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# A BILL FOR AN ACT

RELATING TO CRIME.

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

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

The legislature further finds that despite the foregoing measure, graffiti has reached epidemic levels, diminishing the majestic beauty of our State, and creating an atmosphere of lawlessness that could have dire social and economic consequences. Consequently, the legislature finds this blight to be an intolerable attack on the core economic and cultural values of Hawai`i, and finds that virtual elimination of this blight requires taking the following steps simultaneously: dramatically increasing penalties, providing law enforcement the tools they need to catch and prosecute graffiti vandals, or

"taggers", and providing the means to eliminate graffiti quickly. Accordingly, the purpose of this Act, which may be known as "The Malama Aina Act", is to take the aforementioned steps simultaneously.

PART I.

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

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

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

- (a) The person recklessly damages the property of another, without the other's consent, by the use of widely dangerous means;
- (b) The person intentionally or knowingly damages the property of another, without the other's consent, in an amount exceeding \$500; or
- (c) The person intentionally damages the agricultural equipment, supplies, or products or aquacultural equipment, supplies, or products of another, including trees, bushes, or any other plant and livestock of another, without the other's consent, in an amount exceeding \$100. In calculating the amount of damages to agricultural products, the amount of damages

includes future losses and the loss of future production.

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

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

- (A) a minimum fine of not less than \$1,000;
- (B) a mandatory minimum sentence of not less than 30 days;
- (C) at least 100 hours of community service consisting of the removal of graffiti or illegally dumped rubbish or litter;
- (D) a surcharge of \$500 to be deposited into the graffiti database special fund as established by Act , Session Laws of Hawaii 2010.

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

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

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

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

(2) The term "damage" as used in this section shall also include the common meaning of doing harm to property, where such harm is done intentionally or knowingly, and/shall also include intentionally or knowingly dumping rubbish, litter, or any other noxious solid or liquid waste products or chemical, which in the aggregate exceeds 10, but is less than 50 pounds, or consists of not less than 5 pieces of any weight, upon the public or private property of another, without a valid permit to do so, and without permission of the owner or the owner's representative.

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

- (A) a minimum fine of not less than \$500;
- (B) a mandatory minimum sentence of not less than 7 days;
- (C) at least 50 hours of community service consisting of the removal of graffiti or illegally dumped rubbish or litter;
- (D) a surcharge of \$250 to be deposited into the graffiti database special fund as established by Act , Session Laws of Hawaii 2010.
- (E) suspension of a person's driver's license for two years, or if the person does not have a driver's license, a two year prohibition from obtaining a driver's license if a motor vehicle was used in the commission of the offense."

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

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

- (a) Intentionally damages the property of another without the other's consent; and
- (b) Has been convicted two or more times of an offense under section 708-822 or 708-823.

(2) For purposes of this section, "convicted two or more times" means that, at the time of the instant offense, the person had previously entered a plea of guilty or no contest or a judge or jury had previously returned a verdict of guilty against the person for two or more offenses committed on separate occasions. The term "damage" as used in this section shall also include the common meaning of doing harm to property, where such harm is done intentionally or knowingly, and/shall also include intentionally or knowingly dumping rubbish, litter, or any other noxious solid or liquid waste products or chemical, which in the aggregate exceeds 20, but is less than 100 pounds, or consist of not less than 10 pieces of any weight in the case of a conviction under section 708-822, or which in the aggregate exceeds 10, but is less than 50 pounds, or consist of not less than 5 pieces of any weight in the case of a conviction under section 708-823, upon the public or private property of another, without a valid permit to do so, and without permission of the owner or the owner's representative.

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

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

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

- (C) at least 200 hours of community service consisting of the removal of graffiti or illegally dumped rubbish or litter;
- (D) a surcharge of \$1000 to be deposited into the graffiti database special fund as established by Act , Session Laws of Hawaii 2010.
- (E) suspension of a person's driver's license for two years, or if the person does not have a driver's license, a two year prohibition from obtaining a driver's license if a motor vehicle was used in the commission of the offense."

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

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

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

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

(3) Criminal littering is a petty misdemeanor.

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

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

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

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

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

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

PART II.

SECTION 6. There is established the graffiti database special fund within the department of the attorney general to assist in the funding of the operations of a database of information for law enforcement officials to use in identifying and apprehending creators of graffiti, also known as "taggers". Proceeds from the fund may be used for acquisition of computer software and hardware, surveillance equipment, recording equipment such as digital cameras or still cameras, funding of full-time equivalent and part-time equivalent positions, including positions for the elimination of graffiti, and other costs associated with the maintenance of the graffiti database.

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

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

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

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

### PART III

SECTION 9. The legislature also finds that timely, or near immediate, removal of graffiti deprives vandals of peer recognition and the power to impose their "aesthetic" upon others. Studies show that prompt removal of graffiti is the single most effective component of any successful eradication program. This has been best accomplished in other jurisdictions with abatement crews that deal with designated areas.

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

SECTION 10. Graffiti abatement crew members may enter private property for the limited purpose of eradicating graffiti located on private property. No member of a graffiti abatement crew shall be liable to any private landowner for any injury or damage caused in connection with entry onto private property to, or work in connection with, a graffiti eradication program or

project, except for injury or damage resulting from the gross negligence or wanton acts or omissions of the graffiti abatement crew.

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

For purposes of this section:

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

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

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

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

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

INTRODUCED BY: \_\_\_\_\_

**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.

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