" or "culturally significant" property will, as a practical matter, be subject to enhanced sentences. For example, since the value of damage is calculated as the cost to restore property to "its original state and appearance", a tagger spraying his/her moniker on just one heiau, could easily have created more than \$20,000 worth of damage, and be subject to a five-year prison sentence, and treble damages to the owner.
7. Anyone convicted of causing damage in a natural setting, is further punished by having all penalties multiplied by one-and-a-half times. This does not mean the offender has to damage the environment itself. For example, illegally dumping rubbish in a public park, or creating graffiti on a wall within a park, would subject the offender to this enhanced penalty. <==(RECOMMEND THIS BE PUT

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BACK BY AMENDMENT)(IT IS FAR MORE DIFFICULT TO ERADICATE BLIGHT IN A NATURAL SETTING, AND IN PARTICULAR, GRAFFITI ON NATURAL OBJECTS SUCH AS ROCKS AND TREES. ILLEGAL DUMPING ON BEACHES ALSO IS HARDER TO REMOVE, CAN CAUSE DAMAGE TO FRAGILE OCEAN ECOSYSTEMS, AND PRESENTS PHYSICAL DANGERS TO PEOPLE FROM OBJECTS SUCH AS BROKEN GLASS.)

8. As with current law, parents are held jointly and severally responsible with their minor children for any fines and penalties. However, under the Malama Aina Act, children must repay their parents upon reaching age of majority. – Any fines paid would be construed in the same manner as a tax-lien upon the former minor, subject to wage-garnishment, which would then be used to re-pay the parents. Parents would not be prevented from giving this money back to their children if they chose to do so. The purpose of this provision, is to prevent kids who have difficult relationships with their parents from deliberately causing fines to be foisted upon them. It also makes kids aware they will eventually face full responsibility for the cost of their crime/s. <==(RECOMMEND THIS BE PUT BACK BY AMENDMENT)

9. Offenders would be able to plead for reduced sentences in return for helping to catch other offenders. <==(RECOMMEND THIS BE PUT BACK BY AMENDMENT)(THIS MAY BE IMPORTANT, SINCE CERTAIN SECTIONS OF THE PENAL CODE SUBJECT CONVICTED OFFENDERS TO DETERMINATE SENTENCES. WITH GRAFFITI TAGGERS, GETTING OFFENDERS TO "SNITCH" ON THEIR FRIENDS IS AN EXTREMELY EFFECTIVE STRATEGY FOR CATCHING THEM.

SUMMARY OF SPECIFIC SECTIONS OF THE HAWAII REVISED STATUTES TO BE AMENDED OR ADDED UNDER THE MALAMA AINA ACT

§ 708-821 Criminal property damage in the second degree. – is amended to include any damage exceeding \$20,000 and would be considered a Class "C" Felony <==(RECOMMEND THIS LEVEL OF PUNISHMENT BE PUT BACK BY AMENDMENT, TO THIS AND THE FOLLOWING SECTIONS. (AN EXTREMELY IMPORTANT COMPONENT OF THE MALAMA AINA ACT'S STRATEGY, IS THAT SENTENCES BE EXTREMELY HARSH, SO AS TO MAKE THE RISK OF CONVICTION UNTHINKABLE TO POTENTIAL OFFENDERS. THIS WILL HAVE THE ADDED BENEFIT OF BOLSTERING THE MORALE OF LAW ENFORCEMENT PERSONNEL, WHO OFTEN BECOME DISCOURAGED WHEN THEY GO THROUGH THE TROUBLE OF ARRESTING AN OFFENDER, ONLY TO SEE THEM GET A "SLAP ON THE WRIST"))

1. Five years prison or alternate punishment of regimental discipline pursuant to §706 et seq.
2. A Fine of \$10,000 to \$20,000.
3. A Surcharge of \$3000 to vandalism/graffiti data-base
4. 2000 hours community service; working under civil service supervision to clean rubbish and eradicate graffiti.
5. Plus general provisions applicable to all violations under this Act as indicated above.

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§ 708-822 Criminal property damage in the third degree. <==(RECOMMEND THIS BE PUT BACK BY AMENDMENT) – is amended to include any damage exceeding \$500 but less than \$20,000 and would be considered a misdemeanor.

1. Thirty days minimum to one year maximum prison term or alternate punishment of regimental discipline pursuant to §706.
2. A Fine of \$10,000 to \$20,000.
3. A Surcharge of \$1500 to vandalism/graffiti data-base
4. 1200 hours community service; working under civil service supervision to clean rubbish and eradicate graffiti.
5. Plus general provisions applicable to all violations under this Act as indicated above.

§ 708-823 Criminal property damage in the fourth degree. – is amended to include any damage not exceeding \$500 and would be considered a misdemeanor.

1. Convicted offenders would be sentenced to thirty days in prison or alternate punishment of regimental discipline pursuant to §706.
2. A Fine of \$5,000 to \$10,000.
3. A Surcharge of \$1000 to vandalism/graffiti data-base
4. 600 hours community service; working under civil service supervision to clean rubbish and eradicate graffiti.
5. Plus general provisions applicable to all violations under this Act as indicated above.

§ 708-823.5 Aggravated criminal property damage. – is amended to include the following: A person who is convicted a second time under any section of chapter 708-821, 708-822, or §708-823 et seq. will have the penalties of their second conviction multiplied by one and a half times. A person who is convicted a third or more times under any section of chapter 708-821, 708-822 or §708-823 et seq. will have their penalties doubled.

§708-829. Criminal littering. – is amended so as to NOT include illegal dumping, which would be punished by sections 708-821-823.5 above. Criminal littering could be applied at the discretion of the court, if the amount of litter is less than 10 pieces or 20 pounds, as an alternative sentence, for those creating very small amounts of litter. This section is then amended to increase penalties from four to sixty hours of community service and a \$500 fine. For the second offense, the penalties increase to one-hundred hours community service and a \$1000 fine.

§101-71 Taking private personal property for public use. – <==(RECOMMEND THIS BE PUT BACK BY AMENDMENT)(THE CURRENT VERSION ENABLES ENTRY ONTO PRIVATE PROPERTY, BUT THIS PROVISION PROVIDES THE JUSTIFICATION, SINCE PRIVATE PROPERTY OWNERS, BY FULFILLING THEIR LEGAL DUTY TO ERADICATE BLIGHT UPON THEIR PROPERTY IMMEDIATELY, WOULD NOT BE FACED WITH THE PROSPECT OF OTHERS ENTERING ONTO THEIR PROPERTY. ALSO IMPORTANT IS THE PROVISION THAT IT IS ALL FORMS OF PROPERTY THAT ARE SUBJECT TO THIS, INCLUDING VEHICLES, DUMPSTERS ETC.) - is amended to mandate that private property owners are responsible for keeping their property free of illegally dumped rubbish and graffiti. HOWEVER, property owners would not be penalized

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for not cleaning their property, since it would be unjust to punish them for being crime-victims. Instead, this section gives authorized members of the civil service, and those authorized to assist them, the right to enter upon or access private property for the purpose of eradicating graffiti or illegally dumped rubbish if an owner fails to do so.

(RECOMMEND THIS BE PUT BACK BY AMENDMENT AS A MANDATE TO RE-ORGANIZE THE WAY THE CIVIL SERVICE CURRENTLY ERADICATES BLIGHT, AND PROVIDE FOR BETTER UTILIZATION OF VOLUNTEERS, AND THOSE SERVING COMMUNITY SERVICE SENTENCES==>)**§90D-6 Powers, duties and functions. [of the volunteer commission].** – Throughout Hawai'i literally hundreds of volunteers spend thousands of hours eradicating graffiti and illegally dumped rubbish from public property, but are forbidden from removing blight from private property. This section would be amended to create a corps of "certified" volunteers who undergo background checks and are then issued identification, enabling them to enter upon private property to assist the civil service to eradicate graffiti and illegally dumped rubbish.

§107-3. The powers of the department of accounting and general services. – The Department would be directed to reorganize members of the civil service, so that employees currently responsible for such diverse duties as graffiti eradication, cleanup of illegally dumped rubbish, sanitation, garbage collection, painting & repair, landscaping, etc. would be managed by a single division, and work together as teams. Each team would be responsible for keeping a discrete geographic area, commensurate with the jurisdiction of Community Boards, in as pristine condition as practical. The individuals in each team would communicate regularly with each other, reporting the existence of blight, and other related problems. The teams would also supervise certified volunteers and those serving community sentences, who would assist them with their duties, thus increasing their efficiency while simultaneously making their work-load less burdensome.

§28-10.6 Crime research, prevention, and education. [Department of the Attorney General] – would re-establish the Environmental Crimes Unit, and create a vandalism/graffiti data-base to track offenders. This would be paid for by surcharges and property forfeitures of convicted offenders, pursuant to §§708-821-823.5 et seq.

§489X-2. Sale of adult products; graffiti implements. – would make it a crime to sell graffiti implements to minors. Makes any company who promotes graffiti, and profits from either the sale of graffiti implements, memorabilia, or other items, to minors or adults, vicariously civilly liable to the State of Hawai'i and individual property owners for the damages suffered as the result of graffiti vandalism. This would enable the Attorney General and private individuals, to sue these companies in Hawai'i under the doctrine of vicarious liability for promoting criminal activity. Recovery of damages would be possible, whether or not specific sales of products could be tied to specific crimes. <==(RECOMMEND THIS BE PUT BACK BY AMENDMENT)(THERE ARE MANY COMPANIES PROMOTING AND MAKING A PROFIT OFF OF VANDALISM. THE STATE CAN SUE THEM UNDER THE DOCTRINE OF "VICARIOUS LIABILITY". THEY ARE PROMOTING A CRIME, AND THEN SELLING THE IMPLEMENTS TO COMMIT THAT CRIME..

A few examples of companies who currently promote the crime of graffiti, and profit from it: **BOMBING SCIENCE**, graffiti supplies store at: <http://www.bombingscience.com/graffiti-shop> // **THAT'S LIFE**, graffiti supplies and products store at: <http://thatslife.org/index.php> // **THE STREETS ARE SAYING THINGS**, the original on-line graffiti megastore at: <http://www.freshdailystore.com>

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§201-5 Promotion director and employees. [Planning and economic development], – directed to use a portion of its' budget to educate the public about the economic consequences of litter, graffiti and other forms of blight.

§302A-321. Standards-based curriculum. [Department of Education] – Would be directed to teach kids about the importance of respect for property rights in a civilized society. <==<==(Recommend this be put back by amendment)(Young people seem confused by basic concepts of what property rights mean, and why they are so important. A recent poll of high-school students (I don't have the source) were asked if they though it would be wrong to steal from a store. A huge percentage answered that it would be okay to steal, if the owner had insurance to cover the loss, or if the store were a large chain like Walmart.

THE MALAMA AINA ACT WILL NOT INCREASE COSTS

The Malama Aina Act pays for itself through fines, restitution, tough community sentence requirements, and suing Internet and conventional retailers who profit from the crime of graffiti. Furthermore, research shows that jurisdictions where even just one or two similar provisions are enacted, the incidents of vandalism have radically decreased, thereby reducing the cost. *In other words, the cost of implementing the Act is reduced by implementing the Act.*

SIMILAR STRATEGIES HAVE PROVED THEIR EFFECTIVENESS IN JURISDICTIONS AROUND THE WORLD.

SINGAPORE:

There is **no graffiti** and virtually **no litter or illegal dumping** in Singapore, which also has an extremely low crime rate.

Singapore's legal system became famous (*or infamous*) in the 1990's, when American teenager Michael Fay was convicted of vandalizing several automobiles. Part of his sentence included "canning", a practice antithetical to the American Constitutional principle forbidding "cruel and unusual punishment". President Clinton made a personal plea to the government of Singapore, which then reduced the amount of lashes Michael Fay received.

Because of this incident, many people mistakenly believe Singapore's success at "law and order" is achieved by sacrificing civil liberties, due process, and accepting (American Constitutionally forbidden) "cruel and unusual punishment". A closer study reveals that despite canning, Singapore has a judicial system that provides due process, and leaves civil liberties intact. The lesson to be learned from Singapore is not that we should adopt Constitutionally prohibited "cruel and unusual punishment"; **it's that a comprehensive approach to fighting blight that includes severe punishment works.**

—"Law and Order Lessons From the Merlion; What Singapore is doing right – and what we can learn from that" by Peter Jenkins, <http://www.safenz.org.nz/Articles/Singapore> (October 31, 2009)

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CALCUTTA SOUTH, INDIA:

An entire neighborhood in Calcutta South, India is entirely graffiti free, because the residents proactively enforce prohibition, and eradicate it as soon as it appears.

—"[A Blanket Ban On Graffiti](#)", by Talat Salahuddin, The Calcutta Telegraph, <http://www.telegraphindia.com> (October 31, 2009)

TEMPLE CITY CALIFORNIA:

Temple City, California, quickly eradicates graffiti, and aggressively enforces State law.

"An arrest of even one individual can make a tremendous difference. ... [The] Sheriff's Department has arrested our principal graffiti criminal in and around town - and due to the arrest, there has now been a proportional decrease in the graffiti. ... Temple City Is retaining its home prices better than any city in this area. While most of our surrounding cities have suffered a 10-20% (and some as high as a 30%) loss in home values over the past year, Temple City has actually gained slightly in home values (almost 1%)."

— [Temple City, California, City Manager's Report](#) (July 31, 2008)

PICO RIVERA, CALIFORNIA:

Just by utilizing "[Graffiti Tracker](#)" GPS technology to help catch offenders, the City of Pico Rivera has reduced their graffiti by over 35% and recovered more than \$40,000 in restitution.

"Our success in fighting graffiti in my mind correlated to a decrease in murder and violent crime."

—Ron Beilke, Mayor of Pico Rivera, California

NEW YORK CITY:

SUBWAY HITS DOWN 46% JUST BY INCREASING ENFORCEMENT

It's important to emphasize, that the enormous scale and complexity of the New York City subway system rivals the entire State of Hawai'i. In 2006, on an average work-day, the subway transported 4.9 million passengers per day, and 1.5 billion passengers per year. (The entire population of the State of Hawai'i is less than 1.3 million). There are approximately 6,200 subway cars, 468 subway stations - (only 35 fewer stations than the combined total of all other subway systems in the country) operating on more than 840 miles of track, 24-hours per day, seven days per week.

"Police patrols and Transit surveillance teams have slashed the number of subway graffiti attacks nearly in half, ... Between January and May 2007, vandals trespassing in dark subway tunnels and rail yards ringed with razor wire carried out 98 major spray-paint "hits." They have managed just 53 graffiti raids this year – a 46% drop – according to NYC Transit statistics. "

— NYC Transit Vice President, Vincent DeMarino

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PHOENIX ARIZONA:

The Phoenix "Graffiti Busters" program, dramatically decreased graffiti through tough enforcement and quick eradication according to Jana Sorenson (*below*).

"...graffiti means crime, decay, the breakdown of order and the loss of hope. They see graffiti as a barrier to becoming the neighborhood they want to be."

— Jana Sorensen; Special Assistant Deputy County Attorney, in charge of the anti-graffiti and other community programs and the Maricopa County Attorney's office.