HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

CITY AND COUNTY OF HONOLULU

No. 24-275

RESOLUTION

URGING THE HAWAI'I STATE LEGISLATURE TO ADOPT LEGISLATION THAT WOULD ADDRESS CRIMINAL STREET GANGS.

WHEREAS, there has been a recent increase in the number of shootings and incidences of gun-related violence in the City and County of Honolulu ("City"); in August 2024, there were six reported incidents with many occurring on the west side of O'ahu; and

WHEREAS, the Gun Violence Archive Hawai'i data covering 2021 to 2023 identified Honolulu and Wai'anae as the areas with the largest number of gun violence incidents in the State of Hawai'i ("State"); and

WHEREAS, according to the Honolulu Police Department ("HPD") Data Dashboard, in 2024, there has been an increase in drug violations, gambling offenses, and homicide among other crimes, as compared to 2023; and

WHEREAS, according to the Interagency Working Group on Youth Programs, composed of 13 United States ("U.S.") federal departments and 12 federal agencies that support programs and services focusing on youth, communities with gang activity are disproportionately affected by theft, negative economic impact, vandalism, assault, gun violence, illegal drug trade, and homicide; and

WHEREAS, an increase in certain categories of crime in the City is concerning because it may indicate an increase in criminal street gang participation and violence; and

WHEREAS, more than 40 U.S. jurisdictions, not including Hawai'i, have statutes that specifically define criminal street gangs and related terms, in addition to having enhanced penalties for crimes carried out in service of a criminal street gang; and

WHEREAS, laws specific to criminal street gangs can provide law enforcement and prosecutors with tools to address criminal street gangs and related offenses, including those related to drugs, firearms, and gambling; and

WHEREAS, while the State may have statutes that can be utilized to investigate and prosecute gang-related criminal activity, State law does not specifically define criminal street gangs and related terms nor does it provide for enhanced criminal penalties for gang-related convictions; now, therefore,

HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

CITY AND COUNTY OF HONOLULU

No. 24-275

RESOLUTION

BE IT RESOLVED by the Council of the City and County of Honolulu that the Hawai'i State Legislature is urged to adopt legislation, attached hereto as Exhibit A, which would specifically address criminal street gang activity and establish sentencing enhancements for individuals convicted of criminal acts conducted in association with a criminal street gang; and

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Governor, the Speaker of the Hawai'i State House of Representatives, the President of the Hawai'i State Senate, the Chair of the Hawai'i State Senate Committee on Judiciary, the Chair of the Hawai'i State House of Representatives Committee on Judiciary and Hawaiian Affairs, the Chief of Police, and the Prosecuting Attorney.

INTRODUCED BY:

A. Kpola

Councilmembers

DATE OF INTRODUCTION:

NOV 13 2024

Honolulu, Hawai'i

__.B. NO._____

A BILL FOR AN ACT

RELATING TO CRIMINAL STREET GANGS.

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

SECTION 1. The Legislature finds that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this Act to interfere with the exercise of the constitutionally-protected rights of freedom of expression and association. However, the Legislature also finds that the State must address criminal street gangs and the violence caused by their members. Between January and September of 2024, there was at least one incident of gun violence per month in the State. Additionally, it has been reported that theft, burglaries, drug offenses, and gambling offenses have been on the rise in recent years throughout the State.

According to the Interagency Working Group on Youth Programs, composed of thirteen United States federal departments and twelve federal agencies, communities with gang activity are disproportionately affected by theft, vandalism, assault, gun violence, illegal drug trade, and homicide. An increase in these areas of crime in the State are concerning in that it

likely indicates a corresponding rise in criminal street gang participation and violence.

More than forty other U.S. jurisdictions have statutes that specifically define criminal street gangs and other related terms and provide for enhanced penalties related to participation in illegal activities as a part of a criminal street gang. While the State may have ways to prosecute the crimes committed by members of criminal street gangs, the State does not have laws that define criminal street gangs or related terms. Nor does the State have a specific process to prosecute illegal acts as part of a criminal street gang activity or the ability to apply enhanced penalties for criminal street gang activities.

Accordingly, the purpose of this Act is to:

(1) Clearly define criminal street gangs and related terms;

(2) Prohibit the participation in or recruitment for a criminal street gang; and

(3) Provide for enhanced penalties for participation in illegal activities conducted as a member of a criminal street gang.

SECTION 2. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**Section 711- Criminal street gangs participation, solicitation, recruitment, or retention; enhanced penalties.**

(1) A person commits the offense of criminal street gang participation, solicitation, recruitment, or retention when the person:

(a) Knowingly and willfully participates in a criminal act committed for the benefit of, at the direction of, or in association with any criminal street gang;

(b) Intentionally coerces, solicits, recruits, employs, causes, encourages, or conspires to cause another person to become or remain a member of a criminal street gang that results in the commission of a criminal act;

(c) Intentionally makes any communication, direct or indirect, constituting a threat to:

(i) A person being solicited, recruited, or retained as a member of a criminal street gang or the person's property; or

(ii) Any associate or relative of the person being solicited, recruited, or retained as a member of a criminal street gang or the associate or relative's property,

that results in the commission of a criminal act;

(d) Provides advice or direction in the conduct, financing, or management of a criminal street gang in furtherance of the criminal objectives of the criminal street gang; or

(e) Is a public servant and intentionally promotes or furthers the criminal objectives of the criminal street gang by inducing or committing any act or omission in violation of the public servant's official duty.

(2) To establish that a person is a member of a criminal street gang, it is not necessary for the prosecution to prove that the person devotes all or a substantial part of the person's time or efforts to the criminal street gang. Active participation in or association with the criminal street gang is all that is required.

(3) Criminal street gang participation pursuant to subsection (1)(a) is a class B felony.

(4) Criminal street gang solicitation, recruitment, or retention pursuant to subsections (1)(b), (1)(c), (1)(d), or (1)(e) is a class C felony.

(5) Upon a finding that a defendant committed a criminal act as a member of a criminal street gang, or that a defendant committed a criminal act while actively participating in a criminal street gang, the penalty if committed by an adult, shall be enhanced if the defendant upon finding by proof beyond a reasonable doubt. Such enhancement shall be as follows:

(a) A petty misdemeanor shall be deemed to be and punished as if it were a misdemeanor;

(b) A misdemeanor shall be deemed to be and punished as if it were a class C felony;

(c) A class C felony shall be deemed to be and punished as if it were a class B felony; and

(d) A class B felony shall be deemed to be and punished as if it were a class A felony.

Defendants found to have committed a criminal act as a member of or an active participant in a criminal street gang shall serve their full sentence and not be eligible for a suspension of their sentence, probation, parole, pardon, or release from

confinement, except if found not guilty upon appeal or as authorized by other laws in other states.

(6) Use of a common name or common identifying sign or symbol shall be admissible and may be considered in proving the existence of a criminal street gang or membership in a criminal street gang."

SECTION 3. Section 711-1100, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

""Criminal act" means conduct constituting any of the crimes, or conspiracy or attempt to commit any offense, under chapters 707, 708, 708A, 710, and 711.

"Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts, having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

"Criminal street gang member" or "member of a criminal street gang" means an individual that has engaged in a pattern of criminal street gang activity and for whom at least two of

the following nine criteria associated with a specific criminal street gang apply:

(a) Self-proclamation;

(b) Witness testimony or official statement;

(c) Written or electronic correspondence;

(d) Paraphernalia;

(e) Photographs;

(f) Tattoos;

(g) Clothing;

(h) Colors; or

(i) Any other indicia of street gang membership.

"Pattern of criminal street gang activity" means the commission of, attempted commission of, conspiracy to commit, or solicitation of a delinquent act, or conviction of two or more enumerated criminal acts; provided that at least one of these criminal acts occurred after the effective date of this article, the last of those criminal acts occurred within three years after a prior offense, and the criminal acts were committed on separate occasions or by two or more persons."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the in valid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2025.

INTRODUCED BY: _____

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

CERTIFICATE

RESOLUTION 24-275

Introduced: 11/13/24 By: ANDRIA TUPOLA Committee: PUBLIC SAFETY (PS)

Title: URGING THE HAWAI'I STATE LEGISLATURE TO ADOPT LEGISLATION THAT WOULD ADDRESS CRIMINAL STREET GANGS.

Voting Legend: * = Aye w/Reservations

11/13/24	INTRO	Introduced.
11/19/24	PS	Reported out for adoption. CR-333 4 AYES: DOS SANTOS-TAM, OKIMOTO, TULBA, TUPOLA
12/11/24	CCL	Committee report and Resolution were adopted. 6 AYES: KIA'ĀINA, OKIMOTO*, SAY, TULBA, WATERS, WEYER 3 ABSENT: CORDERO, DOS SANTOS-TAM, TUPOLA

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

GLEN I. TAKAHASHI, CITY CLERK

TOMMY WATERS, CHAIR AND PRESIDING OFFICER