

THE THIRTY-SIXTH LEGISLATURE OF AMERICAN SAMOA

Fourth Regular Session

Begun and held at Fagatogo, Tutuila, American Samoa  
on Monday, the thirteenth day of July  
two thousand and twenty

AN ACT ALLOWING THE PROSECUTION AND DEFENSE TO AGREE TO, AND THE COURT TO APPROVE, A PLEA IN ABEYANCE TO SUSPEND THE ENTERING OF A DEFENDANT’S PLEA AND PLACE THE DEFENDANT ON PROBATION WHEREBY AT THE END OF WHICH, THE COURT MAY REDUCE THE CHARGE THE DEFENDANT PLEADS GUILTY TO OR DISMISS THE ORIGINAL CHARGE; CREATING A CHAPTER 30 IN TITLE 46 A.S.C.A.

Preamble:

WHEREAS, the criminal justice system is unforgiving and unyielding; and

WHEREAS, as no one is perfect on God’s green earth and people make mistakes that they pay for their whole lives; and

WHEREAS, despite having paid your debt to society, a criminal conviction will follow you everywhere you go and make you pay; and

WHEREAS, a criminal conviction will make it difficult to find a job, apply for college, even restrict you from joining the military; and

WHEREAS, after a person has served his sentence, he or she deserves to a second chance to earn a living and take care of his or her family or attend college.

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

**Section 1.** There is created a Chapter 30 under Title 46 A.S.C.A. which reads

**“CHAPTER 30  
PLEA IN ABEYANCE**

**Sections:**

**46.3001** Definitions.

**46.3002** Plea of Abeyance agreement—Negotiations—Contents—Terms of agreement—Waiver of time of sentencing.

- 46.3003 Terms of plea in abeyance.  
46.3004 Manner of entry of plea—Powers of court.  
46.3005 Violation of plea in abeyance agreement—Hearing—Entry of judgment and imposition of sentence—Subsequent prosecutions.

46.3001 Definitions.

For the purposes of this chapter:

(a) "Plea in abeyance" means an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

(b) "Plea in abeyance agreement" means an agreement entered into between the prosecution and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

46.3002 Plea in Abeyance agreement – Negotiation – Contents – Terms of Agreement – Waiver of time for sentencing.

(a) At any time after acceptance of a plea of guilty or no contest but before entry of judgment of conviction and imposition of sentence, the court may, upon motion of both the prosecuting attorney and the defendant, hold the plea in abeyance and not enter judgment of conviction against the defendant nor impose sentence upon the defendant within the time periods contained in local rules.

(b) A defendant has the right to be represented by counsel at any court hearing relating to a plea in abeyance agreement.

(c) A defendant shall be represented by counsel during negotiations for a plea in abeyance and at the time of acknowledgment and affirmation of any plea in abeyance agreement unless the defendant knowingly and intelligently waives the defendant's right to counsel.

(d) Contents of plea in abeyance:

(1) Any plea in abeyance agreement entered into between the prosecution and the defendant and approved by the court shall include a full, detailed recitation of the requirements and conditions agreed to by the defendant and the reason for requesting the court to hold the plea in abeyance.

(2) If the plea is to a felony or any combination of misdemeanors and felonies, the agreement shall be in writing and shall, before acceptance by the court, be executed by the prosecuting attorney, the defendant, and the defendant's counsel in the presence of the court.

(e) A plea may not be held in abeyance for a period longer than 18 months if the plea was to any class of misdemeanor or longer than three (3) years, if the plea was to any degree of felony or to any combination of misdemeanors and felonies.

(f) A plea in abeyance agreement may not be approved unless the defendant, before the court, and any written agreement, knowingly and intelligently waives time for sentencing as designated in the High Court Rules.

**46.3003 Terms of plea of abeyance.**

- (a) The terms of a plea in abeyance agreement may include:
- (1) an order that the defendant pay a non-refundable plea in abeyance fee, of which shall be allocated in the same manner as if paid as a fine for a criminal conviction and which may not exceed in amount the maximum fine which could have been imposed upon conviction and sentencing for the same offense;
  - (2) an order that the defendant pay restitution to the victims of the defendant's actions;
  - (3) an order that the defendant pay the costs of any remedial or rehabilitative program required by the terms of the agreement; and
  - (4) an order that the defendant comply with any other conditions which could have been imposed as conditions of probation upon conviction and sentencing for the same offense.

**46.3004 Manner of entry of plea--Powers of court.**

- (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be done in full compliance with the provisions of the American Samoa Rules of Criminal Procedure.
- (b) In cases charging offenses for which bail may be forfeited, a plea in abeyance agreement may be entered into without a personal appearance before a magistrate.
- (c) A plea in abeyance agreement may provide that the court may, upon finding that the defendant has successfully completed the terms of the agreement:
- (1) reduce the degree of the offense and enter judgment of conviction and impose sentence for a lower degree of offense; or
  - (2) allow withdrawal of defendant's plea and order the dismissal of the case.
- (d) A court may not hold a plea in abeyance without the consent of both the prosecuting attorney and the defendant. A decision by a prosecuting attorney not to agree to a plea in abeyance is final.
- (e) No plea may be held in abeyance in any case involving a sexual offense against a victim who is under the age of 14.
- (f) No plea may be held in abeyance in any case involving a driving under the influence violation under Section 22.0212.

**46.3005 Violation of plea in abeyance agreement--Hearing--Entry of judgment and imposition of sentence--Subsequent prosecutions.**


- (a) If, at any time during the term of the plea in abeyance agreement, information comes to the attention of the prosecuting attorney or the court that the

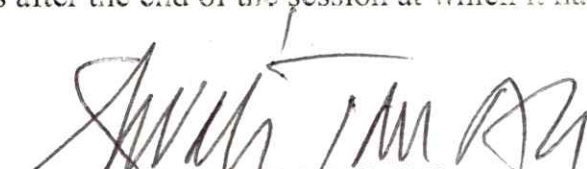
defendant has violated any condition of the agreement, the court, at the request of the prosecuting attorney, made by appropriate motion and affidavit, or upon its own motion, may issue an order requiring the defendant to appear before the court at a designated time and place to show cause why the court should not find the terms of the agreement to have been violated and why the agreement should not be terminated. If, following an evidentiary hearing, the court finds that the defendant has failed to substantially comply with any term or condition of the plea in abeyance agreement, it may terminate the agreement and enter judgment of conviction and impose sentence against the defendant for the offense to which the original plea was entered. Upon entry of judgment of conviction and imposition of sentence, any amounts paid by the defendant as a plea in abeyance fee prior to termination of the agreement shall be credited against any fine imposed by the court.

(b) The termination of a plea in abeyance agreement and subsequent entry of judgment of conviction and imposition of sentence shall not bar any independent prosecution arising from any offense that constituted a violation of any term or condition of an agreement whereby the original plea was placed in abeyance.”

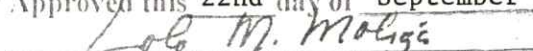
Sec 2. Effective date.

In accordance with Article II Section 19 of the Revised Constitution of American Samoa, this bill shall become effective 60 days after the end of the session at which it has been passed.

  
GAOTEOTE PALAIE TOFAU  
President of the Senate

  
SAVALI TALAVOU ALE  
Speaker, House of Representatives

hereby Approved this 22nd day of September 2020

  
Governor Of American Samoa

NOFOAIGA TOLUSEFULU-ONO FONOFAITULAFONO AMERIKA SAMOA

Fono Tele Lona Fā

Nofoia ma usuia i Fagatogo, Tutuila, Amerika Samoa  
Aso Gafua, aso sefulutolu o Iulai  
Lua afe luasefulu

O SE TULAFONO E FAATAGA AI LE MALILIE FAATASI O LE ITU A LE MALO MA LE ITU A LĒ O LOO MOLIA, MA IA FAAMAONIA FOI E LE FAAMASINOGA, SE TALOSAGA INA IA TAOFI AI LE FAAULUINA O SE TALOSAGA A LE TAGATA MOLIA MA TUU LE TAGATA E FAANOFO VAAVA'AI, A MAE'A LENA TAIMI, E MAFAI E LE FAAMASINOGA ONA FAAITITIA O LE MOLIAGA SA TALI SALA AI LE UA MOLIA, POO LE FAALEAOGA FOI O LE ULUAI MOLIAGA; FAAVAE AI SE MATAUPU FOU 30 O LE ULUTALA 46 T.T.A.S.

Faatomuaga:

TALUAI, e faigata tele ma e le tuuavanao foi le faiga o faamasinoga solitulafono; ma

TALUAI, e leai lava se tagata i luga o le fogaelecie ianulau'ava a le Atua e atoa sona lelei, ma e sese pea ma totogi foi e tagata le sala i lo latou olaga atoa; ma

TALUAI, e ui lava la ina totogi o lau aitalafu i le atunuu, a o le nofosala lava lea, e taumulimuli lava ia te oe i soo se mea e te aiu i ai, ma e totogi lava lena sala; ma

TALUAI, o se solitulafono e faigata ai lava ona maua o se galuega, talosaga e a'oga i se kolisi, ma faatapulaa ai foi lou alu i le militei; ma

TALUAI, a uma ona tuli e se tagata sona faasalaga, ua tatai ona maua e ia se isi avanoa e galue ai e tausi ia ma lona aiga, pe alu foi i le kolisi.

IA FAATULAFONOINA E LE FONO FAITULAFONO A AMERIKA SAMOA:

**Maga 1. Ua faavaeina nei se Mataupu 30 i lalo o le Ulutala 46 TTAS e faitauina faapea:**

**“MATAUPU 30**

**TALOSAGA IA FAATUAI LE FAAULUINA O SE TALI A LĒ UA MOLIA**

**Maga:**

46.3001 Uiga o upu.

46.3002 Maliega o le Talosaga e faatuai—Feutaga'iga—Mea o i totonu—  
Tuutuuga o le maliega—Faagafua o le taimi o le faasalaga.

46.3003 Tuutuuga o le talosaga e faatuai le faauluina o le tali.

46.3004 Faiga o le faauluina o le tali—Malosi o le Faamasinoga.

46.3005 Solia o le Maliega o le talosaga e faatuai le faaulu o le tali—Iloiloga--  
Faauluina o le i'uga ma le faataunuina o le faasalaga—Nisi  
faamasinoga mulimuli ane.

46.3001 Uiga o upu.

Mo mafuaaga o lena mataupu:

(a) “Talosaga e faatuai” o lona uiga o se poloaiga a se faamasinoga, e ala i se manatu faatu mai e itu e lua, e talia ai se tali o le nofosata, pe le faatautee foi o le ua molia, ae le faauluina i le taimi lava lea se faaiuga e faamaonia ai le nofosala, e le faaoo foi i ai se faasalaga i luga o le tuutuuga o le a ia usita'ia tuutuuga faapitoa ua tuuina mai totonu o le maliega o se talosaga ina ia faatuai.

(e) “Maliega o le talosaga e faatuai” o lona uiga o se maliega i le vā o le malo ma le ua molia o loo ta'u mai ai tuutuuga faapitoa e tatau ona mulimuli ai, ina ia mafai ai ona fa'anoaga le talosaga na faia ina ia faatuai le faauluina o le tali.

46.3002 Maliega o le Talosaga e Faatuai – Feutaga'iga – Mea o i totonu –  
Tuutuuga o le Maliega – Faagafua o le taimi o le faasalaga.

(a) I soo se taimi lava pe a mae'a ona talia o le tali e nofo sala poo le lē faatautee foi i le moliaga, ae lei oo ina faauluina le iuga o le nofo sala ma tuuina mai foi le faasalaga, e mafai e le faamasinoga, i luga o se manatu faatu mai e itu e lua o le faamasinoga, ona taofia o lana faaiuga ma lē faataunuina le faasalaga i totonu o taimi ia o loo i ai i ana tulafono o galuega.

(e) E i ai le aia o le ua molia i se loia e fai ma ona sui i soo se iloiloga a le faamasinoga e faia faatatau i le maliega e faatuai le faauluina o le tali.

(i) E i ai le loia e fai ma sui o se tagata molia i le taimi o feutaga'iga mo se talosaga e faatuai le faaulu o le tali, ma le taimi e faailoa ai ma faamaonia soo se maliega i le talosaga e faatuai, sei vagana ai ua faagafua e le tagata molia ma lona iloa ma le malamalama atoatoa lona aia i se loia.

(o) Mea i totonu o le talosaga mo le faatuai:

(1) Soo se maliega i se talosaga e faatuai le faauluina o se tali i le vā o le malo ma lē ua molia ma faamaonia e le faamasinoga, e tatau ona aofia ai le auililiga atoa o mana'oga ma tuutuuga na malie i ai lē na molia ma le mafuaaga na talosaga ai le faamasinoga ina ia umia le talosaga lea.

(2) Afai o le tali na faia e mo se solitulafono mamafa, poo se tuufaatasiga foi o ni solitulafono mama ma solitulafono mamafa, e tatau ona tusinga le maliega

ma e tatau, ona faagaioia e le loia a le malo, o le na molia, ma lana loia i le auai ai o le faamasinoga, a o lei oo ina talia e le faamasinoga.

(u) E le mafai ona taofia o se talosaga e faatuai mo le silia i le 18 masina pe afai o le tali sa faia i soo se tulaga o solitulafono mama poo le sili atu i le 3 tausaga, pe afai o se solitulafono mamafa i soo se tulaga, poo se tuufaatasiga o solitulafono mama ma le mamafa.

(f) E le mafai ona faamaonia o se talosaga e faatuai ai le faauluina o le tali i se solitulafono sei vagana ai ua faagafua ma le iloa lelei ma le malamalama o lē na molia i luma o le faamasinoga, le taimi o le faasalaga e pei ona faatonu mai i Tulafono Galue a le Faamasinoga Mauzuluga.

#### 46.3003 Tuutuuga o le talosaga e faatuai le faauluina o le tali.

(a) O tuutuuga o se maliega i se talosaga e faatuai e aofia ai:

(1) se poloaiga ina ia totogi e lē na molia le tupe e faia ai le talosaga lea e faatuai, e pei lava ona faia e foliga o loo totogi se salatupe mo se faasalaga solitulafono, ma ia le silia le aofai aupito mauzuluga o le sala sa mafai ona faaee i le taimi e faamaonia ai le nofosala mo le solitulafono lea;

(2) se poloaiga ina ia totogi e lē na molia se tupe i e na afaina i ana mea na fai;

(3) se poloaiga ina ia totogi e lē na molia soo se gaioiga poo porokalama na manaomia ona faa i tuutuuga o le maliega; ma

(4) se poloaiga ina ia usita'ia e lē na molia soo se tuutuuga lava sa mafai ona faaone faaee e fai ma tuutuuga o le nofovaavaaia i le taimi na faamaonia ai le solitulafono ma le faasalaga mo le solitulafono lava lea.

#### 46.3004 Faiga o le faauluina o le tali—Malosi o le faamasinoga.

(a) O le taliaina o soo se tali i se solitulafono i le faamoemoe ai e faia se maliega e faatuai ai ona faauluina, ia faia i le usita'ia atoatoa o aiaiga o Tulafono Galue o Taulumaga tau Solitulafono.

(c) I mataupu e i ai solitulafono e mafai ona faaleaoga le tupe e tatala ai i tua, e mafai ona faia o se maliega e faatuai ai e aunoa ma le tau oo atu fua i luma o se faamasino.

(i) E mafai i se maliega e faatuai ona aiaia ai, e mafai e le faamasinoga, pe afai ua faamae'a manuia ona usita'ia e lē na molia tuutuuga o le maliega:

(1) faaititia le tulaga o le solitulafono ma faaulu le faaiuga o le nofosala ma faaee se sala mo le solitulafono faaititia; poo

(2) faataga le tatala i tua o le tali a le tagata na molia ma faaulu le faaleaogaina o le faamasinoga.

(o) E le mafai e le faamasinoga ona faia o se iloiloga o se talosaga mo le faatuai e aunoa ma le maliega a le loia a le malo ma le tagata na molia. O le faaiuga a le loia a le malo e le taliaina e ia le talosaga e faatuai, o lena lava o le a fai.

(u) E leai se talosaga faapea e mafai ona faia i mataupu e aafia ai se solitulafono tau feusua'iga ma se tasi e i lalo ifo o le 14 tausaga.

(f) E leai se talosaga faapea e mafai ona faia i se mataupu e aafia ai le avetaavale 'onā i lalo o le Maga 22.6212.

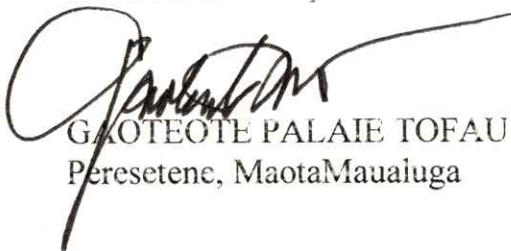
46.3005 Solia o le maliega o se talosaga e faatuai ona faaulu le tali—Iloiloga—Faauluina o le l'uga ma le faataunuina o le faasalaga—Nisi faamasinoga mulimuli ane.

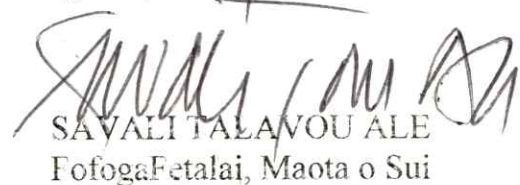
(a) Soo se taimi lava a o i ai i le maliega o se talosaga e faatuai ai ona faaulu se tali, ae oo mai se faamatalaga i le loia a le malo poo le faamasino foi e faapea ua solia e lē na molia se tuutuuga o le maliega, o le a mafai e le faamasinoga, e ala i se talosaga e tusa ai a le loia a le malo, poo le faamasinoga lava foi, ona aumai o se poloaiga e manaomia ai le tagata na molia e oo atu i luma o le faamasinoga i se taimi ma le nofoaga e faatonu mai e faailoa atu se mafuaaga o le a ala ai ona lē faamutaina e le faamasinoga le aoga o le maliega sa faia. Afai e uma ane lea iloiloga ae silafia e le faamasinoga ua le mafai e le tagata na molia ona faataunuu ma usita'ia soo se tuutuuga o le maliega, e mafai ona ia faamuta le maliega ma faia loa lava lana faaiuga o le nofo sala ma faaee le faasalaga o le na molia mo le moliaga sa mua'i tali ai. A faia loa ma tusia le faai'uga o le nofosala ma faaee le sala, o le a fa'aaoga so aofai o tupe sa totogi e lē na molia mo le talosaga ina ia faatuai a o lei oo ina faamuta le aoga o le maliega, o le a to'ese mai ai le zofai o se salatupe e faaee e le faamasinoga.

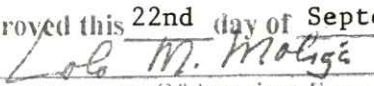
(e) O le faamutaina o se maliega i se talosaga e faatuai le faauluina o le tali, ma le faauluina ai o le faaiuga o le nofosala, ma le faaee o le faasalaga, o le a lē tapunia ai se faamasinoga e faia e mafua mai i soo se solitulafono e aafia ai i le solia o soo se tuutuuga o se maliega lea na faatuai ai ona faaulu le uluai tali a lē na molia."

Maga 2. Aso e taualoa ai.

Ina ia tusa ai ma le Vaega II Maga 19 o le Faavae Tce Teuteu o Amerika Samoa, o le a taualoa lena pili i le 60 aso talu ona uma le tauaofia sa pasia ai

  
G. OTEOTE PALAIE TOFAU  
Peresetene, MaotaMauuluga

  
SAVALI TALAVOU ALE  
FofogaFetalai, Maota o Sui

I hereby Approved this 22nd day of September 2020  
  
Governor Of American Samoa