

## **Title 46**

### **CRIMINAL JUSTICE**

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## **Part I. Practice and Procedure**

### **Chapter 01**

#### **CRIMINAL JUSTICE PLANNING**

##### **Sections:**

- 46.0101     **Legislative declaration.**
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- 46.0104     **Powers and duties.**

**Reviser's Comment:** Section 5 of PL 15-107 delayed the effective date of the act of 31 December 1978.

##### **46.0101     Legislative declaration.**

The Legislature finds and declares that:

- (1) Crime and delinquency are complex social problems requiring the attention and efforts of the criminal justice system, and the people of American Samoa.
- (2) The function of the criminal justice system must be coordinated more efficiently and effectively.
- (3) Training, records, evaluation, technical assistance and public education must be encouraged and focused on the improvement of the criminal justice system and the generation of new methods for the prevention and reduction of crime and delinquency.

**History:** 1978, PL 15-107 § 1.

##### **46.0102     Creation-Composition-Staffing.**

(a) There is within the executive branch the American Samoa Criminal Justice Planning Board which is under the jurisdiction of the Governor.

(b) The Board consists of 14 members appointed by the Governor. Members are selected from among residents of the Territory who are representative of the criminal justice system, including but not limited to: police agencies; the judiciary, prosecutorial and defense counsel; adult correctional and rehabilitative agencies, and juvenile justice agencies; elected officials; local government; public or private agencies related to the criminal justice system; and private citizens; and in compliance with the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and other applicable federal acts. The chairman is selected by the Board from among its members. Members serve without compensation or other emoluments.

(c) Members shall serve for a 2-year term and may be reappointed; provided, that of the members first appointed, one-half serve a 2-year term and one-half serve a one-year term; and provided further, that the terms of those members who serve by virtue of the office they hold shall be concurrent with their service in the office from which they derive their membership.

(d) Should any member cease to be an officer or employee of the unit or agency he is appointed to represent, his membership on the board shall terminate immediately and a new member shall be appointed in the same manner as his predecessor to fill the unexpired term. Other vacancies occurring, except those by the expiration of a term, shall be filled for the balance of the unexpired term in the same manner as the original appointment within 30 days of the vacancy.

(e) The Governor appoints a Director, who serves at the pleasure of the Governor. Other staff personnel are employed in accordance with the career service and other applicable Territorial laws and regulations. The Director may contract for consulting services as may be

necessary and authorized to carry out the purposes of this chapter.

**History:** 1978, PL 15-107 § 2.

**46.0103 Meetings-Quorum-Committees-Rules.**

- (a) The Board shall meet quarterly, and at other times designated by the chairman.
- (b) 7 members constitute a quorum.
- (c) The Board may establish committees it considers advisable and proper.
- (d) All meetings of the Board at which public business is discussed or final action is taken are open to the public.
- (e) The Board shall adopt rules which govern its operations provided they are in accordance with 4.1001 et seq.

**History:** 1978, PL 15-107 § 3.

**46.0104 Powers and duties.**

The Board shall:

- (1) serve as the Territorial Planning Agency under the Omnibus Crime Control and Safe Streets Act of 1968 and the Juvenile Justice and Delinquency Prevention Act of 1974 as amended, and other related federal acts;
- (2) advise and assist the Governor in developing policies, plans, programs, and budgets for improving the coordination, administration and effectiveness of the criminal justice system in the Territory;
- (3) prepare a Territorial Comprehensive Criminal Justice Plan on behalf of the Governor;
- (4) establish goals, priorities, and standards for the reduction of crime and improvement of the administration of justice in the Territory;
- (5) recommend legislation to the Governor and Legislature in the criminal justice field;
- (6) monitor and evaluate programs and projects aimed at reducing crime and delinquency and improving the administration of justice;
- (7) cooperate with and provide technical assistance to public and private agencies relating to the criminal justice system;
- (8) apply for, contract for, receive, and expend for its purposes any appropriations or grant for the Territory, the Federal Government, or any other source public or private, in accordance with the appropriations process;
- (9) have the authority to collect from any governmental entity information, data, reports, statistics, or other material which is necessary to carry out the board's functions; and
- (10) perform other duties as may be necessary to carry out the purposes of this chapter.

**History:** 1978, PL 15-107 § 4.

## **Chapter 02**

### **LAW ENFORCEMENT**

**Sections:**

- 46.0201 Appointment of officers.**
- 46.0202 Security guards-Appointment and powers.**
- 46.0203 Firearms.**

**46.0201 Appointment of officers.**

The Commissioner of Public Safety shall appoint deputy law enforcement officers as the exigencies of the public service may require. Persons appointed and commissioned under this section they shall have and may exercise all of the powers and authority of a police officer.

**History:** 1979, PL 16-18 § 1.

**46.0202 Security guards-Appointment and powers.**

Employees of the airport manager engaged as security guards, upon specific authorization and direction of the Commissioner, shall have all of the powers of police officers, including the power of arrest; provided, that such powers shall remain in force and effect only while the security guards are in actual performance of their duties as security guards.

**History:** 1979, PL 16-18 § 2.

**46.0203 Firearms.**

(a) A law enforcement officer to whom a firearm has been issued in accordance with the provisions of 46.4233 is required to have the firearm so issued in his possession while on duty.

(b) For the purposes of this act "law enforcement officer" means a member of the police force of the Territory.

(c) The Commissioner of Public Safety shall establish a training and certification program for the use of arms and other police weapons by the Territory's law enforcement officers before issuance of these arms and weapons to the law enforcement officers. The Commissioner must submit in writing his training and certification program to the Governor for approval.

**History:** 1981, PL 17-30 § 1.

**Chapter 03**

**(RESERVED)**

**Chapter 04**

**(RESERVED)**

**Chapter 05****GENERAL PROVISIONS****Sections:**

**46.0501 Conformance with Federal Rules of Criminal Procedure.**

**46.0502 Rights of defendants.**

**46.0501 Conformance with Federal Rules of Criminal Procedure.**

Except as otherwise provided in this Code, or by rules adopted by the Chief Justice the criminal procedure in the High Court and in the District Courts shall conform as nearly as may be practical to the Federal Rules of Criminal Procedure.

**History:** 1962, PL 7-36; 1969, PL 11-54.

**Case Notes:**

Rule 7(e), Federal Rules of Criminal Procedure, violated because amended information charged defendant with additional offenses not charged in original information. Rule 48(a) should have been followed. *Government v. Utu*, ASR (1977).

Rule 31(c), Federal Rules of Criminal Procedure, conviction of necessarily included offense, is available under this section. Means impossible to commit greater without first having committed lesser. Verdict may be returned without a specific request for such. *Government v. Maleko*, ASR (1976).

Criminal procedure in courts of American Samoa shall conform as nearly as may be practical to Federal Rules of Criminal Procedure. RCAS 3.0606. *Fanene v. Government*. 4 ASR 957 (1968).

Statute explicitly recognizing power of Chief Justice to make exceptions to rules is clearly not inconsistent with constitutional provision for judicial independence. *Rev'd Const. Am. Samoa Art. III § 2; A.S.C.A. § 46.0501. American Samoa Government v. Tile*, 8 A.S.R.2d 120 (1988).

Reasonable legislative regulation of judicial procedure does not necessarily conflict with judicial independence. Rev'd Const. Am. Samoa Art. III § 2; A.S.C.A. § 46.0501. *American Samoa Government v. Tile*, 8 A.S.R.2d 120 (1988).

The Chief Justice's rulemaking authority under A.S.C.A. § 46.0501 does not include the power to amend unambiguous legislative enactments setting out the prerequisites to appeal. *Fa'amaoni v. American Samoa Government*, 20 A.S.R.2d 127 (1992).

#### **46.0502 Rights of defendants.**

Every defendant in a criminal case before a Court of American Samoa is entitled to:

- (1) have in advance of trial a copy of the charge upon which he is to be tried;
- (2) consult counsel before trial and to have a representative of his own choosing assist him in his defense at the trial;
- (3) apply to the Court for further time to prepare his defense, which the Court shall grant if it is satisfied that the defendant will otherwise be substantially prejudiced in his defense;
- (4) bring with him to the trial such material witnesses as he may desire or to have them summoned by the Court at his request;
- (5) give evidence on his own behalf at his own request at the trial, although he may not be compelled to do so. If he fails to so testify, such failure shall not be construed as evidence against him; but if he does so testify, he may be cross-examined like other witnesses.
- (6) be exempt from testifying against himself;
- (7) appeal;
- (8) a speedy, public and oral trial.

**History:** 1962, PL 7-36; 1972, PL 12-40 § 1.

#### **Case Notes:**

As officers of the court, members of the bar may be appointed, without compensation if necessary, as counsel to insure that indigent criminal defendants receive legal representation. Rev. Const. Am. Samoa Art. I, § 6; A.S.C.A. §§ 46.0502(2), 46.1001. *American Samoa Government v. Wilson*, 23 A.S.R.2d 159 (1993).

Right to effective assistance of counsel applies in American Samoa. Am. Samoa Rev. Const. Art I, § 6; A.S.C.A. §§ 46.0502, 46.1001. *Suisala v. Moaali'itele*, 6 A.S.R.2d 15 (1987).

## **Chapter 06**

### **JURISDICTION AND VENUE**

#### **Sections:**

- |                |   |
|----------------|---|
| <b>46.0601</b> | <b>Adjournment to hold session elsewhere.</b> |
| <b>46.0602</b> | <b>Transfer of case.</b>                      |

#### **46.0601 Adjournment to hold session elsewhere.**

In any case where the interest of justice or the convenience of parties, witnesses or the Court requires, the Chief Justice or the Associate Justice may order that a session of any division of the High Court adjourn from the Court House to sit at any appropriate place in American Samoa.

**History:** 1969, PL 11-54.

#### **46.0602 Transfer of case.**

Any case brought in the High Court or in a district court may, in the interest of justice and for the convenience of the parties and witnesses, be transferred by order of the Chief Justice or the Associate Justice to any court in which it might have been brought originally.

**History:** 1962, PL 7-36; 1966, PL 9-40.

## Chapter 07

### SEARCH AND SEIZURE (RESERVED)

## Chapter 08

### WARRANT AND ARREST

#### Sections:

- 46.0801 Warrant required.**
- 46.0802 Examination of complainant-Affidavit.**
- 46.0803 Warrant of arrest and commitment-Issuance.**
- 46.0804 Warrant of arrest and commitment-Form.**
- 46.0805 Authority to arrest without warrant when.**
- 46.0806 Arrest without warrant by private person.**
- 46.0807 Arrest without warrant-Affidavit and application for warrant.**

#### **46.0801 Warrant required.**

Except as provided in 46.0805 and 46.0806, no arrest may be made except upon warrant, duly issued in accordance with the provisions of this chapter.

**History:** 1963, PL 8-3.

#### **Case Notes:**

Reflecting the common-law rules, the exceptions to American Samoa's arrest-warrant requirement include arrests of felony suspects near a crime scene shortly after a crime's commission, arrests for misdemeanors and felonies committed in an officer's presence, and arrests based on "reasonable grounds" that a felony or breach of the peace has been committed. U.S. Const. Amend. IV; Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. §§ 46.0801 et seq. American Samoa Government v. Gotoloai, 23 A.S.R.2d 65 (1992).

The meaning of statutory provisions generally requiring an arrest warrant must be ascertained in light of the purpose of promoting efficient law enforcement, while protecting individual rights, and of the traditional and almost universal practice of warrantless arrests. U.S. Const. Amend. IV; Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. §§ 46.0801 et seq. American Samoa Government v. Gotoloai, 23 A.S.R.2d 65 (1992).

Arrests and searches are treated differently because "unreasonable search and arrest" provisions are concerned with restricting the use of general search warrants, not with prohibiting warrantless felony arrests; as such, warrantless arrests are permissible if supported by probable cause. U.S. Const. Amend. IV; Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. §§ 46.0801 et seq. American Samoa Government v. Gotoloai, 23 A.S.R.2d 65 (1992).

#### **46.0802 Examination of complainant-Affidavit.**

(a) When a complaint is laid before the Chief Justice, the Associate Justice or any Associate or District Court Judge, for the commission of a public offense triable in American Samoa, the justice or judge must examine the complainant under oath and take his affidavit in writing and cause it to be subscribed by him.

(b) The affidavit must set forth the facts stated by the complainant tending to establish the commission of the offense and the guilt of the defendant. If necessary, such affidavit may be made upon the information and belief of the affiant, provided the facts and the source of the information are stated in the affidavit.

**History:** 1962, PL 7-36, 2008, PL 30-22.

#### **46.0803 Warrant of arrest and commitment-Issuance.**

If the Chief Justice, Associate Justice or other judge is satisfied from an affidavit that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he shall issue a warrant of arrest and commitment in the case of felonies, and a summons in the case of misdemeanors; except that if it is made to appear in such

affidavit that the safety of the defendant or the public so requires, the Chief Justice, Associate Justice or other judge shall issue a warrant of arrest and commitment in the case of misdemeanors.

**History:** 1962, PL 7-36.

**46.0804 Warrant of arrest and commitment-Form.**

(a) A warrant of arrest and commitment is an order in writing, in the name of the government, signed by the Chief Justice, Associate Justice or an Associate or District Court Judge, commanding the arrest of the defendant by the Chief of Police or any other police officer of American Samoa. The warrant must specify the offense charged and the name of the defendant. If the defendant's name is unknown to the official issuing the warrant, the defendant may be designated therein by any name.

(b) The affidavit of the complainant or prosecutor shall be upon, or attached to, the warrant.

(c) If the offense is bailable, the warrant shall so provide, stating the amount of bail which may be posted, designating the particular court before which the defendant is to appear, and specifying that appearance is to be made at the next sitting of the court.

(d) The warrant may be in substantially the following form:

**THE GOVERNMENT OF AMERICAN SAMOA WARRANT OF ARREST AND  
COMMITMENT**

American Samoa

The Government of American Samoa to the Chief of Police or any other police officer of American Samoa:

Information on oath having been this day laid before me by \_\_\_\_\_, that the crime of \_\_\_\_\_ has been committed, and accusing \_\_\_\_\_ thereof, you are hereby commanded forthwith to arrest the above named \_\_\_\_\_, and to commit him to prison to answer said charge, unless he shall give bail in the sum of \$ \_\_\_\_\_, to appear at the next sitting of the \_\_\_\_\_ (Name of court).

Dated this \_\_\_\_ day of, 20 \_\_\_\_

Signed:

\_\_\_\_\_  
Chief Justice of American Samoa  
Associate Justice of American Samoa  
Associate Judge of American Samoa  
District Court Judge of American Samoa  
(Cross out three of above)

**History:** 1962, PL 7-36, 2008, PL 30-22.

**46.0805 Authority to arrest without a warrant when.**

A police officer is authorized, and it is his duty, to make an arrest without a warrant, in the following cases:

- (1) when a felony is committed in his presence;
- (2) to prevent the commission of a felony;
- (3) of persons found near the scene of a felony and suspected of committing it, where such suspicion is based on reasonable grounds and the arrest follows the crime by a short time;
- (4) when a misdemeanor is committed in his presence;
- (5) to prevent a breach of the peace when he has reasonable grounds to believe that a breach of the peace is about to be committed;
- (6) of persons who obstruct justice by assaulting him or otherwise interfering with him while he is discharging his duty;

(7) of persons who are in danger of life or limb and whose arrest is necessary for their protection.

**History:** 1963, PL 8-3.

**Case Notes:**

Warrantless arrest for misdemeanor committed in officer's presence must be made as soon thereafter as reasonably possible; failure to arrest during 15-hour interim removes case from "in presence" exception of paragraph (4) and arrest is invalid. *Government v. Ponausuia*. ASR (1976).

Generally, an arrest, whether with or without a warrant, must be supported by probable cause. Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. § 46.0805(3). *American Samoa Gov't v. Luki*, 21 A.S.R.2d 82 (1992).

A confession will be suppressed if the government fails to meet its burden of showing that probable cause for a warrantless arrest existed when it was made. Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. § 46.0805(3). *American Samoa Gov't v. Luki*, 21 A.S.R.2d 82 (1992).

**46.0806 Arrest without warrant by private person.**

Any person other than a police officer is authorized, and it is his duty, to make an arrest without a warrant when a felony is committed in his presence or to prevent the commission of a felony about to be committed in his presence.

**History:** 1963, PL 8-3.

**46.0807 Arrest without warrant-Affidavit and application for warrant.**

(a) Any police officer or other person making an arrest without a warrant in accordance with this chapter shall immediately thereafter make an affidavit and apply to the Chief Justice, Associate Justice, District Court Judge, or an Associate Judge of the High Court for a warrant of arrest and commitment of the person under arrest.

(b) Nothing in this section may be so construed as to prevent the detention for not to exceed 36 hours of any person lawfully arrested by a police officer when the arresting officer deems the same necessary for the safety of the person arrested or the public.

**History:** 1963, PL 8-3; 2002, PL 27-20, 2008 PL 30-22

## **Chapter 09**

### **CRIMINAL EXTRADITION**

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- 46.0901 Short title.**
- 46.0902 Interpretation.**
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- 46.0904 Duty of Governor to arrest persons charged with crimes in other states.**
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- 46.0910 Authority to arrest.**
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- 46.0914 Warrant to apprehend person charged with crime.**
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- 46.0925 Exemption of extradited persons from civil process.**
- 46.0926 Trial of extradited person for other crimes.**

**46.0901 Short title.**

This chapter may be cited as the Uniform Criminal Extradition Law.

**History:** 1965, PL 9-13.

**46.0902 Interpretation.**

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History:** 1965, PL 9-13.

**46.0903 Definitions.**

Where appearing in this chapter the following apply:

- (a) "Executive authority" includes the Governor and any person performing the functions of Governor in any State or Territory other than this Territory.
- (b) "Governor" includes any person performing the function of Governor by authority of the law of this Territory.
- (c) "State" refers to any other State or Territory, organized or unorganized, of the United States of America other than the Territory of American Samoa.

**History:** 1965, PL 9-13.

**46.0904 Duty of Governor to arrest persons charged with crimes in other states.**

Subject to the qualifications of this chapter and the provisions of the Constitution of the United States controlling and acts of Congress in pursuance thereof, it is the duty of the Governor of this Territory to have arrested and delivered up to the United States Government authorities or executive authority of any other state of the United States Government any person charged in that state or by the United States Government with treason, felony or other crime, who has fled from justice and is found in this Territory.

**History:** 1965, PL 9-13; amd 1991 PL 22-15.

**46.0905 Surrender of persons charged with crime.**

The Governor of this Territory may also surrender on demand of the executive authority of any other State, any person in this Territory charged in such other state in the manner provided in 46.0909 with committing an act in this Territory or in a third state intentionally resulting in a crime in the state whose executive authority is making the demand: and the provisions of this chapter not otherwise inconsistent shall apply to such notwithstanding that the accused was not in that state at the time of the commission of the crime and has not fled therefrom.

**History:** 1965, PL 9-13.

**46.0906 Assistance in investigating demand for surrender.**

When a demand is made upon the Governor of this Territory by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this Territory to investigate or assist in investigating the demand and to report to him the situation and circumstances of the person so demanded and whether he ought to be surrendered.

**History:** 1965, PL 9-13.

**46.0907 Demand for extradition-Form.**

No demand for the extradition of a person charged with crime in another state may be recognized by the Governor unless it is in writing and is accompanied by a copy of an indictment found in the state having jurisdiction of the crime, or by an information supported by affidavit, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the laws of that state and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

**History:** 1965, PL 9-13.

**46.0908 Warrant for extradition-Contents.**

A warrant of extradition may not be issued unless the documents presented by the executive authority making the demand show that:

(1) except in cases arising under 46.0905, the accused was present in the demanding state at the time of the commission of the alleged crime and thereafter fled from the state;

(2) the accused is now in this territory;

(3) the accused is lawfully charged, by indictment found, or by information filed by a prosecuting officer and supported by affidavit to the facts, or by affidavit made before a magistrate in that state, with having committed a crime under the laws of that state, or that he has been convicted of a crime in that state and has escaped from confinement or broken his parole.

**History:** 1965, PL 9-13.

**46.0909 Governor to sign warrant of arrest when.**

If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest which shall be sealed with the Territorial seal and be directed to the Attorney General, Public Safety Commissioner, sheriff or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issue.

**History:** 1965, PL 9-13.

**46.0910 Authority to arrest.**

The warrant shall authorize the officer or other person to whom directed to arrest the accused at any place where he may be found within the Territory and to command the aid of all peace officers in the execution of the warrant, and to deliver the accused subject to the provisions of this law, to the duly authorized agent of the demanding state.

**History:** 1965, PL 9-13.

**46.0911 Authority of arresting officer.**

Every officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein, as the Attorney General, Public Safety Commissioner, the sheriff and other officers have by law in the execution of any criminal

process directed to them, with the like penalties against those who refuse their assistance.

**History:** 1965, PL 9-13.

**46.0912 Rights of arrested persons-Writ of habeas corpus-Penalty for denial of rights.**

(a) No person arrested upon such warrant may be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he has been informed of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand legal counsel.

(b) If the prisoner, his friends or counsel state that he or they desire to test the legality of the arrest, the prisoner shall be taken forthwith before the High Court of American Samoa in this Territory, who shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the Attorney General of American Samoa and to the agent of the demanding state.

(c) An officer who delivers for extradition a person in his custody under the Governor's warrant, in disobedience to this section, shall be guilty of a misdemeanor, and shall be fined not more than \$1,000, or imprisoned not more than 6 months, or both.

**History:** 1965, PL 9-13.

**46.0913 Confinement of arrested persons.**

The officer or person executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of the government, and the warden of such jail must receive and safely keep the prisoner until the person having charge of him is ready to proceed on his route, such person being chargeable with the expense of keeping.

**History:** 1965, PL 9-13.

**46.0914 Warrant to apprehend person charged with crime.**

Whenever any person within this territory is charged, on the oath of any credible person before any judge or magistrate of this Territory, with the commission of a crime in any other state and, except in cases arising under 46.0905, with having fled from justice, or whenever complaint has been made before the High Court of American Samoa setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime and, except in cases arising under 46.0905, has fled therefrom and is believed to have been found in this territory, the judge or magistrate shall issue a warrant directed to the Attorney General, Public Safety Commissioner or sheriff directing him to apprehend the person charged wherever he may be found in this Territory and bring him before the High Court of American Samoa to answer the charge or complaint and affidavit. A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

**History:** 1965, PL 9-13.

**46.0915 Lawful arrest-By officer or private citizen without warrant.**

The arrest of a person may also be lawfully made by an officer or a private citizen without a warrant, upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding 1 year; but when so arrested the accused must be taken before the High Court of American Samoa with all practicable speed and complaint must be against him under oath setting forth the ground for the arrest as in 46.0914, and thereafter, his answer shall be heard as if he had been arrested on a warrant.

**History:** 1965, PL 9-13.

**46.0916 Commitment to jail required when.**

If, from the examination before the High Court of American Samoa, it appears that the person held is the person charged with having committed the crime alleged, that he probably committed the crime and, except in cases arising under 46.0905, that he has fled from justice, the High Court of American Samoa must commit him to jail by a warrant reciting the accusation, for such a time specified in the warrant as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense unless the accused gives bail as provided in this chapter, or until he is legally discharged.

**History:** 1965, PL 9-13.

**46.0917 Admission to bail by bond.**

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, the High Court of American Samoa must admit the person arrested to bail by bond or undertaking with sufficient sureties and in such sum as the court deems proper for his appearance before it at a time specified in such bond or undertaking, and for his surrender to be arrested upon the warrant of the Governor of this Territory.

**History:** 1965, PL 9-13.

**46.0918 Discharge or recommitment.**

If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant, bond or undertaking, the High Court of American Samoa may discharge him, or may recommit him to a further day, or may again take bail for his appearance and surrender. At the expiration of the second period of commitment, or if he has been bailed and appeared according to the terms of his bond or undertaking, the court may either discharge him or may require him to enter into a new bond or undertaking to appear and surrender himself at another day.

**History:** 1965, PL 9-13.

**46.0919 Failure to appear and surrender-Forfeit of bond.**

If the prisoner is admitted to bail and fails to appear and surrender himself according to the condition of his bond, the High Court by proper order shall declare the bond forfeited; and recovery may be had thereon in the name of the Territory as in the case of other bonds or undertakings given by the accused in criminal proceedings within this Territory.

**History:** 1965, PL 9-13.

**46.0920 Effect of prosecution in territory prior to demand.**

If a criminal prosecution has been instituted against an accused under the laws of this Territory and is still pending, the Governor, at his discretion, may either surrender him on the demand of the executive authority of another state or may hold him until he has been tried and discharged, or convicted and punished in this Territory.

**History:** 1965, PL 9-13.

**46.0921 Inquiry into guilt of accused.**

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor, or in any proceeding, after the demand for extradition

accompanied by a charge of crime in legal form as provided in this chapter has been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

**History:** 1965, PL 9-13.

**46.0922 Recall and reissuance of warrants.**

The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

**History:** 1965, PL 9-13.

**46.0923 Demand for person charged with crime in American Samoa-Warrant issued.**

Whenever the Governor of this Territory demands a person charged with crime in this territory from the chief executive of any other state or from the chief judge of the Superior Court of the District of Columbia, he shall issue a warrant under the seal of this Territory to some agent commanding him to receive the person charged and convey him to the proper officer of the government.

**History:** 1965, PL 9-13.

**46.0924 Demand for person charged with crime in American Samoa-Written application-Verification.**

(a) When return to this Territory of a person charged with a crime in this Territory is required, the Attorney General or his assistant shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him and the approximate time, place and circumstances of its committal, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the Attorney General or his assistant the ends of justice require the arrest and return of the accused to this Territory for trial and that the proceeding is not instituted to enforce a private claim.

(b) The application shall be verified by affidavit, executed in duplicate, and accompanied by two certified copies of the information and affidavit filed with the High Court of American Samoa stating the offense with which the accused is charged. The Attorney General or his assistant may also attach such further affidavits and other documents in duplicate, as he shall deem proper to be submitted with such application.

(c) One copy of the application with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment or complaint or information and affidavit shall be filed in the office of the Secretary of American Samoa to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

**History:** 1965, PL 9-13.

**46.0925 Exemption of extradited persons from civil process.**

A person brought into this Territory on extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as such criminal charge until he has been convicted in the criminal proceeding, or if acquitted, until he has had ample opportunity to return to the state from which he was extradited.

**History:** 1965, PL 9-13.

**46.0926 Trial of extradited person for other crimes.**

After a person has been brought back to this Territory upon extradition proceedings, he may

be tried in this Territory for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

**History:** 1965, PL 9-13.

## **Chapter 10**

### **RIGHT TO COUNSEL**

#### **Sections:**

#### **46.1001 Representation of indigent persons.**

#### **46.1001 Representation of indigent persons.**

(a) The public defender shall represent as counsel, without charge, each indigent person who is under arrest for or charged with committing a felony, misdemeanor, immigration law, or traffic violation; and

(1) the defendant requests it; or

(2) the court, on its own motion or otherwise, so orders and the defendant does not affirmatively reject, of record, the opportunity to be represented by legal counsel in the proceeding.

(b) The public defender shall represent indigent persons charged in any court with crimes which constitute juveniles upon whom a delinquency petition is filed or who are in any way restrained by court order, process, or otherwise; persons held in any institution against their will by process or otherwise for the treatment of any disease or disorder or confined for the protection of the public; and those persons charged with violations of the traffic code; provided

(1) the indigent person, or his parent or legal guardian, in delinquency, requests it; or

(2) the court, on its own motion or otherwise, so orders, the defendant, or his parent or legal guardian.

(c) The determination of indigence shall be made by the High Court.

**History:** 1962, PL 7-36; 1969, PL 11-54.

#### **Case Notes:**

As officers of the court, members of the bar may be appointed, without compensation if necessary, as counsel to insure that indigent criminal defendants receive legal representation. Rev. Const. Am. Samoa Art. I, § 6; A.S.C.A. §§ 46.0502(2), 46.1001. American Samoa Government v. Wilson, 23 A.S.R.2d 159 (1993).

Right to effective assistance of counsel applies in American Samoa. Am. Samoa Rev. Const. Art I, § 6; A.S.C.A. §§ 46.0502, 46.1001. Suisala v. Moaali'itele, 6 A.S.R.2d 15 (1987).

The bifurcated-proceedings statute divides the inquiry into whether the defendant "committed the criminal act charged" and whether he was "insane at the time of the commission of the criminal act." A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99 (1991).

## **Chapter 11**

### **APPEARANCE AND BAIL (RESERVED)**

## **Chapter 12**

### **PRELIMINARY EXAMINATION AND COMMENCEMENT OF ACTION**

#### **Sections:**

#### **46.1220 Prosecution of complaints.**

#### **46.1221 Summons.**

#### **46.1220 Prosecution of complaints.**

All criminal prosecutions shall be brought in the name of the "Government of American

Samoa". The Attorney General shall prosecute all criminal cases before the High Court. The prosecution of misdemeanors may be initiated by complaint or by criminal information. The prosecution of felonies may be initiated only by criminal information.

**History:** 1962, PL 7-36; 1969, PL 11-54.

#### **46.1221 Summons.**

(a) When a complaint is laid before the Chief Justice, Associate Justice or an Associate Judge, of the commission of a public offense triable in American Samoa, the justice or judge may, in lieu of issuing a warrant of arrest and commitment, issue a summons commanding and directing the defendant to appear before a specified court at a time certain in the future to answer to the charge. The offense charged must be stated in the summons.

(b) If the defendant fails to appear before the court specified, in response to the summons, the justice or judge may issue a warrant of arrest and commitment in the manner provided in this title.

**History:** 1962, PL 7-36.

### **Chapter 13**

#### **MENTAL COMPETENCY OF ACCUSED**

##### **Sections:**

- 46.1301 Application of 46.1616 through 46.1626.**
- 46.1302 Procedure on plea of not guilty.**
- 46.1303 Motion for examination.**
- 46.1304 Order for examination.**
- 46.1305 Hearing to determine status.**
- 46.1306 Presumptions-Evidence.**
- 46.1307 Proceedings after sanity determination.**
- 46.1308 Confinement.**
- 46.1309 Treatment as outpatient.**
- 46.1310 Jurisdiction of the High Court.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978.

MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC— Model Penal Code.

MPCC—Proposed Criminal Code for the State of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.1301 Application of 46.1301 through 46.310.**

Under 46.1301 through 46.1310 and 46.3216, the following persons are subject to confinement for mental incompetency or insanity in American Samoa:

- (1) defendants found mentally incompetent to stand criminal trial; or
- (2) defendants found insane at the time of the commission of a criminal act.

**History:** 1979, PL 16-43 § 2.

##### **Case Notes:**

In a bifurcated criminal trial, the jury is not exposed to evidence of the defendant's mental capacity until the jury makes an independent finding as to whether the defendant committed the act charged. A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99 (1991).

When a crime includes an intent element, a finding of guilt in the first part of a bifurcated trial also implicitly includes a finding that the defendant either had the requisite intent or would have had it but for the mental disease or defect. A.S.C.A. §§ 46.1301-46.1302. American Samoa Gov't v. Taylor, 19 A.S.R.2d 99 (1991).

Although a defense of diminished mental capacity is arguably comprehended within the "guilt" phase of a bifurcated trial, the interests in a fair trial and an orderly proceeding may be better served by reserving all evidence of mental disease or defect for the "insanity" phase because a jury is likely to view the evidence as being highly probative of issues other than the criminal defendant's mental state, and a limiting instruction would likely be ineffective. A.S.C.A. §§ 46.1301-46.1302. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

During the first phase of a bifurcated criminal trial involving the defense of diminished mental capacity, the court limited the evidence to whether the defendant is or would be guilty, assuming the absence of any mental disease or defect such as would render him incapable of understanding the difference between right and wrong, incapable of conforming his conduct to such a standard, or otherwise incapable of having any requisite mental element of the crimes charged or of any lesser-included offenses. A.S.C.A. §§ 46.1301-46.1302. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

During the first phase of a bifurcated criminal trial involving the defense of diminished mental capacity, though necessarily concerned with the defendant's thoughts relevant to the charged offenses, the court limited both parties from addressing such questions by expert testimony from psychiatrists or psychologists or by other evidence calculated to show that defendant did or not have a mental disease or defect. A.S.C.A. §§ 46.1301-46.1302, 46.1304. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

During the "guilt" phase of a bifurcated criminal trial, the government may not make any use of statements made by the defendant to the government's expert witness or of any evidence discovered as a result of such statements that would not ultimately have been discovered had the statements not been made, unless the defendant put a fact at issue which could only be effectively addressed by the otherwise-inadmissible evidence and if required in the interest of justice. A.S.C.A. §§ 46.1301-46.1302, 46.1304. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

If the defendant is found guilty of one or more crimes in the first phase of a bifurcated criminal trial involving the defense of diminished mental capacity, the trial will proceed to the second stage, during which the parties may present evidence on whether the defendant had a mental disease or defect which would either support an insanity defense or tend to negate the existence of any requisite mental elements of the crime or crimes. A.S.C.A. §§ 46.1301-46.1302. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

During the second phase of a bifurcated criminal trial involving the defense of diminished mental capacity, the government may use evidence obtained during its expert's examination of the defendant or as a result of such evidence, including but not limited to statements made by the defendant to the expert. A.S.C.A. §§ 46.1301-46.1302, 46.1304. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

Defense counsel's motion for a bifurcated criminal trial constituted an implicit waiver of any objection to a procedure which, although clearly consistent with the legislative purpose of the bifurcated-trial statute, is not clearly authorized regarding a defense of diminished mental capacity. A.S.C.A. §§ 46.1301-46.1302. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

The bifurcated-proceedings statute divides the inquiry into whether the defendant "committed the criminal act charged" and whether he was "insane at the time of the commission of the criminal act." A.S.C.A. §§ 46.1301-46.1302. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

**Research Guide:** 15 ASC 7801.

#### **46.1302 Procedure on plea of not guilty.**

Where a defendant pleads not guilty to the commission of a criminal act, then, before the defendant is subject to confinement under subsection (2) of 46.1301, it must first be found that the defendant committed the criminal act charged.

**History:** 1979, PL 16-43 § 2.

#### **Case Notes:**

In a bifurcated criminal trial, the jury is not exposed to evidence of the defendant's mental capacity until the jury makes an independent finding as to whether the defendant committed the act charged. A.S.C.A. §§ 46.1301-46.1302. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

When a crime includes an intent element, a finding of guilt in the first part of a bifurcated trial also implicitly includes a finding that the defendant either had the requisite intent or would have had it but for the mental disease or defect. A.S.C.A. §§ 46.1301-46.1302. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

Although a defense of diminished mental capacity is arguably comprehended within the "guilt" phase of a bifurcated trial, the interests in a fair trial and an orderly proceeding may be better served by reserving all evidence



of mental disease or defect for the "insanity" phase because a jury is likely to view the evidence as being highly probative of issues other than the criminal defendant's mental state, and a limiting instruction would likely be ineffective. A.S.C.A. §§ 46.1301-46.1302. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

During the first phase of a bifurcated criminal trial involving the defense of diminished mental capacity, the court limited the evidence to whether the defendant is or would be guilty, assuming the absence of any mental disease or defect such as would render him incapable of understanding the difference between right and wrong, incapable of conforming his conduct to such a standard, or otherwise incapable of having any requisite mental element of the crimes charged or of any lesser-included offenses. A.S.C.A. §§ 46.1301-46.1302. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

During the first phase of a bifurcated criminal trial involving the defense of diminished mental capacity, though necessarily concerned with the defendant's thoughts relevant to the charged offenses, the court limited both parties from addressing such questions by expert testimony from psychiatrists or psychologists or by other evidence calculated to show that defendant did or not have a mental disease or defect. A.S.C.A. §§ 46.1301-46.1302, 46.1304. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

During the "guilt" phase of a bifurcated criminal trial, the government may not make any use of statements made by the defendant to the government's expert witness or of any evidence discovered as a result of such statements that would not ultimately have been discovered had the statements not been made, unless the defendant put a fact at issue which could only be effectively addressed by the otherwise-inadmissible evidence and if required in the interest of justice. A.S.C.A. §§ 46.1301-46.1302, 46.1304. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

If the defendant is found guilty of one or more crimes in the first phase of a bifurcated criminal trial involving the defense of diminished mental capacity, the trial will proceed to the second stage, during which the parties may present evidence on whether the defendant had a mental disease or defect which would either support an insanity defense or tend to negate the existence of any requisite mental elements of the crime or crimes. A.S.C.A. §§ 46.1301-46.1302. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

During the second phase of a bifurcated criminal trial involving the defense of diminished mental capacity, the government may use evidence obtained during its expert's examination of the defendant or as a result of such evidence, including but not limited to statements made by the defendant to the expert. A.S.C.A. §§ 46.1301-46.1302, 46.1304. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

Defense counsel's motion for a bifurcated criminal trial constituted an implicit waiver of any objection to a procedure which, although clearly consistent with the legislative purpose of the bifurcated-trial statute, is not clearly authorized regarding a defense of diminished mental capacity. A.S.C.A. §§ 46.1301-46.1302. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

The bifurcated-proceedings statute divides the inquiry into whether the defendant "committed the criminal act charged" and whether he was "insane at the time of the commission of the criminal act." A.S.C.A. §§ 46.1301-46.1302. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

**Research Guide:** 15 ASC 7802.

#### **46.1303 Motion for examination.**

The court may order a mental examination of a defendant upon motion of the defendant or the government, or upon the court's own motion, at any time before judgment.

**History:** 1979, PL 16-43 § 2.

#### **Case Notes:**

The Court may order a mental examination of a defendant. A.S.C.A. § 46.1303. *American Samoa Government v. Taylor*, 16 A.S.R.2d 44 (1991).

**Research Guide:** 15 ASC 7803.

#### **46.1304 Order for examination.**

(a) Upon the order of the court, a defendant undergoes a mental examination by a psychiatrist or other person medically or otherwise qualified to give an opinion of the defendant's mental condition.

(b) Unless otherwise specified by the court, the scope of the examination pertains to whether:

- (1) the defendant is mentally competent to stand trial; and
- (2) the defendant was sane at the time of the commission of the criminal act charged.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

The testimony of the government's expert may, in some circumstances, include statements made to him by a criminal defendant during the compelled examination, although the witness may testify only about the alleged mental disease or defect and not about "guilt or innocence" (i.e., about whether the defendant would be guilty in the absence of any such disease or defect). A.S.C.A. § 46.1304. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

During the first phase of a bifurcated criminal trial involving the defense of diminished mental capacity, though necessarily concerned with the defendant's thoughts relevant to the charged offenses, the court limited both parties from addressing such questions by expert testimony from psychiatrists or psychologists or by other evidence calculated to show that defendant did or not have a mental disease or defect. A.S.C.A. §§ 46.1301-46.1302, 46.1304. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

During the "guilt" phase of a bifurcated criminal trial, the government may not make any use of statements made by the defendant to the government's expert witness or of any evidence discovered as a result of such statements that would not ultimately have been discovered had the statements not been made, unless the defendant put a fact at issue which could only be effectively addressed by the otherwise-inadmissible evidence and if required in the interest of justice. A.S.C.A. §§ 46.1301-46.1302, 46.1304. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

A criminal defendant who puts his mental capacity at issue may be compelled to submit to an examination by the government's expert, who may testify about his observations and conclusions. A.S.C.A. § 46.1304. *American Samoa Gov't v. Taylor*, 19 A.S.R.2d 99 (1991).

**Research Guide:** 15 ASC 7804.

**46.1305 Hearing to determine status.**

Upon completion of the mental examination of the defendant, the court conducts a hearing to determine the defendant's mental status. If on the basis of the hearing the court finds:

(1) That the defendant is not mentally competent to stand trial, then the court orders the defendant confined. If the defendant is confined on this basis only, the order shall contain a provision for a hearing within 120 days, unless, for good cause shown, the court orders an extension not to exceed 120 days. The purpose of the hearing is to determine whether there is a substantial probability that the defendant will recover mental competence to stand trial within 1 year from the date of the hearing or the maximum imprisonment imposable under the charge filed against the defendant whichever is lesser. If the court determines there is a substantial probability that the defendant will attain mental competence to stand trial within that period, then the defendant may be further confined; provided, that confinement is justified by progress toward attainment of competency to stand trial and is accompanied by appropriate mental health care and treatment. If the court determines at the hearing or any time later that there is not a substantial probability that the defendant will attain mental competence to stand trial within that period, then the defendant must be released or recommitted under alternative commitment procedures.

(2) That the defendant was insane at the time of the commission of the criminal act, then the court shall order the defendant to be confined, unless it appears to the court that the defendant has fully recovered his sanity, in which case the defendant is released. After a finding of insanity and within 6 months, an additional hearing is held to determine whether the defendant's sanity has been fully recovered. Upon a finding that defendant's sanity has not been recovered, the defendant may make further applications for hearings on the defendant's recovery of sanity provided that 1 year elapses between the applications, and further provided that:

(A) the burden of proving recovery of sanity is on the defendant;

(B) upon the expiration of the maximum imprisonment imposable against the defendant provided by virtue of the criminal charges filed against defendant, the defendant must be released or recommitted according to alternative commitment procedures.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

The Court may order a mentally incompetent defendant to be confined for a maximum of 120 days; within 120 days a hearing shall be held to determine whether the defendant has become competent to stand trial and, if not, whether there is a substantial probability that he will attain competency within one year or the maximum term of imprisonment for the crime charged. A.S.C.A. § 46.1305 *American Samoa Government v. Taylor*, 16 A.S.R.2d 44 (1990).

**Research Guide:** 15 ASC 7805

**46.1306 Presumptions-Evidence.**

- (a) All persons are presumed sane or mentally competent.
- (b) In the sound discretion of the court, any evidence may be received relative to the defendant's mental competence or sanity at any proceeding to determine that competence or sanity. Within this framework, traditional rules of evidence affect the weight, but not the admissibility, of evidence.

**History:** 1979, PL 16-43 § 2.

**46.1307 Proceedings after sanity determination.**

Criminal proceedings may be resumed against a defendant after a finding by the court that:

- (1) the defendant, previously found incompetent to stand trial, is now competent to do so; or
- (2) the defendant is found mentally competent at the hearing preceding the mental examination to determine the defendant's competency.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 15 ASC 7807.

**46.1308 Confinement.**

All orders for confinement pertain to confinement in a correctional facility in American Samoa; provided, that the court is authorized to establish other places, both within and outside American Samoa, for confinement or treatment of a particular person confined by virtue of the provisions of this chapter; and provided that the court may establish and require the defendant to observe a program of mental treatment to be carried out at the place of confinement or elsewhere.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 15 ASC 7808.

**46.1309 Treatment as outpatient.**

A defendant in a criminal case whose mental incompetence or insanity has been stipulated by the parties, or who has been found incompetent or insane under 46.1301 through 46.1310 and 46.3216, may, by stipulation of the parties and the permission of the court, be treated as an outpatient of a mental health facility without required confinement. In that instance the court may make orders as it sees fit for the mental treatment and physical placement of the defendant.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 15 ASC 7809.

**46.1310 Jurisdiction of the High Court.**

Proceedings under 46.1301 through 46.1310 and 46.3216, are heard by the court which has

jurisdiction over the charged criminal offense.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 15 ASC 7810.

## **Chapter 14**

### **EVIDENCE (RESERVED)**

## **Chapter 15**

### **JURY**

#### **Sections:**

- 46.1501 Policy.**
- 46.1502 Prohibition of discrimination.**
- 46.1503 Definitions.**
- 46.1504 Grounds of disqualification.**
- 46.1505 Disqualification by interest.**
- 46.1506 Exemptions.**
- 46.1507 Excused for cause only.**
- 46.1508 Pay-Mileage fee.**
- 46.1509 Certificate for jury pay.**
- 46.1510 Jury commission.**
- 46.1511 Master list.**
- 46.1512 Master jury wheel.**
- 46.1513 Juror qualification form.**
- 46.1514 Questing of prospective juror.**
- 46.1515 Summons for examination of prospective jurors.**
- 46.1516 Misrepresentation of material facts.**
- 46.1517 Qualified jury wheel.**
- 46.1518 Certified jury lists.**
- 46.1519 Drawing of trial jury.**
- 46.1520 Summoning of jurors.**
- 46.1521 Requests for exemption or excuse.**
- 46.1522 Jurors disqualified, exempted, or excused.**
- 46.1523 Term of jurors.**
- 46.1524 Challenging compliance with selection procedures.**
- 46.1525 Preservation of records.**
- 46.1526 Protection of jurors' employment.**
- 46.1527 Use of electronic or electromechanical devices for drawing trial juries.**

#### **46.1501 Policy.**

It is the policy of this Territory that all persons selected for jury service be selected at random from a fair cross-section of the population of the area served by the court, and that all qualified nationals and U.S. citizens who are residents of this Territory have the opportunity in accordance with this chapter to be considered for jury service in this Territory and an obligation to serve as jurors when summoned for that purpose.

**History:** 1980, PL 16-70 § 1.

#### **46.1502 Prohibition of discrimination.**

A national shall not be excluded from jury service in this Territory on account of race, color, religion, sex, national origin, economic status, or on account of a physical handicap except as provided in paragraph (3) of 46.1504.

**History:** 1980, PL 16-70 § 1.

#### **46.1503 Definitions.**

As used in this chapter:

- (a) "Clerk" and "Clerk of the Court" include any deputy clerk.
- (b) "Court" means the High Court and District Court of this Territory, and includes, when the context requires, any judge of the court.
- (c) "Jury wheel" means any physical device or electronic system for the storage of the names or identifying numbers of prospective jurors.
- (d) "Name" when used in connection with prospective jurors, includes identifying numbers of the jurors.
- (e) "National" means a person who owes permanent allegiance to the United States. For purposes of this act the word "national" also includes persons who are citizens of the United States of America.
- (f) "Physical handicap" means a physical impairment which substantially limits one or more of a person's major life activities.
- (g) "Resident" means a person, who has lived in this Territory for at least 90 days.

**History:** 1980, PL 16-70 § 1.

#### **46.1504 Grounds of disqualification.**

A prospective juror is disqualified to serve as a juror if he:

- (1) is not a National of the United States, 18 years old and a resident of the Territory;
- (2) is unable to read, speak, and understand the English or Samoan language;
- (3) is incapable, by reason of his physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion; or
- (4) has been convicted of a felony in a Territorial, State, or Federal court and not pardoned.

**History:** 1980, PL 16-70 § 1.

#### **Case Notes:**

Fact that jurors who speak only Samoan must receive jury instructions through translator does not violate constitutional right to due process; need for translation is inevitable in bilingual territory where many witnesses and jurors speak one language but not the other. 46 A.S.C.A. § 46.1504. *American Samoa Government v. Agasiva*, 4 A.S.R.2d 110 (1987).

No right exists for a citizen of another country to be tried in American Samoa by a jury of his compatriots. A.S.C.A. § 46.1504(1). *American Samoa Government v. Schuster*, 24 A.S.R.2d 102 (1993).

Territorial statute permitting jurors who can read, speak, and understand Samoan but not English does not violate defendant's constitutional right to effective assistance of counsel. 46 A.S.C.A. § 46.1504. *American Samoa Government v. Agasiva*, 4 A.S.R.2d 110 (1987).

#### **46.1505 Disqualification by interest.**

No person shall sit as a juror in any case in which his relative by affinity or by consanguinity within the 3d degree is interested, either as a plaintiff or defendant, or in the issue of which the juror has, either directly or through such relative, any pecuniary interest.

**History:** 1980, PL 16-70 § 1.

#### **46.1506 Exemptions.**

A person may claim exemption from service as a juror if he is:

- (1) an attorney at law;
- (2) a head of an executive department, an elected official, or a judge of the United States or

the Territory;

- (3) a minister or priest following his profession;
- (4) a practicing physician or dentist;
- (5) a member of the armed forces or militia when on active service, or an active member of a police or fire department.

**History:** 1980, 16-70 § 1.

**46.1507        Excused for cause only.**

A juror shall not be excused by a court for slight or trivial cause, but only when it appears that jury duty would entail a serious personal hardship, or that for other good cause he should be excused either temporarily or otherwise.

**History:** 1980, PL 16-70 § 1.

**46.1508        Pay-Mileage fee.**

The pay of jurors shall be \$10 for each half day, and \$20 for each day of actual attendance at court, and in addition 20¢ for each mile actually and necessarily traveled in going only. The mileage fee may be allowed to a juror although, upon his request, he is excused from jury service, or claims exemption from jury service, provided he reports in person at the time for which he was summoned. In the discretion of the court any juror who incurs expenses for transportation, board, and lodging as a result of the distance he resides from the location of the court may be reimbursed for actual expenses.

**History:** 1980, PL 16-70 § 1.

**46.1509        Certificate for jury pay.**

At least once each month, the clerk shall certify the number of days each juror has attended court and the amount due to him. Each juror shall state on oath to the clerk the number of miles traveled for which he is entitled to mileage.

**History:** 1980, PL 16-70 § 1.

**46.1510        Jury commission.**

A Jury Commission of 5 members is established to perform the duties prescribed by this chapter under the supervision and control of the court. The Jury Commission shall be composed of the Clerk of the Court and 4 Jury Commissioners appointed by the Chief Justice prior to 15 January of each year, for a term of 1 year from and after 15 January. The Jury Commissioners must be Nationals of the United States and residents of the Territory. Any Jury Commissioner may be removed by the appointing power for any reason considered sufficient by the appointing power. No more than 3 Commissioners shall be members of the same political district. If a vacancy occurs in the office of a Jury Commissioner at any time, another Commissioner shall be similarly appointed to fill the vacancy. Each Jury Commissioner, except the Clerk of Court appointed to the Commission, shall be allowed for services on the Jury Commission such compensation as may be determined by the judge or judges to be just and reasonable, not to exceed \$400 per year, payable out of court expense funds.

**History:** 1980, PL 16-70 § 1.

**46.1511        Master list.**

(a) Not less than once each year the Jury Commission shall compile a master list. The master list shall consist of all voter registration lists for the Territory, which may be supplemented with names from other lists of persons resident therein such as lists of taxpayers and driver's licenses. This includes names, address, and social security numbers taken from income tax returns and estimates.

(b) Whoever has custody, possession, or control of any of the lists which are to be used in compiling the master list, shall make the list available to the Jury Commission for inspection, reproduction, and copying at all reasonable times.

**History:** 1980, PL 16-70 § 1.

**46.1512 Master jury wheel.**

Not less than once each year the Jury Commission shall, by random selection, place in the master jury wheel the names of prospective jurors taken from the master list, in such number as the Jury Commission determines should be processed in order to provide the number of jurors required for the ensuing year. From time to time an additional number may be determined by the Jury Commission or ordered by the court to be placed in the master jury wheel.

**History:** 1980, PL 16-70 § 1.

**46.1513 Juror qualification form.**

The Jury Commission shall prepare an alphabetical list of the names in the master jury wheel, which shall not be disclosed to any person other than pursuant to this chapter or specific order of the court. The Jury Commission shall mail to every name on such list a juror qualification form accompanied by instructions to fill out and return the form by mail to the clerk within 10 days after its receipt. The form shall be subject to approval by the court as to matters of form and shall elicit the name, address of resident, age of the prospective juror, other information pertinent to disqualification or exemption from jury service, and such other matters as may be ordered by the court. The form further shall contain the prospective juror's declaration that his responses are true to the best of his knowledge and his acknowledgment that a willful misrepresentation of a material fact may be punished by a class B misdemeanor. Notarization of the juror qualification form shall not be required. If the prospective juror is unable to fill out the form, another person may do it for him and shall indicate that he has done so and the reason there for. Upon failure or refusal of any person duly receiving the juror qualification form to complete and return it as required, or in case of an omission, ambiguity, or error in a returned form, the court, after first summoning the person to appear before the clerk to complete or correct the form, may punish the person for contempt.

**History:** 1980, PL 16-70 § 1.

**46.1514 Questing of prospective juror.**

At the time of his appearance for jury service, or at the time of any interview before the court, Jury Commission, or clerk, any prospective juror may be required or permitted to fill out another juror qualification form in the presence of the court, Jury Commission, or clerk, at which time the prospective juror may be questioned, but only with regard to his questions contained on the form and grounds for his exemption, excuse or disqualification. Any information thus acquired by the court, jury commission, or clerk shall be noted on the juror qualification form.

**History:** 1980, PL 16-70 § 1.

**46.1515 Summons for examination of prospective jurors.**

The jury commission may in its discretion, by court process, summon prospective jurors before it for examination. A person summoned for examination shall receive mileage as under 46.1508.

**History:** 1980, PL 16-70 § 1.

**46.1516 Misrepresentation of material facts.**

Any person who willfully misrepresents a material fact on a juror qualification form for the

purpose of avoiding or securing service as a juror is guilty of a class C misdemeanor.

**History:** 1980, PL 16-70 § 1.

**46.1517 Qualified jury wheel.**

Upon return of the juror qualification forms, the jury commission shall, after careful investigation in each case, select for jury service all those persons whom it believes are qualified and not exempt; provided, that any person who is exempt may be selected if he waives his exemption. The names of the persons so selected shall be placed in the qualified jury wheel, to be used in compiling lists of jurors subject to service during the ensuing year: provided, that the jury commission may, with the approval of the court, excuse a prospective juror for any cause set forth under 46.1507, in which case the name of such excused person shall not be placed in the qualified jury wheel.

**History:** 1980, PL 16-70 § 1.

**46.1518 Certified jury lists.**

Every year the jury commission shall make and, not later than 5 January, file with the clerk of the court 1 or more certified lists of the names and addresses of 50 nationals, or such greater number as the court may order, subject to serve as jurors during the ensuing year from and after 15 January. At the same time the jury commission shall likewise file a separate certified list of the names and addresses of nationals subject to serve as trial jurors during the ensuing year, after 15 January, the number as the jury commission considers necessary. The certified lists of trial jurors shall be compiled from names drawn at random from the qualified jury wheel, and shall be prepared in alphabetical sequence. The names on the certified lists shall be open to public inspection, subject to order of the court.

**History:** 1980, PL 16-70 § 1.

**46.1519 Drawing of trial jury.**

(a) In the High Court, this section shall be applicable to the drawing of a trial jury and service thereon.

(b) Not later than 15 January of each year, the clerk shall draw at random from the names on the certified list of trial jurors such number of trial jury panels as is deemed sufficient for the ensuing year, each panel to consist of 18 names. When directed by the court, additional panels shall be drawn. The names and juror qualification forms for the prospective jurors on each panel shall be sealed in envelopes, 1 envelope for each panel. The envelopes shall remain sealed and in the custody of the clerk.

(c) Whenever a judge requires the services of a trial jury for use in proceedings before him or any other judge of the court, he may order the required number of panels from the clerk. Upon receipt by the judge of the envelopes containing the panels, the contents thereof shall be made available to the litigants concerned.

(d) The whole or any number of the jurors from a panel or panels ordered by a judge may be required to attend and serve. The names of those summoned and present, and not disqualified, excused or exempted, shall be placed in an appropriate container, from which there shall be drawn a sufficient number of names to constitute a trial jury. The drawing shall be by lot in open court under the supervision of the judge. There is no requirement that names on a particular panel be exhausted before those on another panel may be used in the drawing, and the names of jurors on different panels which have been transmitted to the judge may be mixed with each other in the container during the drawing. If a jury cannot be chosen for the trial of a case from the names placed in the container before the drawing commenced, additional names may be placed in the container. For this purpose additional panels may be ordered and the prospective jurors summoned. The judge may summon jurymen from among bystanders on consent of all parties.

(e) Prospective jurors in attendance but not actually serving in a trial before him shall be



subject to such orders relative to further jury service as the judge deems appropriate, including service before other judges.

(f) Each panel ordered by a judge shall serve for a period of 30 days, commencing from the 1st day the panel is required to appear for service; provided, that any juror may be required to serve beyond the 30-day period for the trial of any case in which the selection of the jury commenced within that period. Upon completion of service by all members of a panel, such panel shall be returned to the clerk which shall not transmit such panel again to any judge until all other panels have been exhausted and other panels which served at a more remote time have been first transmitted for service.

(g) A judge may, having regard to the equitable distribution of jury service, excuse any juror after actual service in trial.

**History:** 1980, PL 16-70 § 1.

#### **46.1520            Summoning of jurors.**

(a) When so ordered by the court, the clerk shall transmit to the Commissioner of Public Safety or Marshal the names of jurors to be summoned. The Commissioner of Public Safety or Marshal, either personally or through an authorized subordinate, shall summon the persons named to attend the court by giving personal notice to each of the time and place of required appearance as fixed by order of the court. The court may order the summoning of jurors by any officer of the court and the service of summons by any form of personal notice, including notice by telephone.

(b) A juror who willfully or without reasonable excuse fails to attend after personal service of written summons by a Commissioner of Public Safety or Marshal may be arrested and punished for contempt.

**History:** 1980, PL 16-70 § 1.

#### **46.1521            Requests for exemption or excuse.**

If a person who is exempt or who believes himself to be entitled to be excused from jury duty, is summoned as a juror, he may, even though he did not request exemption or excuse previously, or was not exempted or excused by the jury commission, make his request for exemption or excuse to the judge of the court. The request may be made to the clerk or marshal, who shall deliver it to the judge, and if sufficient in substance, it shall be received as an excuse for nonattendance in person.

**History:** 1980, PL 16-70 § 1.

#### **46.1522            Jurors disqualified, exempted, or excused.**

Whenever a juror has been disqualified, exempted, or excused, that fact shall be noted on his juror qualification form, and he shall not be subject to service for the period of time commensurate with the nature and circumstances of his disqualification, exemption, or excuse.

**History:** 1980, PL 16-70 § 1.

#### **46.1523            Term of jurors.**

The persons whose names are placed on the certified lists filed by the jury commission shall be subject to service for 1 year from and after 15 January and until the filing of new certified lists, provided, that jurors may sit beyond the end of the period above prescribed for the trial of any case in which the selection of the jury commenced within said period.

**History:** 1980, PL 16-70 § 1.

#### **46.1524            Challenging compliance with selection procedures.**

(a) Promptly after the moving party discovered or by the exercise of diligence could have

discovered the grounds therefor, and in any event before the trial jury is sworn to try the case, a party may move to stay the proceedings, and in a criminal case for other appropriate relief, on the ground of substantial failure to comply with this chapter in selecting the trial jury.

(b) Upon motion filed under subsection (a) containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with this chapter, the moving party is entitled to present in support of the motion the testimony of a jury Commissioner or the clerk, any relevant records and papers not public or otherwise available used by the jury commission or the clerk, and any other relevant evidence. If the court determines that in selecting a trial jury there has been a substantial failure to comply with this chapter and that the moving party has been prejudiced thereby, the court shall stay the proceedings pending the selection of the jury in conformity with this chapter, or grant other appropriate relief.

(c) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the territory, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this chapter.

(d) The contents of any records or papers used by the jury commission or the clerk in connection with the selection process shall not be disclosed except as provided by other provisions of this chapter, or in connection with preparation or presentation of a motion under subsection (a) or upon order of the court. The parties in a case may inspect, reproduce, and copy the records or papers at all reasonable times during the preparation and pendency of a motion under subsection (a).

**History:** 1980, PL 16-70 § 1.

#### **46.1525        Preservation of records.**

All records and papers compiled and maintained by the jury commission or the clerk in connection with selection and service of jurors shall be preserved by the clerk in connection with selection and service of jurors shall be preserved by the clerk for 4 years after the termination of the prescribed period of service and for any longer period ordered by the court.

**History:** 1980, PL 16-70 § 1.

#### **46.1526        Protection of jurors employment.**

(a) An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service.

(b) Any employer who violates subsection (a) is guilty of a class C misdemeanor.

(c) If an employer discharges an employee in violation of subsection (a), the employee within 90 days from the date of discharge may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for 6 weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

**History:** 1980, PL 16-70 § 1.

#### **46.1527        Use of electronic or electromechanical devices for drawing trial juries.**

Selections of citizens who are subject to jury duty and drawings of jury lists and panels may be made by means of electronic or electromechanical devices commonly designated as data processing equipment such as punch cards, electronic tape, random access files, and other solid state devices when they are available for their use and the court so orders.

**History:** 1980, PL 16-70 § 1.

### **Chapter 16**

### **TRIAL IN COURT (RESERVED)**

## **CHAPTER 17**

**(RESERVED)**

## **CHAPTER 18**

### **VILLAGE COURT PROCEEDINGS**

#### **Sections:**

- 46.1801 Designation of prosecutor-Filing complaint.**
- 46.1802 Sentence for plea of guilty.**
- 46.1803 Plea of not guilty-Trial.**
- 46.1804 Rights of accused.**
- 46.1805 Admissible evidence.**
- 46.1806 Sentencing-Suspensions.**
- 46.1807 Failure to appear or perform sentence.**
- 46.1808 Retrial de novo-District Court.**

#### **46.1801 Designation of prosecutor-Filing complaint.**

(a) The pulenuu of each village, or his designee, shall serve as prosecutor before the court for the village, except that when the pulenuu is to be a witness, he shall designate another person as prosecutor.

(b) When a pulenuu has evidence that a village regulation has been violated, he may file a complaint with the village court. The complaint shall be in writing and a copy shall be served on the accused prior to arraignment. The complaint shall advise the accused in effective and understandable language of the following:

- (1) the nature of the charge against him and the specific regulation involved;
- (2) the time and place of his arraignment for the entry of his plea and the time and place of his trial if he pleads not guilty;
- (3) his rights as enumerated in 46.1804;
- (4) his right to a retrial de novo before the district court as provided in 46.1808.

**History:** 1969, PL 11-54; 1971, PL 12-16 § 2; and 1979, PL 16-52 § 4.

**Amendments:** 1979 Subsection (a): deleted “district” from before “court”. Subsection (1.): substituted, “village court”, for “district court” in first sentence, and, in paragraph (4), substituted “district court” for “High Court”.

#### **46.1802 Sentence for plea of guilty.**

If an accused pleads guilty on arraignment before a village court, the court may find the accused guilty and sentence the accused as provided in 46.1806.

**History:** 1969, PL 11-54; and 1979, PL 16-52 § 5.

**Amendments:** 1979 Substituted “village court” for “district court”.

#### **46.1803 Plea of not guilty-Trial.**

If the accused pleads not guilty, he may be found guilty only after a trial before the village court. Trials shall be open to the public, and no trial may be held sooner than seven days after the accused has been served with a copy of the complaint.

**History:** 1969, PL 11-54; and 1979, PL 16-52 § 6.

**Amendments:** 1979 Substituted “village court” for “district court”.

#### **46.1804 Rights of accused.**

An accused shall have the right to:

- (1) request and receive any time necessary to consult with counsel and to prepare his defense;
- (2) be represented by the counsel of his choice at arraignment and trial;
- (3) be present during the trial and to cross-examine witnesses presented against him;
- (4) present any material evidence on his own behalf and to have witnesses summoned by the court as his request;
- (5) testify in his own behalf or to refrain from testifying, as he may prefer.

**History:** 1969, PL 11-54.

**46.1805 Admissible evidence.**

The court shall consider only the evidence presented before it under oath or stipulated to; no other written statements of witnesses or other hearsay may be presented.

**History:** 1969, PL 11-54.

**46.1806 Sentencing-Suspensions.**

(a) If a village court finds an accused guilty it may sentence the accused to the penalty provided in the village regulations. If permitted by the village regulations, the village court, upon conviction, may impose a fine not to exceed \$100 or may require the accused to perform labor for the village under the supervision of the pulenu'u not to exceed 25 hours total or 8 hours in any day, or both.

(b) The court shall have the discretion to suspend sentences or impose lesser penalties than are provided in the village regulations but the court may not impose a penalty greater than that provided in the regulations.

(c) Fines shall be paid to the Clerk of the High Court.

**History:** 1969, PL 11-54; and 1979, PL 16-52 § 7.

**Reviser's Comment:** This section, originally codified as 15 ASC 6401, was repealed by PL 16-43, and later amended by PL 16-52.

**46.1807 Failure to appear or perform sentence.**

(a) If an accused fails to appear in village court as summoned, or appears but fails to perform a sentence, the court shall refer the matter to the district court of American Samoa.

(b) Upon referral to the matter, the judge shall issue an order requiring the accused to appear at the District Court and show cause why he should not appear in Village Court or perform the required sentence as the case may be.

(c) If the accused fails to show cause and the judge is satisfied that the proceedings in the village are entirely regular in that the requirements of this title and all other laws and regulations pertaining to village courts have been met, he shall order the accused to so appear or perform the sentence.

(d) If the accused fails to comply with any order of the District Court made pursuant to this section, he shall be in contempt of court and dealt with accordingly.

**History:** 1966, PL 9-30; 1969, PL 11-54; 1972, PL 12-64 § 1; and 1979, PL 16-52 § 8.

**Amendments:** 1979 Made name changes to conform section to the District Court Act of 1979.

**46.1808 Retrial de novo-District court.**

(a) Any accused who is found guilty by a village court shall be informed by the court of his right to have his case retried de novo before the district court of American Samoa; provided, he requests such a retrial within 10 days of the pronouncement of judgment.

(b) If the accused informs the village court that he desires a retrial before the district court,

the village court shall vacate the judgment and the pulenu'u shall refer the case to the Attorney General.

(c) If the Attorney General determines that prosecution of the case is justified, he shall be responsible for the prosecution before the district court, with the assistance of the pulenu'u. The accused shall be entitled to all the rights of a criminal defendant before the district court.

(d) Upon conviction following a retrial for a violation of village regulations, the District Court may impose only those penalties which the village court could have.

(e) Except for retrials de novo in District Court, there shall be no appeal from or review of village court proceedings. There is no right of appeal from a judgment of the district court entered after a trial de novo.

**History:** 1969, PL 11-54; and 1979, PL 16-52 § 9.

**Amendments:** 1979 Specifics of retrial de novo were amended generally.

## **Chapter 19**

### **GENERAL SENTENCING PROVISIONS**

#### **Sections:**

- 46.1901      Authorized dispositions.**
- 46.1902      Felony or misdemeanor-Combination of dispositions.**
- 46.1903      Infraction-Combination of dispositions.**
- 46.1904      Offense by organization-Combination of dispositions.**
- 46.1905      Interpretation of chapter.**
- 46.1906      Classification of offenses.**
- 46.1907      Classification of offenses outside this title.**
- 46.1908      Presentence investigation and report.**
- 46.1909      Presentence commitment for study.**
- 46.1910      Role of court in sentencing-Effect of Ifoga ceremony.**

**Research Guide:** Following each section of this chapter appears the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978.

MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC—Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.1901      Authorized dispositions.**

(a) Every person found guilty of an offense, whether defined in this title or in the American Samoa Code Annotated in accordance with the classifications in this chapter, shall be dealt with by the court in accordance with the provisions of this chapter, except that for offenses defined outside this title and not in accordance with the classifications of this chapter and not repealed, the term of imprisonment or the fine that may be imposed is that provided in the statute defining the offense.

**History:** 1979, PL 16-43 § 2; and 1980, PL 16-90 § 1.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

**Research Guide:** MCC 557.011, 15 ASC 5003, 15 ASC 5005, 15 ASC 6401.

#### **46.1902      Felony or misdemeanor-Combination of dispositions.**

Whenever any person has been found guilty of a felony or a misdemeanor, the court shall

make 1 or more of the following dispositions of the offender in any appropriate combination. The court may:

- (1) sentence the person to a term of imprisonment as authorized by 46.2301 et seq.;
- (2) sentence the person to pay a fine as authorized by 46.2101 et seq.;
- (3) suspend the imposition of sentence, with or without placing the person on probation;
- (4) pronounce sentence and suspend its execution, placing the person on probation;
- (5) impose a period of detention as a condition of probation, as authorized by 46.2206;
- (6) require the person to do ordinary labor.

The sentence shall be carried out under the direction of the pulenu'u of the person's village, the Attorney General, or the county chief of the person's county as the court may direct.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

Rule 11 of criminal procedure requires notice to defendant in plea agreement that he has no right to withdraw guilty plea if government's recommendation of sentence is not followed by court. *Uliata v. A.S.G.*, 3 A.S.R.2d 102 (App. Div.(1986)).

**Research Guide:** MCC 557.011, 15 ASC 5003, 15 ASC 5005, 15 ASC 6401.

**46.1903 Infraction-Combination of dispositions.**

Whenever any person has been found guilty of an infraction, the court shall make 1 or the following dispositions of the offender in any appropriate combination. This court may:

- (1) sentence the person to pay a fine as authorized by 46.2 101 et seq.;
- (2) suspend the imposition of sentence, with or without placing the person on probation;
- (3) pronounce sentence and suspend its execution, placing the person on probation;
- (4) require the person to do ordinary labor in the county of the person's residence as provided in subsection (6) of 46.1902.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 557.011, 15 ASC 5003, 15 ASC 5005, 15 ASC 6401.

**46.1904 Offense by organization-Combination of dispositions.**

Whenever any organization has been found guilty of an offense, the court shall make 1 or more of the following dispositions of the organization in any appropriate combination. The court may:

- (1) sentence the organization to pay a fine as authorized by 46.2101 et seq.;
- (2) suspend the imposition of sentence, with or without placing the organization on probation;
- (3) pronounce sentence and suspend its execution, placing the organization on probation;
- (4) impose any special sentence or sanction authorized by law including, but not limited to, requiring the officers or directors of the organization to do ordinary labor, as provided in subsection (6) of 46.1902.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 557.011, 15 ASC 5003, 15 ASC 5005, 15 ASC 6401.

**46.1905 Interpretation of chapter.**

This chapter is not to be construed to deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. An appropriate order exercising that authority may be included as part of any sentence.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 557 011, 15 ASC 5003, 15 ASC 5005, 15 ASC 6401.

**46.1906 Classification of offenses.**

- (a) Felonies are classified for the purpose of sentencing into the following 4 categories:
  - (1) class A felonies;
  - (2) class B felonies;
  - (3) class C felonies;
  - (4) class D felonies.
- (b) Misdemeanors are classified for the purpose of sentencing into the following 3 categories:
  - (1) class A misdemeanors;
  - (2) class B misdemeanors;
  - (3) class C misdemeanors.
- (c) Infractions are not further classified.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 557 016, 15 ASC 1.

**46.1907 Classification of offenses outside this title.**

- (a) Any offense defined outside this title which is declared to be a misdemeanor without specification its penalty is a class A misdemeanor.
- (b) Any offense defined outside this title which is declared to be a felony without specification its penalty is a class D felony.
- (c) For the purpose of applying the extended term provisions of 46.2305, and for determining the penalty for attempts and conspiracies, offenses defined outside of this title are classified as follows.
  - (1) If the offense is a felony:
    - (A) it is a class A felony if the authorized penalty includes death, life imprisonment, or imprisonment for a minimum term of 10 years or more;
    - (B) it is a class B felony if the term of imprisonment authorized exceeds 5 years but is less than 15 years;
    - (C) it is a class C felony if the maximum term of imprisonment authorized is 7 years;
    - (D) it is a class D felony if the maximum term if imprisonment is less than 5 years;
  - (2) If the offense is a misdemeanor:
    - (A) it is a class A misdemeanor if the authorized imprisonment exceeds 6 months in jail;
    - (B) it is a class B misdemeanor if the authorized imprisonment exceeds 15 days but is not more than 6 months;
    - (C) it is a class C misdemeanor if the authorized imprisonment is 15 days or less;
    - (D) it is an infraction if there is no authorized imprisonment.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 557.021, 15 ASC 2.

**46.1908 Presentence investigation and report.**

- (a) A probation officer shall, unless waived by the defendant, make a presentence investigation in all felony cases and report to the court before any authorized disposition under 46.1901 through 46.1905. In all other cases before the court, the probation officer shall, if directed by the court, make a presentence investigation and report to the court before any authorized disposition under 46.1901 through 46.1905. The report shall not be submitted to the court or its contents disclosed to anyone until the defendant has pleaded guilty or been found guilty.

(b) The presentence investigation report shall be prepared, presented, and utilized as may be provided by rule of court except that no court shall prevent the defendant or the attorney for the defendant from having access to the complete presentence investigation report and recommendations before any authorized disposition under 46.1901 through 46.1905.

(c) The defendant is not obligated to make any statement to a probation officer in connection with any presentence investigation.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 557.026.

#### **46.1909 Presentence commitment for study.**

(a) In felony cases where the circumstances surrounding the commission of the crime or other circumstances brought to the attention of the court indicate a strong likelihood that the defendant is suffering from a mental disease or disorder, and the court desires more detailed information about the defendant's mental condition before making an authorized disposition under 46.1901 through 46.1905, it may order the commitment of the defendant for mental examination.

(b) The court may commit the defendant to the Department of Health and order the defendant examined by a person or persons as the court or that department may designate. The cost of guarding and transporting any confined defendant to and from any place of examination shall be borne by the territory. Any commitment shall be for a period not exceeding 120 days.

(c) Within 40 days after the examination the person or persons making the examination or examinations shall transmit to the court a report of it including answers to any specific questions submitted by the court. The Clerk of the Court shall immediately supply copies of the report to the prosecuting attorney and to the defendant or his attorney.

(d) Any period of commitment to a facility of the Department of Health for the purpose of this section shall be credited against any term of imprisonment imposed upon the defendant.

**History:** 1979, PL 16-43 § 2.

#### **46.1910 Role of court in sentencing-Effect of Ifoga ceremony.**

(a) Upon a finding of guilt upon verdict or plea, except as provided in 46.3513, the court shall decide the extent or duration of sentence or other disposition to be imposed under all the circumstances, having regard to the nature and circumstances of the offense and the history and character of the defendant, and render judgment accordingly.

(b) In deciding the extent or duration of sentence or other disposition to be imposed, the court may, in addition to the factors included in subsection (a), reduce the extent or duration of the sentence or other disposition if the court finds that an ifoga ceremony has been performed.

(1) "Ifoga" means the Samoan custom of public apology.

(2) In deciding the extent or duration of sentence or other disposition to be imposed when an ifoga ceremony has been performed, the court may reduce the level of the crime by a maximum of 1 classification from the classification upon which judgment of guilt has been entered following a plea of guilty or trial.

**History:** 1979, PL 16-43 § 2.

#### **Case Notes:**

Mandatory application of subsection (c) 15 ASC 5005 inoperative due to young age of defendant and prior satisfactory performance while in custody. *Government v. Tuiiau*. ASR (1977).

**Research Guide:** MCC 557.036. 15 ASC 5004, 15 ASC 5005, 15 ASC 6401.



## Chapter 20

### RESTITUTION TO VICTIMS OF CRIME

#### Sections:

- 46.2001 Findings-Purpose.**
- 46.2002 Establishment of restitution programs.**
- 46.2003 Prohibition on victims paying court of filing fees**

**Research Guide:** MCC 557 031, 15 ASC 7801 —7810.

#### **46.2001 Findings-Purpose.**

- (a) The Legislature finds and declares that:
  - (1) the number of victims of crime increases daily;
  - (2) these victims suffer undue hardship by virtue of physical injury or loss of property;
  - (3) persons found guilty of causing this suffering should be under a moral and legal obligation to make adequate restitution to those injured by their conduct;
  - (4) restitution or reparation, or both, provided by criminal offenders to their victims, in money or service, may be an instrument of rehabilitation for offenders.
- (b) The purpose of this chapter is to encourage the establishment of programs to provide for restitution to victims of crime by offenders who are sentenced, or who have been released on parole, or who are being held in the correctional and detention facility. It is the intent of the Legislature that restitution be utilized wherever feasible to restore losses to the victims of crime and to aid the offender in reintegration as a productive member of society.

**History:** 1978, PL 15-77 § 1.

#### **46.2002 Establishment of restitution programs.**

The Department of Public Safety may, as a means of assisting in the rehabilitation of persons committed to its care, establish programs and procedures whereby those persons may contribute toward restitution, in money or service, of those persons injured as a consequence of their criminal acts.

**History:** 1978, PL 15-77 § 1.

#### **46.2003 Prohibition on victims paying court of filing fees.**

In connection with the prosecution of any misdemeanor or felony domestic violence or sexual assault offense, the victim or abused shall not bear the costs associated with filing criminal charges and prosecution of a domestic violence or sexual assault defendant, including filing fees for criminal charges, costs associated with the issuance or service of a warrant protection order, or witness subpoena.

**History:** 1997 PL 25-11.

## Chapter 21

### FINES

#### Sections:

- 46.2101 Felonies.**
- 46.2102 Misdemeanors and infractions.**
- 46.2103 Fines for corporations.**
- 46.2104 Fine to be proportioned to burden of payment.**
- 46.2105 Nonpayment-Warrant of arrest or summons.**
- 46.2106 Default by corporation.**
- 46.2107 Means of collection upon default.**
- 46.2108 Revocation of a fine.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978.

MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC—Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973

#### **46.2101 Felonies.**

(a) A person who has been convicted of a class C or D felony may be sentenced:

(1) to pay a fine not exceeding \$5,000; or

(2) if the offender has gained money or property through the commission of the crime, to pay an amount, fixed by the court, not exceeding 2 times amount of the offender's gain from the commission of the crime. An individual offender may be fined not more than \$20,000 under this provision.

(b) As used in this section, the term "gain" means the amount of money or the value of property derived from the commission of the crime. The amount of money or value of property returned to the victim of the crime or seized by or surrendered to lawful authority prior to the time sentence is imposed shall be deducted from the fine. When the court imposes a fine based on gain, the court shall make a finding as to the amount of the offender's gain from the crime. If the record does not contain sufficient evidence to support such a finding, the court may conduct a hearing upon the issue.

(c) The provisions of this section do not apply to corporations.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 560.016.

#### **46.2102 Misdemeanors and infractions.**

(a) Except as otherwise provided for an offense outside this part, a person who has been convicted of a misdemeanor or infraction may be sentenced to pay a fine not exceeding:

(1) \$1,000 for a class A misdemeanor;

(2) \$500 for a class B misdemeanor;

(3) \$300 for a class C misdemeanor;

(4) \$200 for an infraction.

(b) In lieu of a fine imposed under subsection (a), a person who has been convicted of a misdemeanor or infraction through which he derived "gain", as defined in 46.2101, may be sentenced to a fine which does not exceed 2 times the amount of gain from the commission of the offense. An individual offender may be fined not more than \$20,000 under this provision.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 560.016

#### **46.2103 Fines for corporations.**

(a) A sentence to pay a fine, when imposed on a corporation for an offense defined in this title or for any offense defined outside this title for which no special corporate fine is specified, shall be a sentence to pay an amount, fixed by the court, not exceeding:

(1) \$10,000 when the conviction is of a felony;

(2) \$5,000 when the conviction is of a class A misdemeanor;

(3) \$2,000 when the conviction is of a class B misdemeanor;

(4) \$1,000 when the conviction is of a class C misdemeanor;

(5) \$500 when the conviction is of an infraction;

(6) any higher amount not exceeding 2 times the amount of the corporation's gain from the

commission of the offense, as determined under 46.2101.

(b) In the case of an offense defined outside this title, if a special fine for a corporation is expressly specified in the statute that defines the offense, the fine fixed by the court shall be:

- (1) an amount within the limits specified in the statute that defines the offense; or
- (2) any higher amount not exceeding 2 times the amount of the corporation's gain from the commission of the offense, as determined under 46.2101.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 560 021.

#### **46.2104 Fine to be proportioned to burden of payment.**

(a) In determining the amount and the method of payment of a fine, the court shall, insofar as practicable, proportion the fine to the burden that payment will impose in view of the financial resources of a defendant. The court may not sentence an offender to pay a fine in any amount which will prevent him from making restitution or reparation to the victim of the offense.

(b) When any other disposition is authorized by statute, the court shall not sentence an individual to pay a fine only unless, having regard to the nature and circumstances of the offense and the history and character of the offender, it is of the opinion that the fine alone will suffice for the protection of the public.

(c) The court may not sentence an individual to pay a fine in addition to any other sentence authorized by 46.1901 through 46.1905 unless:

- (1) he has derived a pecuniary gain from the offense; or
- (2) the court is of the opinion that a fine is uniquely adapted to deterrence of the type of offense involved or to the correction of the defendant.

(d) When an offender is sentenced to pay a fine, the court may provide for the payment to be made within a specified period of time or in specified installments. If no delayed or installment provision is made a part of the sentence, the fine is payable immediately.

(e) When an offender is sentenced to pay a fine, the court may not impose at the same time an alternative sentence to be served in the event that the fine is not paid. The response of the court to nonpayment is determined only after the fine has not been paid, as under 46.2105 through 46.2107.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 560 026.

#### **46.2105 Nonpayment-Warrant of arrest or summons.**

(a) When an offender sentenced to pay a fine defaults in the payment of the fine or in any installment, the court upon motion of the Attorney General or upon its own motion, may require him to show cause why he should not be imprisoned for nonpayment. The court may issue a warrant of arrest or a summons for his appearance.

(b) Following an order to show cause under subsection (a), unless the offender shows that his default was not attributable to an intentional refusal to obey the sentence of the court, or not attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment, the court may order the defendant imprisoned for a term not to exceed 180 days if the fine was imposed for conviction of a felony, misdemeanor, or infraction. The court may provide in its order that payment or satisfaction of the fine at any time will entitle the offender to his release from the imprisonment or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of the fine.

(c) If it appears that the default in the payment of a fine is excusable under the standards set forth in subsection (b), the court may enter an order allowing the offender additional time for payment, reducing the amount of the fine or of each installment, or revoking the fine or the unpaid portion in whole or in part.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 560.031.

**46.2106 Default by corporation.**

When a fine is imposed on a corporation it is the duty of the person or persons authorized to make disbursement of the assets of the corporation and their superiors to pay the fine from the assets of the corporation. The failure of those persons to do so shall render them subject to imprisonment under subsections (a) and (b) of 46.2105.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 560.031.

**46.2107 Means of collection upon default.**

Upon default in the payment of a fine or any installment thereof, the fine may be collected by any means authorized for the enforcement of money judgments.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 560.031.

**46.2108 Revocation of a fine.**

A defendant who has been sentenced to pay a fine may at any time petition the sentencing court for a revocation of a fine or any unpaid portion of it. If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine no longer exist or that it would otherwise be unjust to require payment of the fine, the court may revoke the fine or the unpaid portion in whole or in part or may modify the method of payment.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 560.036.

## **Chapter 22**

### **PROBATION**

**Sections:**

- 46.2201 Probation officers-Appointment, compensation, removal, and fees.**
- 46.2202 Probation officers-Duties.**
- 46.2203 Eligibility.**
- 46.2204 Terms of probation.**
- 46.2205 Conditions-Revocation or modification.**
- 46.2206 Detention condition of probation.**
- 46.2207 Multiple terms run concurrently.**
- 46.2208 Termination of probation-Discharge of defendant.**
- 46.2209 Violation of condition.**
- 46.2210 Notice of revocation to probationer.**
- 46.2211 Notice to appear to answer charges-Warrant of arrest.**
- 46.2212 Authority to arrest or detain probationer.**
- 46.2213 Arrest-Preliminary hearing-Release on bail.**
- 46.2214 Notice to sentencing court of arrest and detention.**
- 46.2215 Power of court.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978.

MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC—Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.2201 Probation officers--Appointment, compensation, removal, and fees.**

(a) The Chief Justice of the High Court of American Samoa, pursuant to ASCA 3.0205, may appoint 1 or more suitable persons to serve as probation officers within the jurisdiction and under the direction of the court.

(b) The Chief Justice may designate existing court employees to serve as probation officers in addition to their current court duties, or appoint full or part time compensated probation officers, pursuant to ASCA 3.0205, or both.

(c) The appointment of a probation officer shall be in writing and entered on the records of the court.

(d) The Chief Justice, in his discretion, may remove a probation officer.

(e) Whenever the Chief Justice has appointed more than 1 probation officer, 1 may be designated chief probation officer and he shall direct the work of all probation officers.

(f) Costs of probationary services including but not limited to supervision of probationers, alcohol and other drug random testing, and education, training and counseling programs shall be assessed upon and collected from each person placed on probation. The Chief Justice may by order or rule issue and periodically revise a fee schedule for such costs and services, the proceeds from which shall be deposited in the General Fund of the American Samoa Government.

**History:** 1979, PL 16-43 § 2; amd 2010, PL 31-11 § 1.

**Research Guide:** 28 ASC 6, 28 ASC 7, 28 ASC 8.

#### **46.2202 Probation officers-Duties.**

The probation officer shall:

(1) furnish to each probationer under his supervision a written certificate stating the conditions of probation and instruct him regarding it;

(2) keep informed concerning the conduct and condition of each probationer under his supervision and report on that to the court;

(3) use all suitable methods, not inconsistent with the conditions imposed by the court, to aid probationers and to bring about improvement in their conduct and condition;

(4) keep records of his work and accurate and complete accounts of all moneys collected from persons under his supervision, give receipts for them, and make at least monthly returns of them;

(5) perform other duties as the court may direct.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 28 ASC 9.

#### **46.2203 Eligibility.**

The court may place a person on probation for a specific period upon conviction of any offense or upon suspending imposition of sentence if, having regard to the nature and circumstances of the offense and to the history and character of the defendant, the court is of the opinion that:

(1) institutional confinement of the defendant is not necessary for the protection of the public; and

(2) the defendant is in need of guidance, training or other assistance which in his case can be effectively administered through probation supervision; or

(3) the defendant poses a significant danger to society such that continuing court supervision is appropriate.

**History:** 1979, PL 16-43 § 2; 2004, PL 28-9.

**Case Notes:**

Where one section of parole statute provided that parole should not be given unless institutional confinement is deemed unnecessary, and later amendment to another section of the statute was clearly designed to allow court to impose probation and conditional detention in certain cases where confinement is deemed necessary, the general rule stated in the earlier provision does not operate as a limitation on the power granted by the later provision. A.S.C.A. §§ 46.2203, 46.2206. *Atuatasi v. Moaali'itele*, 8 A.S.R.2d 53 (1988).

Statute providing for parole of prisoner who has served one-third of his sentence of imprisonment has no application to probationer whose sentence of imprisonment has been suspended and who is serving a term of detention, for a period no greater than one-third of the suspended sentence of imprisonment, as a condition of his probation. A.S.C.A. §§ 46.2203, 46.2206(3), 46.2209. *Atuatasi v. Moaali'itele*, 8 A.S.R.2d 53 (1988).

Where probation statute originally provided that probation could be imposed only in cases where incarceration was not necessary for the protection of the public, and also provided that a brief period of detention could be imposed as a condition of probation, but statute was later amended to provide that such detention could be imposed for up to fifteen years, the later enactment implicitly amended the earlier; court could therefore impose detention as a condition of probation not only for the purpose of rehabilitation, but also where incarceration was deemed necessary for the protection of the public. A.S.C.A. §§ 46.2203, 46.2206. *Atuatasi v. American Samoa Government*, 9 A.S.R.2d 67 (1988).

Under the 1987 amendment to the probation statute, sentencing judges are free to impose probation for reasons other than the rehabilitation-related provisions of the statute. A.S.C.A. §§ 46.2203, 46.2206. *American Samoa Government v. Falefatu*, 17 A.S.R.2d 114 (1990).

In cases of apparent conflict between two statutes, specific and later statute prevails over more general and earlier statute. A.S.C.A. §§ 46.2203, 46.2206. *Atuatasi v. American Samoa Government*, 9 A.S.R.2d 67 (1988).

**Research Guide:** MCC 559.012, 28 ASC 1.

**46.2204 Terms of probation.**

(a) Unless terminated under 46.2207 through 46.2215, the terms during which probation shall remain conditional and be subject to revocation are:

- (1) a term of years not less than 1 year and not to exceed 5 years for a felony;
- (2) a term not less than 6 months and not to exceed 2 years for a misdemeanor;
- (3) a term not less than 6 months and not to exceed 1 year for an infraction.

(b) The court designates a specific term of probation at the time of sentencing or at the time of suspension of imposition of sentence.

(c) The defendant's liability for any fine or other punishment imposed as to which probation is granted is fully discharged by the fulfillment of the terms and conditions of probation.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

The Court's power over probationers is strictly limited to the term of the probation, which may not exceed five years. A.S.C.A. § 46.2204. *American Samoa Government v. Falefatu*, 17 A.S.R.2d 114 (1990).

**Research Guide:** MCC 559.016, 28 ASC 1, 28 ASC 3.

**46.2205 Conditions-Revocation or modification.**

(a) While on probation, and among the conditions thereof, the defendant:

- (1) may be required to pay a fine in 1 or several sums; and

(2) may be required to make restitution or reparation, in money or in service, to the victim of his conduct for the damage or injury which was caused by the offense for which conviction was had, the amount and manner to be fixed by the High Court but not to exceed an amount the defendant will be able to pay within the probation term; and

(3) may be required to provide for the support of any persons for whose support he is legally responsible.

(b) The court may revoke or modify any condition of probation at any time prior to the expiration or termination of the probation period.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

The High Court has continuing jurisdiction to terminate or modify the conditions of probation throughout the entire term of probation. A.S.C.A. § 46.2205. *American Samoa Government v. Falefatu*, 17 A.S.R.2d 114 (1990).

An untimely motion for a new trial was construed to be one to terminate conditions of probation. A.S.C.A. § 46.2205. *American Samoa Government v. Falefatu*, 17 A.S.R.2d 114 (1990).

Conditions of probation are valid if they are reasonably related either to rehabilitation or to public protection, at least if the entire sentence considered as a whole was reasonably calculated to achieve both of these purposes. A.S.C.A. § 46.2205. *American Samoa Government v. Falefatu*, 17 A.S.R.2d 114 (1990).

In a criminal case, a court may require a defendant to leave the territory as a condition of probation and may impose other probationary conditions reasonably related to the purposes of probation beyond those conditions enumerated in the statute. A.S.C.A. §§ 41.0614, 46.2205. *American Samoa Government v. Salu*, 22 A.S.R.2d 48 (1992).

**Research Guide:** 28 ASC 2.

**46.2206 Detention condition of probation.**

Except in infraction cases, when probation is granted, the court, in addition to conditions imposed under 46.2205, may require as a condition of probation that the defendant submit to a period of detention in an appropriate institution at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court shall designate.

(1) In misdemeanor cases, the period of detention under this section may not exceed:

(A) 15 days for a class C misdemeanor;

(B) 45 days for a class B misdemeanor; and

(C) 90 days for a class A misdemeanor.

(2) In felony cases, the period of detention under this section may not exceed one third of the maximum prescribed term of imprisonment for the crime of which the defendant has been convicted, or, where the maximum prescribed term is life imprisonment, 15 years.

(3) If probation is revoked and a term of imprisonment is served by reason of it, the time spent in a jail or other institution as a detention condition of probation is credited against the prison or jail term served for the offense in connection with which the detention condition was imposed.

**History:** 1979, PL 16-43 § 2; 1983, PL 18-16 § 1; and 1987, PL 20-15 § 1, 2008, PL 30-22.

**Case Notes:**

Statute allowing court to impose detention as a condition of probation did not violate the constitutional provision allowing governor to grant pardons, since any prisoner pardoned by the governor could no longer be incarcerated. Rev. Const. Am. Samoa art. IV § 9; A.S.C.A. § 46.2206. *Atuatasi v. Moaali'itele*, 8 A.S.R.2d 53 (1988).

Sentencing court may require convicted defendant to serve multiple periods of detention as conditions of multiple terms of detention, but the periods of detention must be served concurrently and the aggregate period of detention cannot exceed the statutory maximum. A.S.C.A. §§ 46.2206, 46.2207. *American Samoa Government v. Masaniai*, 6 A.S.R.2d 114 (1987).

Where one section of parole statute provided that parole should not be given unless institutional confinement is deemed unnecessary, and later amendment to another section of the statute was clearly designed to allow court to

impose probation and conditional detention in certain cases where confinement is deemed necessary, the general rule stated in the earlier provision does not operate as a limitation on the power granted by the later provision. A.S.C.A. §§ 46.2203, 46.2206. *Atuatasi v. Moaali'itele*, 8 A.S.R.2d 53 (1988).

Amendment to probation statute, allowing court to impose detention as a condition of probation for up to one-third of the maximum term of imprisonment, was intended to give court the power to prevent the early release of dangerous criminals. A.S.C.A. § 46.2206. *Atuatasi v. Moaali'itele*, 8 A.S.R.2d 53 (1988).

Parole and conditional probation statutes provide two alternative modes of sentencing, with the mandatory period of detention limited to one-third of the sentence in both cases but conditional probation statute allowing the court to exercise greater control over the conditions of detention. A.S.C.A. §§ 46.2206, 46.2304, 46.2701 et seq. *Atuatasi v. Moaali'itele*, 8 A.S.R.2d 53 (1988).

Statute providing for parole of prisoner who has served one-third of his sentence of imprisonment has no application to probationer whose sentence of imprisonment has been suspended and who is serving a term of detention, for a period no greater than one-third of the suspended sentence of imprisonment, as a condition of his probation. A.S.C.A. §§ 46.2203, 46.2206(3), 46.2209. *Atuatasi v. Moaali'itele*, 8 A.S.R.2d 53 (1988).

Prisoner whose sentence of imprisonment was suspended but who was required to serve a term of detention as a condition of probation, under a statute providing that such term could be no greater than one-third of the suspended sentence of imprisonment, was not unfairly deprived of the opportunity to apply for parole, since he would be released from detention on the same day that he would otherwise have been eligible to apply for parole. A.S.C.A. §§ 46.2206, 46.2304, 46.2701 et seq. *Atuatasi v. Moaali'itele*, 8 A.S.R.2d 53 (1988).

There is no inconsistency in suspending a "sentence of imprisonment" while simultaneously imposing "detention" as a condition of probation, where statutes use these terms to denote two alternative modes of sentencing. A.S.C.A. §§ 46.2206, 46.2301 et seq. *Atuatasi v. American Samoa Government*, 9 A.S.R.2d 67 (1988).

Prisoner who was sentenced to detention as a condition of probation, under statute limiting such conditional detention to one-third of the maximum prescribed term of imprisonment for the crime of which he was convicted, was not arbitrarily denied access to parole where under parole statute he would have been required to serve one-third of his sentence before becoming eligible for parole. A.S.C.A. §§ 46.2206, 46.2304(a)(1). *Atuatasi v. American Samoa Government*, 9 A.S.R.2d 67 (1988).

Where probation statute originally provided that probation could be imposed only in cases where incarceration was not necessary for the protection of the public, and also provided that a brief period of detention could be imposed as a condition of probation, but statute was later amended to provide that such detention could be imposed for up to fifteen years, the later enactment implicitly amended the earlier; court could therefore impose detention as a condition of probation not only for the purpose of rehabilitation, but also where incarceration was deemed necessary for the protection of the public. A.S.C.A. §§ 46.2203, 46.2206. *Atuatasi v. American Samoa Government*, 9 A.S.R.2d 67 (1988).

The High Court has the power to impose detention as a condition of probation for a period equivalent to one-third of the maximum sentence of imprisonment authorized by law. A.S.C.A. § 46.2206. *American Samoa Government v. Falefatu*, 17 A.S.R.2d 114 (1990).

Under the 1987 amendment to the probation statute, sentencing judges are free to impose probation for reasons other than the rehabilitation-related provisions of the statute. A.S.C.A. §§ 46.2203, 46.2206. *American Samoa Government v. Falefatu*, 17 A.S.R.2d 114 (1990).

In cases of apparent conflict between two statutes, specific and later statute prevails over more general and earlier statute. A.S.C.A. §§ 46.2203, 46.2206. *Atuatasi v. American Samoa Government*, 9 A.S.R.2d 67 (1988).

**Research Guide:** MCC 559.026, 28 ASC 1, 28 ASC 5.

**Amendments:** 1983 Amended to increase detention period for felony cases from 60 days to one year.  
1987 Subsection (2): revised maximum period of detention from one year.

#### **46.2207 Multiple terms run concurrently.**

A term of probation commences on the day it is imposed. Multiple terms of probation, whether imposed at the same time or at different times, shall run concurrently. Terms of probation shall also run concurrently with any federal, state, or territorial jail, prison, probation or parole term for another offense to which the defendant is or becomes subject during the period unless otherwise specified by the court.

**History:** 1979, PL 16-43 § 2.



**Case Notes:**

Sentencing court may require convicted defendant to serve multiple periods of detention as conditions of multiple terms of detention, but the periods of detention must be served concurrently and the aggregate period of detention cannot exceed the statutory maximum. A.S.C.A. §§ 46.2206, 46.2207. *American Samoa Government v. Masaniai*, 6 A.S.R.2d 114 (1987).

**Research Guide:** MCC 559.036, 28 ASC 5.

**46.2208 Termination of probation-Discharge of defendant.**

The court may terminate a period of probation and discharge the defendant at any time before completion of the specific term fixed under 46.2204 if warranted by the conduct of the defendant and the ends of justice. Procedures for termination and discharge may be established by rule of court.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 559.036, 28 ASC 5.

**46.2209 Violation of condition.**

If the defendant violates a condition of probation at any time prior to the expiration or termination of the probation term, the court may continue him on the existing conditions, with or without modifying or enlarging the conditions, or, if the continuation, modification, or enlargement is not appropriate, may revoke probation and order that any sentence previously imposed be executed. If imposition of sentence was suspended, the court may revoke probation and impose any sentence available under 46.1901 through 46.1905. The court may mitigate any sentence of imprisonment by reducing the prison or jail term by all or part of the time the defendant was on probation.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

Statute providing for parole of prisoner who has served one-third of his sentence of imprisonment has no application to probationer whose sentence of imprisonment has been suspended and who is serving a term of detention, for a period no greater than one-third of the suspended sentence of imprisonment, as a condition of his probation. A.S.C.A. §§ 46.2203, 46.2206(3), 46.2209. *Atuatasi v. Moaali'itele*, 8 A.S.R.2d 53 (1988).

**Research Guide:** MCC559.036, 28 ASC 5.

**46.2210 Notice of revocation to probationer.**

Probation shall not be revoked without giving the probationer notice and an opportunity to be heard on the issues of whether he violated a condition of probation and, if he did, whether revocation is warranted under all the circumstances.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 559.036, 28 ASC 5.

**46.2211 Notice to appear to answer charges-Warrant of arrest.**

At any time during the term of probation, the court may issue a notice to the probationer to appear to answer a charge of a violation and the court may issue a warrant of arrest for the violation. The notice shall be personally served upon the probationer. The warrant shall authorize the return of the probationer to the custody of the court or to any suitable detention facility designated by the court.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC559.036, 28 ASC5.

**46.2212 Authority to arrest or detain probationer.**

Any probation officer, if he has probable cause to believe that the probationer has violated a condition of probation, may arrest the probationer without a warrant, or may deputize any other officer with the power of arrest to do so by giving him a written statement of the circumstances of the alleged violation, including a statement that the probationer has, in the judgment of the probation officer, violated the conditions of his probation. The written statement, delivered with the probationer to the official in charge of any jail or other detention facility, shall be sufficient authority for detaining the probationer pending a preliminary hearing on the alleged violation.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 559.036, 28 ASC 5.

**46.2213 Arrest-Preliminary hearing-Release on bail.**

(a) If the probationer is arrested under the authority granted in 46.2211 and 46.2212, he has the right to a preliminary hearing on the violation charged. He shall be notified immediately in writing of the alleged probation violation. The preliminary hearing shall be heard by the sentencing court, and shall be conducted as provided by rule of court.

(b) If it appears that there is probable cause to believe that the probationer has violated a condition of his probation, or if the probationer waives the preliminary hearing, the judge shall order the probationer held for further proceedings in the sentencing court.

(c) If probable cause is not found, this may not bar the sentencing court from holding a hearing on the question of the probationer's alleged violation of a condition of probation nor from ordering the probationer to be present at such a hearing.

(d) Provisions regarding release on bail of persons charged with offenses shall be applicable to probationers arrested and ordered held under this provision.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 559.036, 28 ASC 5.

**46.2214 Notice to sentencing court of arrest and detention.**

Upon arrest and detention, the probation officer shall immediately notify the sentencing court and shall submit to the court a written report showing in what manner the probationer has violated the conditions of probation. Thereupon, or upon arrest by warrant, the court shall cause the probationer to be brought before it without unnecessary delay for a hearing on the violation charged. Revocation hearings shall be conducted as provided by rule of court.

**History:** 1979, PL 16-43§ 2.

**Research Guide:** MCC 559.036, 28 ASC 5.

**46.2215 Power of court.**

The power of the court to revoke probation shall extend for the duration of the term of probation designated by the court and for any further period which is reasonably necessary for the adjudication of matters arising before its expiration; provided, that some affirmative manifestation of an intent to conduct a revocation hearing occurs prior to the expiration of the period and that every reasonable effort is made to notify the probationer and to conduct the hearing prior to the expiration of the period.

**History:** 1979, PL 16-43 § 2.

## Chapter 23

### IMPRISONMENT

#### Sections:

- 46.2301** Authorized terms.
- 46.2302** Class C and D felonies.
- 46.2303** Imposition of sentence for felony and misdemeanor.
- 46.2304** Sentence includes prison and parole term.
- 46.2305** Extended terms for dangerous offenders.
- 46.2306** Extended term procedures.
- 46.2307** Concurrent and consecutive terms of imprisonment.
- 46.2308** Calculation of terms of imprisonment-Credit for jail time awaiting trial.

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978.

MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC—Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.2301** Authorized terms.

The authorized terms of sentences of imprisonment, including both prison terms and parole terms are:

- (1) for a class A felony, life imprisonment, or a term of years not less than 10 years and not to exceed 30 years;
- (2) for a class B felony, a term not less than 5 years and not to exceed 15 years;
- (3) for a class C felony, a term not to exceed 7 years;
- (4) for a class D a term not to exceed 5 years;
- (5) for a class A, a term not to exceed one year;
- (6) for a class B a term not to exceed 6 months;
- (7) for a class C misdemeanor, a term not to exceed 15 days.

**History:** 1979, PL 16-43 § 2; amd 1981, PL 17-16 § 1.

#### **Case Notes:**

There is no inconsistency in suspending a "sentence of imprisonment" while simultaneously imposing "detention" as a condition of probation, where statutes use these terms to denote two alternative modes of sentencing. A.S.C.A. §§ 46.2206, 46.2301 et seq. *Atutasi v. American Samoa Government*, 9 A.S.R.2d 67 (1988).

**Research Guide:** MCC 558.011, 28 ASC 1, 28 ASC 4, 28 ASC 404, 28 ASC 405.

#### **46.2302** Class C and D felonies.

In cases of class C and D felonies, the court has the discretion to imprison for a special term not to exceed one year in the territorial correctional facility or other authorized penal institution, and the place of confinement is to be fixed by the court. If the court imposes a sentence of imprisonment for a term longer than one year upon a person convicted of a class C or D felony, it shall commit the person to the custody of the corrections division for a term of years not less than 2 years and not exceeding the maximum authorized terms provided in subsections (3) and (4) of 46.2301.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 558.011, 28 ASC 1, 28 ASC 4, 28 ASC 404, 28 ASC 405.

**46.2303 Imposition of sentence for felony and misdemeanor.**

(a) When a sentence of imprisonment for a felony is imposed, the court shall commit the defendant to the custody of the corrections division for the term imposed under 46.2301, or until released under procedures established elsewhere by law.

(b) When an extended sentence of imprisonment is imposed pursuant to 46.2305 et seq., the court shall commit the defendant to the custody of the corrections division for the maximum prison term of the sentence imposed under 46.2301.

(c) A sentence of imprisonment for a misdemeanor shall be for a definite term and the court shall commit the defendant to the Territorial Correctional Facility or other authorized penal institution for the term of his sentence or until released under procedures established elsewhere by law.

**History:** 1979, PL 16-43 § 2; amd 1981, PL 17-16 § 2.

**Research Guide:** MCC 558.011, 28 ASC 1, 28 ASC 4, 28 ASC 404, 28 ASC 405.

**46.2304 Sentence includes prison and parole term.**

(a) A sentence of imprisonment for a term of years consists of a prison term and a parole term. A minimum prison term of 1/3 of the sentence of imprisonment or 15 years in cases of life sentences for crimes other than murder in the first degree, must be served by a prisoner before the prisoner is eligible to apply for parole. The parole term of a prisoner may not exceed the unexpired sentence of imprisonment of the prisoner. The minimum parole term of any sentence imposed under 46.2301 is:

- (1) one-third for terms of 9 years or less;
- (2) 3 years for terms between 9 and 15 years; or
- (3) 5 years for terms more than 15 years, but not including life imprisonment. The maximum prison term is the remainder of the sentence.

(b) "Parole" means the discharge of a prisoner by the corrections division subject to conditions of release that the territorial parole board considers reasonable to assist the offender to lead a law-abiding life, and subject to the supervision under the territorial parole board. The conditions of release include: avoidance by the offender of any other crime whether federal, state or territorial: shall prohibit technical violation of his parole: and, may require the offender to make restitution or reparation to aggrieved parties for damages or loss caused by the offense for which conviction was had but should not exceed an amount the defendant will be able to pay within the parole term.

**History:** 1979, PL 16-43 § 2; amd 1981, PL 17-16 § 3.

**Case Notes:**

Where prisoner had not served one-third of his sentence of imprisonment, parole board had no jurisdiction to entertain his application for parole, and parole board order was of no legal effect. A.S.C.A. §§ 46.2304, 46.2702. *Atuatasi v. Moaali'itele*, 8 A.S.R.2d 53 (1988).

Parole and conditional probation statutes provide two alternative modes of sentencing, with the mandatory period of detention limited to one-third of the sentence in both cases but conditional probation statute allowing the court to exercise greater control over the conditions of detention. A.S.C.A. §§ 46.2206, 46.2304, 46.2701 et seq. *Atuatasi v. Moaali'itele*, 8 A.S.R.2d 53 (1988).

Prisoner who was sentenced to detention as a condition of probation, under statute limiting such conditional detention to one-third of the maximum prescribed term of imprisonment for the crime of which he was convicted, was not arbitrarily denied access to parole where under parole statute he would have been required to serve one-third of his sentence before becoming eligible for parole. A.S.C.A. §§ 46.2206, 46.2304(a)(1). *Atuatasi v. American Samoa Government*, 9 A.S.R.2d 67 (1988).

**Research Guide:** MCC 558.011, 28 ASC 1, 28 ASC 4, 28 ASC 404, 28 ASC 405.

**46.2305 Extended terms for dangerous offenders.**

(a) The court may sentence a person who has pleaded guilty to or has been found guilty of a class B, C, or D felony to an extended term of imprisonment if it finds the defendant is a persistent offender or a dangerous offender.

(b) A “persistent offender” is one who has been previously convicted of 2 felonies committed at different times and not related to the instant crime of each other as a single criminal episode.

(c) A “dangerous offender” is one who:

(1) is being sentenced for a felony during the commission of which he knowingly murdered or endangered or threatened the life of another person or knowingly inflicted or attempted or threatened to inflict serious physical injury on another person; and

(2) has been previously convicted of a class A or B felony or of a dangerous felony.

(d) The total authorized maximum terms of imprisonment for a persistent offender or a dangerous offender are:

(1) for a class B felony, a term of years not to exceed 30 years;

(2) for a class C to exceed 15 years;

(3) for a class D to exceed 10 years.

(e) Except as provided in person who is armed with a deadly weapon during the felony, a term of years not felony, a term of years not subsection (f), a firearm or other commission or attempted commission of a misdemeanor, upon conviction, shall be sentenced by the court to an additional, consecutive, mandatory sentence of 6 months.

(f) A person convicted of a misdemeanor or attempted misdemeanor in which the use of a firearm was an element of the crime shall be sentenced by the court to a term of years or months as provided under 46.2301 which shall include a minimum sentence of 6 months.

**History:** 1979, PL 16-43 § 2; amd 1982, PL 17-42 § 1.

**Amendments:** 1982 Subsections (e) and (f) added.

**Research Guide:** MCC 558.016.

**46.2306 Extended term procedures.**

(a) The court shall not impose an extended term under 46.2305 (a), (b), (c), or (d) unless:

(1) the indictment or information, original, amended, or in lieu of an indictment, pleads all essential facts warranting imposition of an extended term; and

(2) after a finding of guilty or a plea of guilty, a sentencing hearing is held at which evidence establishing the basis for an extended term is presented in open court with full rights of confrontation and cross-examination, and with the defendant having the opportunity to present evidence; and

(3) the court determines the existence of the basis for the extended term and makes specific findings to that effect.

(b) Nothing in this section prevents the use of presentence investigations or commitments under 46.1908 and 46.1909.

(c) At the sentencing hearing both the Territory and the defendant are permitted to present additional information bearing on the issue of sentence.

**History:** 1979, PL 16-43 § 2; amd 1982, PL 17-42 § 2.

**Amendments:** 1982 Subsection (a) introductory paragraph amended.

**Research Guide:** MCC 558.021.

**46.2307 Concurrent and consecutive terms of imprisonment.**

(a) Multiple sentences of imprisonment run concurrently unless the court specifies that they run consecutively or as otherwise provided by law.

(b) If a person who is on probation or parole, or conditional, is sentenced to a term of imprisonment for an offense committed after the granting of probation or parole or after the start of his parole term, the court shall direct the manner in which the sentence or sentences imposed by the court shall run with respect to any resulting probation or parole revocation term. If the subsequent sentence to imprisonment is in another jurisdiction, the court shall specify how any resulting probation or parole revocation term or terms shall run with respect to the foreign sentence of imprisonment.

**History:** 1979, PL 16-43 § 2; amd 1982, PL 17-42 § 3.

**Amendments:** 1982 Subsection (a) introductory paragraph amended.

**Research Guide:** MCC 558.026, 28 ASC 406.

#### **46.2308 Calculation of terms of imprisonment-Credit for jail time awaiting trial.**

(a) A person convicted of a crime in this Territory shall receive as credit toward service of a sentence of imprisonment all time spent by him in prison or jail both because awaiting trial for the crime and pending transfer after conviction to the corrections division or the place of confinement to which he was sentenced. Time required by law to be credited upon some other sentence is applied to that sentence alone; except that:

(1) time spent in jail or prison awaiting trial for an offense because of detainer for the offense is credited toward service of a sentence of imprisonment for that offense even though the person was confined awaiting trial for some unrelated bailable offense; and

(2) credit for jail or prison time is applied to each sentence if they are concurrent.

(b) The officer required by law to deliver a convicted person to the corrections division endorses upon the commitment papers the period of time to be credited as provided in subsection (a).

(c) If a sentence of imprisonment is vacated and a new sentence is imposed on the defendant for the same offense, the new sentence is calculated as if it had commenced at the time the vacated sentence was imposed, and all time served under the vacated sentence is credited against the new sentence.

(d) If a person serving a sentence of imprisonment escapes from custody, the escape interrupts the sentence. The interruption continues until the person is returned to the institution in which the sentence was being served, or in the case of one committed to the custody of the corrections division to any institution administered by the division.

(e) If a person released from imprisonment on parole violates any of the conditions of his parole or release, he may be treated as a parole violator. If the territorial parole board revokes the parole, the paroled person serves the remainder of his prison term and all the parole term, as an additional prison term, and the paroled person serves the remainder of the parole term as an additional prison term unless he is sooner released on parole.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 558.031, 28 ASC 406.

## **Chapter 24**

### **APPEALS**

#### **Sections:**

- |                |  |
|----------------|--|
| <b>46.2401</b> | <b>Stay of execution.</b>                          |
| <b>46.2402</b> | <b>Procedure on appeals.</b>                       |
| <b>46.2403</b> | <b>Disposition of appeals.</b>                     |
| <b>46.2405</b> | <b>Appeal by the government in criminal cases.</b> |

**46.2401 Stay of execution.**

Pending the hearing and determination of an appeal, execution of the final sentence of the High Court, except a sentence of death, will not be stayed unless the appellate division, the trial division, or the Chief Justice orders a stay for cause shown and upon such terms as it or he may fix.

**History:** 1962, PL 7-36; 1967, PL 10-17; 1968, PL 10-62.

**46.2402 Procedure on appeals.**

The following procedure shall apply to appeals taken to the appellate division of the High Court:

(a) Before filing a notice of appeal, a motion for a new trial shall be filed within 10 days after the announcement of the judgment or sentence.

(b) A notice of appeal shall be filed within 10 days after the denial of a motion for a new trial.

(c) The appellant shall cause the record on appeal to be filed with the appellate division and the appeal to be docketed there within 30 days from the date the notice of appeal is filed.

**History:** 1962, PL 7-36; 1966, PL 10-42; 1967, PL 10-17; 1968, PL 10-62.

**Case Notes:**

American Samoa procedure for appeals from Trial Division to Appellate Division of the High Court incorporates United States Federal Rules provisions as to time and procedure. RCAS 3.0502. *Fanene v. Government*, 4 ASR 957 (1968).

The ten-day time limit to file a motion for a new trial is mandatory and jurisdictional; errors of law not raised within ten days of judgment or sentence are waived, at least insofar as they concern the right to appeal. A.S.C.A. §§ 43.0802(a), 46.2402(a). *American Samoa Government v. Falefatu*, 17 A.S.R.2d 114 (1990).

In some cases, such as when an illegal sentence was pronounced on a defendant unrepresented by counsel or when the circumstances surrounding an error of law made it impossible for counsel to call it to the Court's attention within ten days, a statutory ten-day limit might amount to an unconstitutional denial of liberty without due process of law. U.S. Const. Amends. V, XIV; Revised Const. of American Samoa Art. I, § 2; A.S.C.A. § 46.2402(a). *American Samoa Government v. Falefatu*, 17 A.S.R.2d 114 (1990).

A motion for a new trial in a criminal case "shall be filed within 10 days after the announcement of judgment or sentence." A.S.C.A. § 46.2402(a). *American Samoa Government v. Falefatu*, 17 A.S.R.2d 114 (1990).

The formal style or caption of a motion for a new trial is not essential to fulfill the statutory requirement; nor must the motion specifically request a new trial rather than some lesser or different form of relief, as long as the asserted errors are susceptible of such relief. A.S.C.A. §§ 43.0802(a), 46.2402(a). *American Samoa Government v. Falefatu*, 17 A.S.R.2d 114 (1990).

**46.2403 Disposition of appeals.**

(a) The appellate division may set aside the judgment of conviction and, if the defendant has appealed or requested a new trial, it may order a new trial or commute, reduce (but not increase), or suspend the execution of the sentence, in whole or in part.

(b) Findings of fact may not be set aside by the appellate division unless clearly erroneous.

**History:** 1962, PL 7-36; 1967, PL 10-17; 1969, PL 11-54.

**Case Notes:**

Appellate court is bound by the findings of fact of trial court unless clearly erroneous. RCAS 3.0503. *Isumu v. Masalosalo*, 4 ASR 868 (1962); *Mageo v. Government*, 4 ASR 874 (1963); *Fuga v. Mageo*, 4 ASR 899 (1964); *Faatamala v. Haleck*, 4 ASR 888 (1963).

Appellate court will use authority to reduce or modify sentence. RCAS 3.0503. *Tigi v. Government*, 4 ASR 902 (1964).

Power of Appellate Division to reduce or suspend execution of sentence is only present when timely appeal is filed. RCAS 3.0503. *Fanene v. Government*, 4 ASR 957 (1968).

Appellate court may commit, reduce (but not increase) or suspend execution of sentence. RCAS 3.050 3. Tigi v. Government, 4 ASR 894 (1963).

Appellate court may affirm, modify, set aside or reverse any judgment or order appealed from or remand for new trial, but it may review facts as well as law only in appeal from district courts. RCAS 3.0503. Tigi v. Government. 4 ASR 894 (1963).

#### **46.2405 Appeal by the government in criminal cases.**

(a) In a criminal case, the government may appeal in the following instances:

(1) from a judgment, order or other decision of acquittal, arresting a judgment of conviction, or dismissing the information, complaint or other accusation, or any count thereof, where the decision is based upon the invalidity or construction of the statute upon which the prosecution is founded.

(2) from a judgment, order or decision suppressing or excluding evidence, or requiring the return of seized property.

(b) If the defendant has not been put in jeopardy before the decision is made, the Attorney General must certify at the time the appeal is filed that the appeal is not taken for purpose of delay and, when evidence has been suppressed, excluded or returned, that the evidence is substantial proof of a fact material in the proceeding.

(c) If the defendant has been put in jeopardy before the decision is made, there may be no further prosecution, and the appellate or reviewing court may only determine the validity or construction of the statute upon which the prosecution is founded, or the validity of the decision suppressing or excluding, or requiring the return of, evidence as a matter of law.

(d) If an appeal is taken by the government under this section, it shall file its notice of appeal, and any required certification, within 10 days after date of the decision appealed has been entered, and comply with all other requirements for appeal under subsection (c) of 46.2402.

(e) The provisions of this section shall be liberally construed to effectuate its purposes.

**History:** 1977, PL 15-37.

#### **Case Notes:**

Statute authorizing the government to appeal from dismissal of criminal complaint where dismissal arose from construction of statute provided government with an adequate remedy for errors of law by district court. A.S.C.A. § 46.2405. American Samoa Government v. District Court, 10 A.S.R.2d 18 (1989).

Where statutory right of appeal from alleged errors of law by district court provided government with an adequate remedy, government's petition to High Court for writ of mandamus should be denied. A.S.C.A. § 46.2405. American Samoa Government v. District Court, 10 A.S.R.2d 18 (1989).

Where the government appeals from an order dismissing criminal charges, it must show that dismissal resulted from the misconstruction of the statute upon which prosecution was founded. A.S.C.A. § 46.2405(a)(1). American Samoa Government v. Hirata, 12 A.S.R.2d 22 (1989).

Appellate court could not assume, from the mere fact of dismissal of criminal complaints by the district court, that dismissal resulted from misconstruction of a statute rather than the insufficiency of the evidence. A.S.C.A. § 46.2405(a)(1). American Samoa Government v. Hirata, 12 A.S.R.2d 22 (1989).

## **Chapter 25**

### **PRISONERS**

#### **Sections:**

- 46.2501 Requirement to do light labor.**
- 46.2502 Performance of labor during confinement.**
- 46.2503 Solitary confinement-Bread and water rations.**
- 46.2521 Rehabilitative release program established.**
- 46.2522 Definitions.**
- 46.2523 Authority.**
- 46.2524 Eligibility.**
- 46.2525 Escape while on program release.**
- 46.2526 Program employer-Duties.**



- 46.2527 Inmate transport between prison and worksite-Carrier duty.**
- 46.2528 Inmate earnings.**
- 46.2529 Earnings exempt from process.**
- 46.2530 Private detention facility-Halfway house.**
- 46.2531 Halfway house funding.**
- 46.2532 Electronic monitoring device defined.**
- 46.2533 Use of electronic monitoring device authorized.**
- 46.2534 Control of electronic monitoring device.**
- 46.2535 Intentional interfering with electronic monitoring device.**

**46.2501 Requirement to do light labor.**

Able-bodied persons confined to prison pending trial may be required to do light labor.

**History:** 1963, PL 8-3; 1966, PL 9-44.

**46.2502 Performance of labor during confinement.**

An able-bodied person confined in prison as punishment for an offense may be required to perform labor during the whole or any part of the time of the sentence unless the sentence provides otherwise. The labor required may be ordinary labor in the case of males and light labor in the case of females.

**History:** 1963, PL 8-3; 1966, PL 9-44.

**46.2503 Solitary confinement-Bread and water rations.**

Prisoners may not be placed in solitary confinement except for the purpose of discipline and then only upon the written order of the Attorney General. If a prisoner is so confined, it shall be for not more than 10 days for any one offense. A prisoner who has been placed in solitary confinement may also be put on bread and water with a full ration every third day. In no case may he be put on bread and water if in the opinion of a medical doctor other food is necessary for the preservation of his health.

**History:** 1963, PL 8-3; 1966, PL 9-44.

**Case Notes:**

Bread and water punishment permitted by this section cannot be imposed without some semblance of due process. *ASG V. Taufouu*, 2 ASR 2d (1984).

**46.2521 Rehabilitative release program established.**

There is established as a function of the Department of Public Safety a rehabilitative release program for the prisoners serving prison sentences at the territorial correctional facility, comprised of work release, educational and vocational release, and funeral release.

**History:** 1999, PL 26-5.

**46.2522 Definitions.**

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Work release" means the release of an inmate to the community to be employed for wages. Release for employment may be authorized each day between the hours of 6:00 o'clock A.M. and 6:00 o'clock P.M., for a maximum of 6 days per week.
- (2) "Educational or vocational release" means the release of an inmate to the community to attend an educational or vocational program sanctioned by the Department of Education. Release for educational purpose may be authorized each day between the hours of 6:00 o'clock A.M. and 6:00 P.M., for a maximum of 6 days per week.
- (3) "Funeral release" means the release of an inmate to the community to attend the funeral of an immediate family member. Release to attend such funeral may be authorized between the

hours of 6:00 o'clock A.M. and 6:00 o'clock P.M., for a maximum of 2 consecutive days.

(4) "Immediate family member" means an inmate's parent, spouse, or child.

**History:** 1999, PL 26-5.

**46.2523 Authority.**

(a) The Commissioner of Public Safety is responsible for the administration of the prisoner rehabilitative release program. He shall make periodic review of the rules and law governing the release program. As deem advisable he shall make appropriate changes to existing rules and law and he shall initiate the procedure required for the adoption of new rules and the enactment of additional law.

(b) The Warden of the Territorial Correctional Facility is responsible for the evaluation and approval, pursuant to the guidelines established in the chapter, applications submitted by inmates desiring to participate in the release program. He is also responsible for the supervision of the release program subject to any additional directive given by the Commissioner.

(c) The selection process employ by the warden must not violate federal and territorial law on discrimination. An inmate's gender, race, religious conviction, or national origin shall not be a reason to deny participation in the release program if otherwise qualified.

(d) Before any release is authorized under the program the warden shall prepare written agreements to be executed by participating inmates in which the rules and policies of the program are clearly explained.

**History:** 1999, PL 26-5.

**46.2524 Eligibility.**

The rehabilitative release program shall be available to all sentenced inmates confined in the territorial correctional facility who meet the qualifications stated below.

(a) Inmates who are serving terms of detention as a condition of probation are eligible, but their employment and hours and days of release are controlled by the Court.

(b) Inmates who are classified as minimum security are eligible; inmates with medium or maximum security classifications are ineligible.

(c) Inmates convicted of murder, violent sex crimes, sexual assaults on children, or armed robbery are ineligible.

(d) Inmates serving sentences of imprisonment of less than one year, or specifically restricted from participation by the court, are ineligible.

(e) Inmates serving sentences of more then a year, but less then 28 months, become eligible after serving six months of such sentences.

(f) Inmates serving sentences of more then 28 months become eligible after serving one-third of such sentences.

(g) Inmates who have had no major disciplinary action for a minimum of six months are eligible.

(h) Inmates undergoing loss of privileges punishment for a minor rules violation must complete the punishment before becoming eligible.

(i) Inmates pending disciplinary charges are ineligible.

(j) Inmates pending criminal charges in court are ineligible.

(k) Inmates who were removed from any rehabilitation program for cause are ineligible for six months after removal.

(l) Inmates who have escaped from confinement or the rehabilitative release program are ineligible.

(m) Inmates who have participated in full-time constructive assignments or institutional programs for at least six months are eligible.

(n) Inmates with drug or alcohol dependency histories must have completed a drug and alcohol abuse program and be drug and alcohol free for one year before becoming eligible.

(o) Inmates convicted of non-violent sex crimes not involving children shall become eligible upon receiving a written favorable evaluation and recommendation from a psychiatrist

or clinical psychologist.

(p) Eligible applicants shall be physically and mentally capable of full-time work, educational instruction, or vocational training, as their type of release requires.

(q) Inmates who commit new offenses while on rehabilitative release shall be ineligible to participate in the program during their current sentence.

(r) Aliens must be legally present in the Territory to be eligible for this program.

**History:** 1999, PL 26-5.

#### **46.2525        Escape while on program release.**

The work place assigned by an employer, or other place designated in the rehabilitative release program contractual agreement and the direct route to and from those designated places, are an extension of confinement. A person commits the crime of escape from rehabilitative release if he has been assigned to the rehabilitative release program and violates subsection (a) or (b).

(a) A person assigned to the rehabilitative release program shall at all times remain in the work place, classroom, or any other place assigned in the contractual agreement.

(b) A person assigned to the rehabilitative release program shall not deviate from a direct route to and from the Territorial Correctional Facility, or any other place assigned as a place of confinement, and the destination assigned in the contractual agreement, nor shall he stop anywhere to conduct personal business while traveling between the two points.

(c) Escape from rehabilitative release constitutes a violation of section 46.4627, a class D felony.

**History:** 1999, PL 26-5.

#### **46.2526        Program employer--Duties.**

(a) It is the duty of a rehabilitative release program employer, teacher, instructor, or any other person who has authority over or directs the educational or vocational activities of a participating inmate to immediately report to the Territorial Correctional Facility the absence of the inmate from the work place, classroom, or any other place assigned in the contractual agreement.

(b) A participating rehabilitative release program employer, or any other person who has authority over or directs the educational or vocational activities of the participating inmate, shall not direct such inmate to leave the work place, or any other place assigned in the contractual agreement.

(c) Nor, shall a participating employer, or any other person who has authority over or directs the educational or vocational activities of the participating inmate during rehabilitative release, direct, transport or cause the participating inmate to deviate from a direct route between the assigned place designated in the contractual agreement and the Territorial Correctional Facility or other designated place of confinement.

(d) Anyone who violates subsection (a), (b), or (c) is guilty of a violation of section 46.4627, a class D felony.

**History** 1999; PL 26-5

#### **46.2527        Inmate transport between prison and worksite-Carrier duty.**

(a) Any person who agrees to transport an inmate between the territorial correctional facility, or any other facility designated as a place of custody, and the inmate's place of work shall sign a transportation agreement. No rehabilitative release inmate shall be permitted to leave his place of confinement until the transportation agreement has been signed.

(b) A person transporting an inmate as described in subsection (a) shall not drive the inmate to a place other than the place stated in the transportation agreement, nor shall he deviate from the direct route of travel described in the transportation agreement.

(c) A person transporting an inmate as described in subsection (a) shall immediately report

to the Territorial Correctional Facility the inmate's departure from the transportation vehicle between the points described in the transportation agreement.

(d) Violation of subsections (b), (c) and (d) is a violation of section 46.4627, a class D felony.

**History:** 1999, PL 26-5

**46.2528 Inmate earnings.**

The net earnings of each inmate participating in the rehabilitative release program shall be forwarded to the Treasurer for deposit to the account of the inmate in a rehabilitative release account in the Territorial Treasury for the sole benefit of the inmate. Such wages may be disbursed or expended by the inmate for the following purposes and in the following order.

(a) The cost of the inmate's keep in a halfway house as determined by section 46.2511 as a cost sharing contribution. Such money will be paid directly to the private institution pursuant to section 46.2512 halfway house funding;

(b) Court ordered support of inmate's dependents, if any;

(c) Court-ordered restitution, if any;

(d) Contribution to any indemnification program established by law to aid victims of crime, provided the contribution must not be more than 10 percent of the gross wages;

(e) The balance shall be disbursed to the inmate.

**History:** 1999, PL 26-5

**46.2529 Earnings exempt from process.**

Wages and salaries earned through placement in the rehabilitative release program shall not be subject to garnishment, attachment, or execution in the hands of the employer or the Treasurer.

**History:** 1999, PL 26-5

**46.2530 Private detention facility-Halfway house.**

When determined by the Commissioner that the circumstances of a rehabilitative release program participant do not require the security of the territorial correctional facility, he may contract with private agencies for the custody and separate care of such places of custody.

(a) The halfway house shall meet the minimum staffing requirements which shall be determined by the Commissioner.

(b) Rules and regulations pertaining to custody and privileges shall be determined by the Commissioner. Halfway house management may establish more stringent rules, but modification of the rules shall first be approved by the Commissioner.

**History:** 1999, PL 26-5

**46.2531 Halfway house funding.**

Inmate residents of a halfway house are required to share the cost of the American Samoa Government contract on a basis to be determined by the Commissioner and clearly listed in the contractual agreement.

(a) Payment of room and board shall be made by the inmate directly to the Treasurer each payday in the manner prescribed by section 46.2509, Inmate earnings. Failure to make such payment will result in the inmate's immediate removal from the rehabilitative release program.

(b) When extenuating circumstances warrant, the Commissioner or the court may waive the payment of such fees by an inmate. The Commissioner shall immediately report such waivers, whether made by the Commissioner or the court, to the Treasurer.

**History:** 1999, PL 26-5

**46.2532 Electronic monitoring device defined.**

Any device attached to the person of an arrestee or convicted prisoner that is used in conjunction with a public telephone system that alerts authorities to the absence of the person from an assigned place of home arrest or other place of temporary release from the Territorial Correctional Facility, is an electronic monitoring device.

**History:** 1999, PL 26-5

**46.2533 Use of electronic monitoring device authorized.**

The use of electronic monitoring devices is hereby authorized for use of the court or the Commissioner of the Department of Public Safety under the following conditions.

(a) When in the opinion of the court home arrest is a practical alternative to bail or pretrial confinement.

(b) When in the opinion of the court a probationary sentence to home confinement in nonviolent criminal cases is a reasonable alternative to confinement in the territorial correctional facility.

(c) When deemed necessary by the Commissioner of the Department of Public Safety, it may be attached to an inmate participant in the rehabilitative release program.

**History:** 1999, PL 26-5

**46.2534 Control of electronic monitoring device.**

The Commissioner of the Department of Public Safety is hereby designated as the sole person responsible to purchase, control, attach and remove all electronic monitoring devices authorized by this chapter. The Commissioner is also empowered and directed to monitor all persons wearing such devices and to take immediate law enforcement action upon discovering a violation by a wearer.

**History:** 1999, PL 26-5

**46.2535 Intentional interfering with electronic monitoring device.**

A person who has had attached to his person, pursuant to court order, or as a requirement of the territorial correctional facility rehabilitative release program, an electronic monitoring device, and who removes such device from his person, or who renders such device inoperative, or who interferes with or disables any telephone line or device used in connection with the electronic monitoring system, has escaped from confinement, even if he did not leave the place to which he was assigned. Violation of this section is a class D felony.

**History:** 1999, PL 26-5

## **Chapter 26**

### **OFFENDERS EXCHANGE**

**Sections:**

**46.2601 Exchange of offenders under treaty-Consent by Governor.**

**46.2601 Exchange of offenders under treaty-Consent by Governor.**

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which they are citizens or nationals, the Governor may, on behalf of the Territory and subject to the terms of the treaty, consent to the transfer or exchange of offenders and take any other action necessary to initiate the participation of this Territory in the treaty.

**History:** 1981, PL 17-10 § 2.

## Chapter 27

### PAROLE

#### Sections:

- 46.2701 Board of parole-Creation and membership-Powers.**
- 46.2702 Eligibility-Board-Procedure.**
- 46.2703 Release.**
- 46.2704 Terms and conditions.**
- 46.2705 Aliens.**
- 46.2706 Recommitment proceedings.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978. MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC—Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to draft a Modern Criminal Code, October 1973.

#### **46.2701 Board of parole-Creation and membership-Powers.**

(a) There is created in the executive branch a board of parole, consisting of 5 members appointed by the Governor, all of whom must be nonelected citizens of American Samoa not employed by the government. The board shall select one of its members to be the chairman.

(b) The board may:

(1) adopt rules pursuant to the Administrative Procedure Act, Section 4.1001 et seq., governing its practices and procedures; and

(2) issue subpoenas compelling witnesses to attend its proceedings and producing those records or documents which the board deems necessary for the investigation of a case before it.

**History:** 1979, PL 1643 § 2; 1980, PL 16-71 § 2; 1981, PL 17-16 § 4; amd 1986, PL 19-38 § 1.

**Amendments:** 1980 Added provision for nonelected private citizens at end of sentence.

1986 Subsection (a): amended generally. Subsection (b)(l). deleted "being".

#### **46.2702 Eligibility-Board-Procedure.**

(a) A prisoner other than a juvenile delinquent or a committed youth offender, wherever confined, and serving a term or terms of over 6 months, who has served the minimum prison term under 46.2304 may apply to the board for parole. A prisoner whose application for parole is denied may reapply in 6 months from the date of the board's denial.

(b) Upon receipt of an application for parole by an eligible prisoner, the board considers all pertinent information regarding the prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, the reports of any physical and mental examinations which have been made of him, and, if readily obtainable, the recommendations of the sentencing judge or justice.

(c) The board shall interview the prisoner requesting the parole and hear oral testimony from a person desiring to testify before the board concerning the application for parole of the prisoner.

**History:** 1979, PL 16-43 § 2; amd 1981, PL 17-16 § 5.

#### **Case Notes:**

Employee of Attorney General may make recommendation to Parole Board for reduction of sentence. RCAS 4.0203. *Fanene v. Government*, 4 ASR 957 (1968).

Where prisoner had not served one-third of his sentence of imprisonment, parole board had no jurisdiction to entertain his application for parole, and parole board order was of no legal effect. A.S.C.A. §§ 46.2304, 46.2702. *Atuatasi v. Moaali'itele*, 8 A.S.R.2d 53 (1988).

**Research Guide:** 28 ASC 402.

#### **46.2703 Release.**

(a) If it appears to the board from a report by the proper institutional officers, or upon application by a prisoner eligible for release on parole, that there is a reasonable probability that the prisoner will live and remain at liberty without violating the law, and if in the opinion of the board the release is not incompatible with the welfare of society, the board may in its discretion authorize the release of the prisoner on parole.

(b) A prisoner whose unexpired sentence of imprisonment equals the minimum parole term established under 46.2304 shall receive a parole subject to the terms and conditions established by the board.

**History:** 1979, PL 1643 § 2; amd 1981, PL 17-16 § 6.

**Research Guide:** 29 ASC 403.

#### **46.2704 Terms and conditions.**

(a) Subject to the terms and conditions established by the board, a parolee may be allowed to return to his home or go elsewhere. The parolee remains in the legal custody and under the control of the attorney general. The parole continues until the expiration of the maximum term or terms for which the parolee was sentenced.

(b) Each order of parole must set the terms and conditions of parole.

**History:** 1979, PL 16-43 § 2; amd 1981, PL 17-16 § 7.

**Research Guide:** 28 ASC 404.

#### **46.2705 Aliens.**

(a) When an alien prisoner subject to deportation becomes eligible for parole, the board may authorize his release on the condition that he be deported and remain outside American Samoa.

(b) The prisoner, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 28 ASC 405.

#### **46.2706 Recommitment proceedings.**

(a) A warrant for the retaking of any American Samoan prisoner who has violated his parole may be issued only by the board or a member of it and within the maximum term or terms for which he was sentenced.

(b) The unexpired term of imprisonment of that prisoner shall begin to run from the date he is returned to the custody of the Attorney General under the warrant.

(c) The time the prisoner was on parole shall not diminish the time he was sentenced to serve.

(d) Any police officer of American Samoa, to whom a warrant for the retaking of a parole violator is delivered, shall execute that warrant by taking the prisoner and returning him to the custody of the Attorney General.

(e) A prisoner retaken upon a warrant issued by the board shall be given an opportunity to appear before the board, a member of it, or an examiner designated by the board. The board may then, or at any time in its discretion, revoke the order of parole and terminate the parole or

modify the terms and conditions of it.

(f) If an order of parole is revoked and the parole terminated, the prisoner may be required to serve all or any part of the remainder of the term for which he was sentenced.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 28 ASC 406.

## **Chapter 28**

### **REGISTRATION OF OFFENDERS**

**History:** Repealed 2014, PL 33-18.

**(RESERVED)**

## **Chapter 29**

### **SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION**

#### **Sections:**

- 46.2901**      **Establishment of registry.**
- 46.2902**      **Definitions.**
- 46.2903**      **Registerable offenses.**
- 46.2904**      **Tier I offenses.**
- 46.2905**      **Tier II offenses.**
- 46.2906**      **Tier III offenses.**
- 46.2907**      **General requirements.**
- 46.2908**      **Required information.**
- 46.2909**      **Frequency and duration of registration.**
- 46.2910**      **Requirements for in-person appearances.**
- 46.2911**      **Where registration is required.**
- 46.2912**      **Timing of registration.**
- 46.2913**      **Retroactive registration.**
- 46.2914**      **Keeping the registration current.**
- 46.2915**      **Failure to appear for registration.**
- 46.2916**      **Public sex offender registry website.**
- 46.2917**      **Required and prohibited information.**
- 46.2918**      **Community notifications.**
- 46.2919**      **Immunity.**
- 46.2920**      **Failure to register as a sex offender and related offenses.**
- 46.2921**      **Severability.**

#### **46.2901**      **Establishment of registry.**

(a) Sex Offender Registry. There is hereby established the American Samoa Sex Offender Registry, which the Attorney General's Office shall maintain and operate pursuant to the provisions of this code, as amended.

(b) Public Sex Offender Registry Website. There is hereby established a public sex offender registry website; It shall be called the American Samoa Public Sex Offender Registry Website,



which the Attorney General's Office shall maintain and operate pursuant to the provisions of this code, as amended.

**History:** 2014, PL 33-18.

Amendments: Chapter 28 (PL 26-7 & PL 28-2) was repealed in its entirety and replaced with PL 33-18, 2014.

#### **46.2902 Definitions.**

(a) Convicted. An adult sex offender is "convicted" for the purposes of this chapter if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled.

(b) A juvenile offender is "convicted" for purposes of this code if the juvenile offender is either:

(1) Prosecuted and found guilty as an adult for a sex offense; or

(2) Adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than Sexual Abuse in the First Degree.

(c) Foreign convictions. A foreign conviction is one obtained outside of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa and any American Indian Tribe.

(d) Employee. The term "employee" as used in this chapter includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers are included within the definition of employee for registration purposes.

(e) Immediate. "Immediate" and "immediately" mean within 3 business days.

(f) Imprisonment. The term "imprisonment" refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence.

(g) Persons under "house arrest" following conviction of a covered sex offense are required to register pursuant to the provisions of this chapter during their period of "house arrest".

(h) Jurisdiction. The term "jurisdiction" as used in this chapter refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian Tribe that elected to function as a SORNA registration and notification jurisdiction pursuant to PL 109-248 Section 127 (42 U.S.C. § 16927).

(i) Minor. The term "minor" means an individual who has not attained the age of 18 years.

(j) Resides. The term "reside" or "resides" means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps.

(k) Sex offense. The term "sex offense" as used in this code includes those offenses contained in 42 U.S.C. § 16911(5) (as amended), the American Samoa Code and those offenses enumerated in A.S.C.A Title 46, Chapter 26. An offense involving consensual sexual conduct is not a sex offense for the purposes of this code if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense.

(l) Sex offender. A person convicted of a sex offense is a "sex offender".

(m) Sexual act. The term "sexual act" means:

(1) contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

(2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(4) the intentional touching, even through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person.

(n) Sexual contact. The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desires of another person.

(o) Student. A “student” is a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.

(p) SORNA. The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. §16911 *et. seq.*, as amended.

(q) Sex Offender Registry. The term “sex offender registry” means the registry of sex offenders, and a notification program, as maintained by the Attorney General’s Office.

(r) National Sex Offender Registry (NSOR). The national database maintained by the Federal Bureau of Investigation pursuant to 42 U.S.C. §16919.

(s) SMART Office. The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. §16945.

(t) Dru Sjodin National Sex Offender Public Website (NSOPW). The public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16920.

(u) “Tier I Sex Offender”. A “tier I sex offender”, or a “sex offender” designated as “tier I”, is one who has been convicted of a “tier I” sex offense as defined in 46.2904.

(v) “Tier II Sex Offender”. A “tier II sex offender”, or a “sex offender” designated as “tier II”, is one who has been convicted of a “tier II” sex offense as defined in 46.2905.

(w) “Tier III Sex Offender”. A “tier III sex offender”, or a “sex offender” designated as “tier III”, is one who has been convicted of a “tier III” sex offense as defined in 46.2906.

**History:** 2014, PL 33-18.

#### **46.2903 Registerable offenses.**

Individuals who reside within the Territory of American Samoa, are employed within Territory of American Samoa, or who attend school within the Territory of American Samoa, who have been convicted of any of the offenses listed in this section are subject to the requirements of this code. In addition, any individual who is convicted of any of the offenses listed in this code who does not intend to establish residence, employment or school attendance within the Territory of American Samoa are also subject to the requirements of this code until such time they depart the Territory of American Samoa.

(a) American Samoa offenses:

- (1) 46.3531 Kidnapping (when the offender is not a parent, and the victim is under 18)
- (2) 46.3532 Felonious restraint (when the offender is not a parent, and victim is under 18)

- (3) 46.3533 False imprisonment (when the offender is not a parent, and the victim is under 18)
- (4) 46.3604 Rape
- (5) 46.3610 Sexual assault
- (6) 46.3611 Sodomy
- (7) 46.3612 Deviate sexual assault
- (8) 46.3615 Sexual abuse in the First degree
- (9) 46.3616 Sexual abuse in the Second degree
- (10) 46.3617 Indecent exposure
- (11) 46.3618 Child molesting
- (12) 46.3703 Patronizing prostitution (victim under 18)
- (13) 46.3705 Promoting prostitution in the First degree (victim under 18)
- (14) 46.3706 Promoting prostitution in the Second degree (victim under 18)
- (15) 46.3802 Incest
- (16) 46.3811 Abuse of a child (when the offense is of a sexual nature)

(b) Federal Offenses. A conviction for an attempt or conspiracy to commit any of the following, and any other offense hereafter included in the definition of “sex offense” at 42 U.S.C. §16911(5):

- (1) 18 U.S.C. §1591 (sex trafficking of children),
- (2) 18 U.S.C. §1801 (video voyeurism of a minor),
- (3) 18 U.S.C. §2241 (aggravated sexual abuse),
- (4) 18 U.S.C. §2242 (sexual abuse),
- (5) 18 U.S.C. §2243 (sexual abuse of a minor or ward),
- (6) 18 U.S.C. §2244 (abusive sexual contact),
- (7) 18 U.S.C. §2245 (offenses resulting in death),
- (8) 18 U.S.C. §2251 (sexual exploitation of children),
- (9) 18 U.S.C. §2251A (selling or buying of children),
- (10) 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),
- (11) 18 U.S.C. §2252A (material containing child pornography),
- (12) 18 U.S.C. §2252B (misleading domain names on the internet),
- (13) 18 U.S.C. §2252C (misleading words or digital images on the internet),
- (14) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the U.S.),
- (15) 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),
- (16) 18 U.S.C. §2422 (coercion and enticement of a minor for illegal sexual activity),
- (17) 18 U.S.C. §2423 (Transportation of Minors for Illegal Sexual Activity, Travel With the Intent to Engage in Illicit Sexual Conduct with a Minor, Engaging in Illicit Sexual Conduct in Foreign Places),
- (18) 18 U.S.C. §2424 (failure to file factual statement about an alien individual),
- (19) 18U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

(c) Foreign offenses. Any conviction for a sex offense involving any conduct listed in 46.2903(a) that was obtained under the laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

(d) Military offenses. Any military conviction for a sex offense. This includes sex offenses under the Uniform Code of Military Justice, as specified by the U.S. Secretary of Defense under section 115(a) (8) (C) (i) of Public Law 105-119 (codified at 10 U.S.C. 951 note).

(e) Juvenile offenses or adjudications. Any sex offense, attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. §2241(a) and (b)), and committed by a minor who is 14 years of age or older at the time of the offense. This includes engaging in a sexual act with another by force or the threat of serious violence; or engaging in a sexual act with another by rendering the victim unconscious or involuntarily drugging the victim.

(f) Jurisdiction Offenses. Any sex offense committed in any jurisdiction, including American Samoa, that involves:

- (1) Any conduct that by its nature is a sex offense against a minor,
  - (2) Any type or degree of genital, oral, or anal penetration,
  - (3) Any sexual touching of or sexual contact with a person's body, either directly or through the clothing,
  - (4) Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense,
  - (5) False imprisonment of a minor,
  - (6) Kidnapping of a minor,
  - (7) Possession, production, or distribution of child pornography,
  - (8) Solicitation of a minor to practice prostitution,
  - (9) Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct,
  - (10) Use of a minor in a sexual performance.
- (g) Any offense similar to those outlined in:
- (1) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),
  - (2) 18 U.S.C. §1801 (video voyeurism of a minor),
  - (3) 18 U.S.C. §2241 (aggravated sexual abuse),
  - (4) 18 U.S.C. §2242 (sexual abuse),
  - (5) 18 U.S.C. §2244 (abusive sexual contact),
  - (6) 18 U.S.C. §2422(b)(coercing a minor to engage in prostitution), or
  - (7) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

**History:** 2014, PL 33-18.

#### **46.2904 Tier I offenses.**

(a) Sex offenses. A "Tier I" offense includes any sex offense, for which a person has been convicted that is not a "Tier II" or "Tier III" offense.

(b) Generally. A "Tier I" offense also includes any offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to 46.2903 that involves the false imprisonment of a minor, video voyeurism of a minor, possession or receipt of child pornography, is punishable by a maximum term of imprisonment of one year or less.

(c) American Samoa offenses:

- (1) 46.3533 False imprisonment (when the offender is not a parent, and the victim is under 18)
- (2) 46.3615 Sexual abuse in the First degree (when the victim is 18 or older)
- (3) 46.3616 Sexual abuse in the Second degree
- (d) Certain Federal Offenses. Conviction for any of the following federal offenses or an attempt or conspiracy to commit such an offense shall be considered a conviction for a “Tier I” offense:
  - (1) 18 U.S.C. §1801 (video voyeurism of a minor),
  - (2) 18 U.S.C. §2252 (receipt or possession of child pornography),
  - (3) 18 U.S.C. §2252A (receipt or possession of child pornography),
  - (4) 18 U.S.C. §2252B (misleading domain names on the internet),
  - (5) 18 U.S.C. §2252C (misleading words or digital images on the internet),
  - (6) 18 U.S.C. §2422(a) (coercion to engage in prostitution),
  - (7) 18 U.S.C. §2423(b) (travel with the intent to engage in illicit conduct),
  - (8) 18 U.S.C. §2423(c) (engaging in illicit conduct in foreign places),
  - (9) 18 U.S.C. §2423(d) (arranging, inducing procuring or facilitating the travel in interstate commerce of an adult for the purpose of engaging in illicit conduct for financial gain),
  - (10) 18 U.S.C. §2424 (failure to file factual statement about an alien individual), or
  - (11) 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).
- (e) Certain military offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in 46.2904 (b), (c), or (d) shall be considered a “Tier 1” offense.

**History:** 2014, PL 33-18.

#### **46.2905 Tier II offenses.**

- (a) Recidivism and felonies. Unless otherwise covered by 46.2906, any sex offense that is not the first sex offense for which a person has been convicted and that is punishable by more than one year in jail is considered a “Tier II” offense.
- (b) Offenses involving minors. A “Tier II” offense includes any sex offense against a minor for which a person has been convicted that involves:
  - (1) The use of minors in prostitution, including solicitations;
  - (2) Enticing a minor to engage in criminal sexual activity;
  - (3) A non-forcible sexual act with a minor 16 or 17 years old;
  - (4) Sexual contact with a minor 13 years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body;
  - (5) The use of a minor in a sexual performance; or
  - (6) The production or distribution of child pornography.
- (c) American Samoa offenses:
  - (1) 46.3615 Sexual abuse in the First degree (victim 13-17)
  - (2) 46.3703 Patronizing prostitution (victim under 18)
  - (3) 46.3705 Promoting prostitution in the First degree (victim under 18)
  - (4) 46.3706 Promoting prostitution in the Second degree (victim under 18)
  - (5) 46.3802 Incest (victim 16 or 17)
  - (6) 46.3811 Abuse of a child (when the offense is of a sexual nature)

(c) Certain Federal Offenses. Conviction for any of the following federal offenses or an attempt or conspiracy to commit such an offense shall be considered a conviction for a “Tier II” offense:

- (1) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),
- (2) 18 U.S.C. §2423(d) (arranging, inducing procuring or facilitating the travel in interstate commerce of a minor for the purpose of engaging in illicit conduct for financial gain),
- (3) 18 U.S.C. §2244 (Abusive sexual contact, where the victim is 13 years of age or older),
- (4) 18 U.S.C. §2251 (sexual exploitation of children),
- (5) 18 U.S.C. §2251A (selling or buying of children),
- (6) 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),
- (7) 18 U.S.C. §2252A (production or distribution of material containing child pornography),
- (8) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States),
- (9) 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),
- (10) 18 U.S.C. §2422(b)(coercing a minor to engage in prostitution),
- (11) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

(d) Certain military offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in 46.2905 (a), (b) or (c) shall be considered a “Tier II” offense.

**History:** 2014, PL 33-18.

#### **46.2906 Tier III offenses.**

(a) Recidivism and felonies. Any sex offense that is punishable by more than one year in jail where the offender has at least one prior conviction or has previously become a Tier II sex offender, is a “Tier III” offense.

(b) General offenses. A “Tier III” offense includes any sex offense, for which a person has been convicted that involves:

- (1) Non-parental kidnapping of a minor;
  - (2) A sexual act with another by force or threat;
  - (3) A sexual act with another who has been rendered unconscious, is involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate;
- or
- (4) Sexual contact with a minor 12 years of age or younger, including offenses that cover sexual touching of, or contact with the intimate parts of the body, either directly or through the clothing.

(c) American Samoa offenses:

- (1) 46.3531 Kidnapping (when the offender is not a parent, and the victim is under 18)
- (2) 46.3532 Felonious restraint (when the offender is not a parent, and victim is under 18)
- (3) 46.3604 Rape
- (4) 46.3610 Sexual assault
- (5) 46.3611 Sodomy
- (6) 46.3612 Deviate sexual assault
- (7) 46.3615 Sexual abuse in the First degree (victim under 13)
- (8) 46.3618 Child molesting

(9) 46.3802 Incest (victim under 16).

(d) Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered conviction for a “Tier III” offense:

(1) 18 U.S.C. §2241(aggravated sexual abuse),

(2) 18 U.S.C. §2242 (sexual abuse),

(3) 18 U.S.C. §2243 (sexual abuse of a minor or ward),

(4) Where the victim is 12 years of age or younger, 18 U.S.C. §2244 (abusive sexual contact).

(d) Certain military offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in 46.2906 (b), (c) or (d) shall be considered a “Tier III” offense.

**History:** 2014, PL 33-18.

#### **46.2907 General requirements.**

(a) Duties. A sex offender covered by this code who is required to register pursuant to 46.2903 shall provide all of the information detailed in this chapter to the Attorney General’s Office. The Attorney General’s Office shall obtain all of the information detailed in this chapter from covered sex offenders who are required to register in accordance with this code, and shall implement any necessary policies and procedures.

(b) Digitization. All information obtained under this code shall be, at a minimum, maintained by the Attorney General’s Office in a digitized format.

(c) Electronic database. A sex offender registry shall be maintained in an electronic database by the Attorney General’s Office, and shall be in a form capable of electronic transmission.

**History:** 2014, PL 33-18.

#### **46.2908 Required information.**

(a) Criminal history. The Attorney General’s Office or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender’s criminal history:

(1) The date of all arrests;

(2) The date of all convictions;

(3) The sex offender’s status of parole, probation, or supervised release;

(4) The sex offender’s registration status; and

(5) Any outstanding arrest warrants.

(b) Date of birth. The Attorney General’s Office or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender’s date of birth:

(1) The sex offender’s actual date of birth; and

(2) Any other date of birth used by the sex offender.

(c) DNA. If the sex offender’s DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the Attorney General’s Office or designee a sample of his DNA. Any DNA sample obtained from the sex offender shall be submitted directly to the FBI for submission in CODIS.

(d) Driver's license. A covered sex offender shall provide all of the sex offender's valid driver's licenses issued by any jurisdiction, and the Attorney General's Office or designee shall make a photocopy of any such licenses.

(e) Identification cards, passports and travel documents. A covered sex offender shall provide and the Attorney General's Office or designee shall make a photocopy of the following:

- (1) Any and all identification documents issued by any jurisdiction;
- (2) Any and all passports and/or travel documents used by the sex offender; and
- (3) Any and all immigration documents used by the sex offender.

(f) Employment. The Attorney General's Office or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's employment; to include any and all places where the sex offender is employed through any means, including volunteer and unpaid positions:

- (1) The name of the sex offender's employer;
- (2) The address or location of the sex offender's employer; and
- (3) Similar information related to any transient or day labor employment.

(g) Finger and palm prints. The Attorney General's Office or designee shall obtain, and a covered sex offender shall provide, both finger prints and palm prints. The Attorney General's Office or designee shall submit the offender's finger prints to the FBI's Integrated Automated Fingerprint Identification System (IAFIS) database, and shall submit the offender's palm prints to the FBI's palm print database.

(h) Internet identifiers. The Attorney General's Office or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's internet related activity:

- (1) Any and all email addresses used by the sex offender;
- (2) Any and all Instant Message addresses and identifiers;
- (3) Any and all other designations or monikers used for self-identification in internet communications or postings; and
- (4) Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings.

(i) Name. The Attorney General's Office or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's name:

- (1) The sex offender's full primary given name as reflected on any official birth certificate;
- (2) Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used.

(j) Phone numbers. The Attorney General's Office or designee shall obtain, and a covered sex offender shall provide, any and all telephone numbers and any other designations used by sex offenders for purposes of routing or self-identification in telephonic communications including but not limited to:

- (1) Any and all cellular telephone numbers;
- (2) Any and all land line telephone numbers;
- (3) Any and all voice over IP (VOIP) telephone numbers.

(k) Photograph. A covered sex offender shall permit his photograph to be taken by the Attorney General's Office or designee:

- (1) Every 90 days for Tier III sex offenders;
- (2) Every 180 days for Tier II sex offenders; and
- (3) Every year for Tier I sex offenders.

(l) Physical description. The Attorney General's Office or designee shall obtain, and a covered sex offender shall provide, an accurate description of the sex offender as follows:



(1) A physical description;  
(2) A general description of the sex offender's physical appearance or characteristics; and  
(3) Any identifying marks, such as, but not limited to scars, moles, birthmarks, or tattoos.  
(m) Professional licenses. The Attorney General's Office or designee shall obtain, and a covered sex offender shall provide, all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

(n) Address. The Attorney General's Office or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's residence:

(1) The address of each residence at which the sex offender resides or will reside;  
(2) The address of each residence where the sex offender has resided in the past 5 years;  
and

(3) Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

(o) School location. The Attorney General's Office or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's school:

(1) The name and address of each school where the sex offender is or will be a student; and  
(2) The names and addresses of the schools where the sex offender was a student, this includes any and all high schools and colleges/universities or vocational schools the sex offender has attended.

(p) Social security number. The Attorney General's Office or designee shall obtain, and a covered sex offender shall provide, the following information:

(1) A valid social security number for the sex offender; and  
(2) Any social security number the sex offender has used in the past; valid or otherwise.

(q) Lodging information. The Attorney General's Office or designee shall obtain, and a covered sex offender shall provide, the following information when the sex offender will be absent from his residence for seven days or more:

(1) Identifying information of the temporary lodging locations including addresses and names;

(2) The dates the sex offender will be staying at each temporary lodging location; and

(3) The registered sex offender shall provide the information in (1) and (2) above no later than 7 days before his scheduled travel. The information shall be provided in person.

(r) Travel abroad. The Attorney General's Office or designee shall obtain, and a covered sex offender shall provide, the following information when the sex offender will be travelling outside of the territory of American Samoa:

(1) Identifying information of the intended destination, itinerary information, and any other relevant travel information;

(2) The dates the sex offender will be at the intended destination;

(3) The registered sex offender shall provide the information in 46.2908 no later than 21 days before his scheduled travel. The information shall be provided in person;

(4) The Attorney General's Office or designee shall immediately notify the U.S. Marshals Service and any other jurisdiction where the sex offender is either registered, or is required to register, of that updated information.

(s) Offense information. The Attorney General's Office or designee shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

(t) Detailed information. The Attorney General's Office or designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles owned or

operated by the sex offender for work or personal use; including land vehicles, aircrafts, and watercrafts:

- (1) License plate numbers;
- (2) Registration numbers or identifiers;
- (3) General description of the vehicle to include color, make, model, and year; and
- (4) Any permanent or frequent location where any covered vehicle is kept.

(u) Sex offender acknowledgement form. The sex offender shall read or have read to them, and sign a form stating that the duty to register has been explained to them by the Attorney General's Office, and that the sex offender understands the registration requirement.

(1) The form shall be signed and dated by the Attorney General's Office personnel registering the sex offender;

(2) The Attorney General's Office shall immediately upload the acknowledgement form into the Attorney General's Office sex offender registry.

**History:** 2014, PL 33-18.

#### **46.2909 Frequency and duration of registration.**

(a) Frequency. A sex offender who is required to register shall, at a minimum, appear in person at the Attorney General's Office for purposes of verification and keeping their registration current in accordance with the following time frames:

(1) For "Tier I" offenders, once every year for 15 years from the time of release from custody for a sex offender who is incarcerated for the registration offense, or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.

(2) For "Tier II" offenders, once every 180 days for 25 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.

(3) For "Tier III" offenders, once every 90 days for the rest of their lives.

(b) Reduction of registration periods. A sex offender may have their period of registration reduced as follows:

(1) A Tier I offender may have his or her period of registration reduced to 10 years, if he or she has maintained a clean record for 10 consecutive years;

(2) A Tier III offender may have his or her period of registration reduced to 25 years if he or she was adjudicated a delinquent of an offense as a juvenile that required Tier III registration, and he or she has maintained a clean record for 25 consecutive years.

(c) Clean record. For purposes of this chapter, a person has a clean record if:

(1) He or she has not been convicted of any offense, for which there was a maximum term of imprisonment of more than one year;

(2) He or she has not been convicted of any sex offense;

(3) He or she has successfully completed, without revocation, any period of supervised release, probation, or parole; and

(4) He or she has successfully completed an appropriate sex offender treatment program certified by the Attorney General's Office, a tribe, another jurisdiction, or by the Attorney General of the United States.

**History:** 2014, PL 33-18; 2017, PL 35-4.

#### **46.2910 Requirements for in-person appearances.**

(a) Photographs. At each in person verification, the sex offender shall permit the Attorney General's Office to take a photograph of the offender.

(b) Review of information. At each in person verification the sex offender shall review existing information for accuracy.

(c) Notification. If any new information or change in information is obtained at an in person verification, the Attorney General's Office shall immediately notify all other jurisdictions in which the sex offender is required to register of the information or change in information.

(d) If any new information or change in information is obtained at an in person verification, the Attorney General's Office shall immediately update the public website, if applicable, and update information in NCIC/NSOR.

**History: 2014, PL 33-18.**

#### **46.2911 Where registration is required.**

(a) Jurisdiction of conviction. A sex offender must initially register with the Attorney General's Office if the sex offender was convicted by a court in American Samoa of a covered sex offense, regardless of the sex offender's actual or intended residency.

(b) Jurisdiction of incarceration. A sex offender must register with the Attorney General's Office if the sex offender is incarcerated within American Samoa while completing any sentence for a covered sex offense, regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence.

(c) Jurisdiction of residence. A sex offender must register with the Attorney General's Office if the sex offender resides within American Samoa.

(d) Jurisdiction of employment. A sex offender must register with the Attorney General's Office if he or she is employed within American Samoa.

(e) Jurisdiction of school attendance. A sex offender must register with the Attorney General's Office if the sex offender is a student in any capacity within American Samoa.

**History: 2014, PL 33-18.**

#### **46.2912 Timing of registration.**

(a) Timing. A sex offender required to register with American Samoa under this code shall do so in the following timeframe:

(1) If convicted by a court in American Samoa for a covered sex offense and incarcerated, the sex offender must register before being released from incarceration;

(2) If convicted by a court in American Samoa for a covered sex offenses but not incarcerated, within 3 business days of sentencing for the registration offense; and

(3) Within 3 business days of establishing a residence, commencing employment, or becoming a student in American Samoa, a sex offender must appear in person to register with Attorney General's Office.

(b) Duties of Attorney General's Office. The Attorney General's Office shall have policies and procedures in place to ensure the following:

(1) That any sex offender incarcerated or sentenced by a court in American Samoa for a covered sex offense completes their initial registration;

(2) That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement;

(3) That the sex offender is registered, and immediately added to the public website if applicable;

(4) That upon entry of the sex offender's information into the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status; and

(5) That all information is entered and updated in NCIC/NSOR.

**History:** 2014, PL 33-18.

#### **46.2913 Retroactive registration.**

(a) Retroactive registration. The Attorney General's Office shall have in place policies and procedures to ensure the following three categories of sex offenders are subjected to the registration and updating requirements of this code:

(1) Sex offenders incarcerated or under the supervision of American Samoa, whether for a covered sex offense or other crime;

(2) Sex offenders already registered or subject to a pre-existing sex offender registration requirement; and

(3) Sex offenders reentering the justice system due to conviction for any crime.

(b) Timing of recapture. The Attorney General's Office shall ensure recapture of the sex offenders mentioned in this section within the following timeframe to be calculated from the date of passage of this code:

(1) For Tier I sex offenders, 1 year;

(2) For Tier II sex offenders, 180 days; and

(3) For Tier III sex offenders, 90 days.

**History:** 2014, PL 33-18.

#### **46.2914 Keeping the registration current.**

(a) All sex offenders required to register in American Samoa shall immediately appear in person at the Attorney General's Office to update any changes to their:

(1) Name;

(2) residence (including termination of residency);

(3) employment;

(4) school attendance;

(5) temporary lodging; or

(6) international travel.

(b) All sex offenders required to register in American Samoa shall immediately notify Attorney General's Office to update any changes to their:

(1) vehicle information;

(2) internet identifiers;

(3) or telephone numbers.

**History:** 2014, PL 33-18.

#### **46.2915 Failure to appear for registration.**

(a) In the event a sex offender fails to register as required by this code, the Attorney General's Office or designee shall immediately inform the jurisdiction that provided notification

that the sex offender was to commence residence, employment, or school attendance in American Samoa that the sex offender failed to appear for registration.

(b) If the Attorney General's Office or designee receives information that a sex offender has absconded, the Attorney General's Office shall make an effort to determine if the sex offender has actually absconded.

(1) In the event no determination can be made, the Attorney General's Office or designee shall ensure the Office of the Attorney General and any other appropriate law enforcement agency is notified.

(2) If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.

(3) If an absconded sex offender cannot be located, then the local police shall take the following steps:

(A) Update the registry/public website to reflect the sex offender has absconded or is otherwise not capable of being located;

(B) Notify the U.S. Marshals Service, National Sex Offender Targeting Center;

(C) Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest, where appropriate;

(D) Update the NCIC/NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located; and

(E) Enter the sex offender into the National Crime Information Center Wanted Person File.

**History:** 2014, PL 33-18.

#### **46.2916 Public sex offender registry website.**

(a) Website. The Attorney General's Office shall use and maintain a public sex offender registry website.

(b) Links. The Attorney General's Office's public sex offender registry website shall include links to sex offender safety and education resources.

(c) Instructions. The Attorney General's Office's public sex offender registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.

(d) Warnings. The Attorney General's Office's public sex offender registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses, and that any such action could result in civil or criminal penalties.

(e) Search capabilities. The Attorney General's Office's public sex offender registry website shall have the capability of conducting searches by (1) name; (2) county, city, and/or town; and (3) zip code and/or geographic radius.

(f) Dru Sjodin National Sex Offender Public Website. The Attorney General's Office shall include in the design of its registry website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States.

**History:** 2014, PL 33-18.

**46.2917 Required and prohibited information.**

(a) Required information. The following information shall be made available to the public on the sex offender registry website:

- (1) Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded;
- (2) All sex offenses for which the sex offender has been convicted;
- (3) The sex offense(s) for which the offender is currently registered;
- (4) The name of the sex offender's employer(s);
- (5) The name of the sex offender including all aliases;
- (6) A current photograph of the sex offender;
- (7) A physical description of the sex offender;
- (8) The residential address and, if relevant, a description of a habitual residence of the sex offender;
- (9) All names of schools attended by the sex offender; and
- (10) The sex offender's vehicle license plate number along with a description of the vehicle.

(b) Prohibited information. The following information shall not be available to the public on the sex offender registry website:

- (1) Any arrest that did not result in conviction;
- (2) The sex offender's social security number;
- (3) Any travel and immigration documents;
- (4) The identity of the victim; and
- (5) Internet identifiers.

**History:** 2014, PL 33-18.

**46.2918 Community notifications.**

(a) Law enforcement notification. Whenever a sex offender registers or updates his or her information, the Attorney General's Office shall:

- (1) Monitor and utilize the SORNA exchange portal for inter-jurisdictional change of residence, employment or student status;
- (2) Immediately update NCIC/NSOR;
- (3) Immediately notify any agency, department, or program within the territory that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions;
- (4) Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's residency, school attendance, or employment;
- (5) Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a) when a sex offender registers or updates registration;
- (6) Immediately enter or update information posted on the public website.

(b) Community notification. The Attorney General's Office shall ensure there is an automated community notification process in place that ensures the following:

- (1) Upon a sex offender's registration or update of information, the public sex offender registry website is immediately updated;
- (2) The public sex offender registry has a function that enables the general public to request an e-mail notice that will notify them when a sex offender commences residence, employment,

or school attendance with the Attorney General's Office, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the public registry for the new information.

**History:** 2014, PL 33-18.

**46.2919 Immunity.**

(a) No waiver of immunity. Nothing under this chapter shall be construed as a waiver of sovereign immunity for the Attorney General's Office, its departments, agencies, employees, or agents.

(b) Good faith. Any person acting under good faith of this territory shall be immune from any civil liability arising out of such actions.

**History:** 2014, PL 33-18.

**46.2920 Failure to register as a sex offender and related offenses.**

(a) Failure to register as a sex offender.

(1) A sex offender commits the crime of failure to register as a sex offender if he:

(A) Fails to register as a sex offender as required by this code;

(B) Fails to appear for his periodic verification requirement; or

(C) Fails to keep his registration current.

(2) Failure to register as a sex offender is a class D felony.

(b) Hindrance of sex offender registration.

(1) A person commits the crime of hindrance of sex offender registration if they:

(A) Knowingly harbors, knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this Title;

(B) Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for noncompliance with the requirements of this Title; or

(C) Provides information to law enforcement agency regarding a sex offender which the person knows to be false.

(2) Hindrance of Sex Offender Registration is a class A misdemeanor.

**History:** 2014, PL 33-18.

**46.2921 Severability.**

The provisions of this act are severable. If any part of this act is declared invalid or found unconstitutional, that shall not affect the remainder of this act.

**History:** 2014, PL 33-18.

## **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.**

(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.

**History:** 2020, PL 36-11.

**46.3002      Plea of 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.

**History:** 2020, PL 36-11.



**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.

**History:** 2020, PL 36-11.

**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.

**History:** 2020, PL 36-11.

**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.

**History:** 2020, PL 36-11.

## **Part II. Crimes**

### **Chapter 31**

#### **GENERAL PROVISIONS**

**Sections:**

- 46.3101 Short title.**
- 46.3102 Classes of crimes.**
- 46.3103 Infractions.**
- 46.3104 Offenses and infractions must be defined by statute.**
- 46.3105 Application to offenses committed before and after enactment.**
- 46.3106 Time limitations.**
- 46.3107 Limitation on conviction for multiple offenses.**
- 46.3108 Conviction of included offenses.**
- 46.3109 Burden of injecting the issue.**
- 46.3110 Affirmative defense.**
- 46.3111 Definitions.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978.

MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC—Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

**46.3101 Short title.**

This title shall be known and may be cited as "The Criminal Justice Act of 1979".

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 556.011.

**46.3102 Classes of crimes.**

(a) An offense defined by this title or by any other statute of this Territory for which a sentence of death or imprisonment is authorized, constitutes a "crime". Crimes are classified as felonies and misdemeanors.

(b) A crime is a "felony" if it is so designated or if persons convicted of it may be sentenced to death or imprisonment for a term which is in excess of one year.

(c) A crime is a "misdemeanor" if it is so designated or if persons convicted of it may be sentenced to imprisonment for a term of which the maximum is one year or less.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 556 016, 15 ASC 1.

**46.3103            Infractions.**

(a) An offense defined by this title or by any other statute of this Territory constitutes an “infraction” if it is so designated or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction.

(b) An infraction does not constitute a crime, and conviction of an infraction does not give rise to any disability or legal disadvantage based on conviction of a crime.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 556.021.

**46.3104            Offenses and infractions must be defined by statute.**

No conduct constitutes an offense or an infraction unless made so by this title, other applicable statutes, or the Uniform Village Regulations.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 556.026.

**46.3105            Application to offenses committed before and after enactment.**

(a) The provisions of this title govern the construction and punishment for any offense defined in this title and committed after 31 December 1979, as well as the construction and application of any defense to a prosecution for that offense.

(b) Offenses defined outside of this title and not specifically repealed remain in effect.

(c) The provisions of this title do not apply to or govern the construction of and punishment for any offense committed prior to 1 January 1980 or the construction and application of any defense to a prosecution for that offense. The offense must be construed and punished according to the provisions of law existing at the time of its commission in the same manner as if this title had not been enacted.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 556 031.

**46.3106            Time limitations.**

(a) A prosecution for any class A felony may be commenced at any time.

(b) Except as otherwise provided in this section, prosecutions for other offenses must be commenced within the following periods of limitation:

(1) for any felony, 3 years;

(2) for any misdemeanor, 1 year;

(3) for any infraction, 6 months.

(c) If the period prescribed in subsection (b) has expired, a prosecution may nevertheless be commenced for:

(1) any offense a material element of which is either fraud or a breach of fiduciary obligation within 1 year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this provision extend the period of limitation by more than 3 years; and

(2) any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within 2 years thereafter but in no case shall this provision extend the period of limitation by more than 3 years.

(d) An offense is committed either when every element occurs, or, if a legislative purpose to

prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity in it is terminated. Time starts to run on the day after the offense is committed.

(e) A prosecution is commenced and is pending either when a criminal complaint or an information is filed.

(f) The period of limitation does not run:

(1) during anytime when the accused is absent from the territory but in no case does this provision extend the period of limitation otherwise applicable by more than 3 years; or

(2) during any time when the accused is concealing himself from justice either within or outside this territory; or

(3) during any time when a prosecution against the accused for the offense is pending in this territory.

**History:** 1979, PL 16-43 § 2; 2004, PL 28-9.

**Research Guide:** MCC 556 036, 15 ASC 4601, 15 ASC 4602.

#### **46.3107 Limitation on conviction for multiple offenses.**

When the same conduct of a person may establish the commission of more than 1 offense, he may be prosecuted for each offense. He may not, however, be convicted of more than 1 offense if:

(1) 1 offense is included in the other, as defined in 46.3108; or

(2) inconsistent findings of fact are required to establish the commission of the offenses; or

(3) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of conduct; or

(4) the offense is defined as a continuing course of conduct and the person's course of conduct was uninterrupted unless the law provides that specific periods of that conduct constitute separate offenses.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 556 041.

#### **46.3108 Conviction of included offenses.**

(a) A defendant may be convicted of an offense included in an offense charged in the indictment or information. An offense is so included when:

(1) it is established by proof of it or less than all the facts required to establish the commission of the offense charged; or

(2) it is specifically denominated by statute as a lesser degree of the offense charged; or

(3) it consists of an attempt to commit the offense charged or to commit an offense otherwise included in it.

(b) The court is not to be obligated to charge the jury with respect to an included offense unless there is a basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 556 046.

#### **46.3109 Burden of injecting the issue.**

When the phrase "the defendant has the burden of injecting the issue" is used in this title it means:

(1) the defense referred to is not submitted to the trier of fact unless supported by some evidence; and

(2) if the issue is submitted to the trier of fact, any reasonable doubt on the issue requires a

finding for the defendant on that issue.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 556.051.

#### **46.3110 Affirmative defense.**

When the phrase “affirmative defense” is used in this title, it means:

- (1) the defense referred to is not submitted to the trier of fact unless supported by evidence; and
- (2) if the defense is submitted to the trier of fact, the defendant has the burden of persuasion that the defense is more probably true than not.

**History:** 1979, PL 16-43 § 2.

**Research Guide:**

#### **46.3111 Definitions.**

In this title, unless the context requires a different definition, the following shall apply:

- (1) “Affirmative defense” has the meaning specified in 46.3110.
- (2) “Burden of injecting the issue” has the meaning specified in 46.3109.
- (3) Confinement: a person is in “confinement” when he is held in a place of confinement pursuant to arrest or order of a court, and remains in confinement until:
  - (A) a court orders his release; or
  - (B) he is released on bail, bond, or recognizance, personal or otherwise; or
  - (C) a public servant having the legal power and duty to confine him authorizes his release without guard and without condition that he return to confinement;
  - (D) a person is not in confinement if:
    - (i) he is on probation or parole, temporary or otherwise; or
    - (ii) he is under sentence to serve a term of confinement which is not continuous or is serving a sentence under a work-release program and in either case is not being held in a place of confinement or is not being held under guard by a person having the legal power and duty to transport him to or from a place of confinement.
- (4) Consent or lack of consent may be expressed or implied. Assent does not constitute consent if:
  - (A) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and the incompetence is manifest or known to the actor; or
  - (B) it is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
  - (C) it is induced by force, duress or deception.
- (5) “Criminal negligence” has the meaning specified in 46.3202.
- (6) Custody: a person is in “custody” when he has been arrested but has not been delivered to a place of confinement.
- (7) “Dangerous instrument” means any instrument, article, or substance which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.
- (8) “Dangerous felony” means the felonies of murder, forcible rape, assault, robbery, kidnapping, or the attempt to commit any of these felonies.
- (9) “Deadly weapon” means any firearm, loaded or unloaded, or any weapon from which a shot, readily capable of producing death or serious physical injury may be discharged; or switchblade knife, dagger, billy, blackjack, metal knuckles: or rock, bottle or other missile.
- (10) “Felony” has the meaning specified in 46.3102.
- (11) “Forcible compulsion” means either:
  - (A) physical force that overcomes reasonable resistance; or
  - (B) a threat, express or implied, that places a person in reasonable fear of death, serious

physical injury or kidnapping of himself or another person.

(12) "Incapacitated" means that physical or mental condition, temporary or permanent, in which a person is unconscious, unable to appraise the nature of his conduct, or unable to communicate unwillingness to an act. A person is not "incapacitated" with respect to an act committed upon him if he became unconscious, unable to appraise the nature of his conduct or unable to communicate unwillingness to an act, after consenting to the act.

(13) "Inhabitable structure" has the meaning specified in 46.4001.

(14) "Infraction" has the meaning specified in 46.3103.

(15) "Knowingly" has the meaning specified in 46.3202.

(16) "Law enforcement officer" means any public servant having the authority to make arrests for violations of the laws of this territory.

(17) "Misdemeanor" has the meaning specified in 46.3102.

(18) "Offense" has the meaning specified in 46.3102.

(19) "Physical injury" means physical pain, illness, or any impairment of physical condition.

(20) "Place of confinement" means any building or facility and its grounds wherein a court is legally authorized to order that a person charged with or convicted of a crime be held.

(21) "Public servant" means any person employed in any way by the government of this territory who is compensated by the government by reason of his employment. It includes, but is not limited to, legislators, jurors, members of the judiciary and law enforcement officers. It does not include witnesses.

(22) "Purposely" has the meaning specified in 46.3202.

(23) "Recklessly" has the meaning specified in 46.3202.

(24) "Serious physical injury" means physical injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(25) "Unlawfully" means without justification or excuse.

(26) "Voluntary act" has the meaning specified in 46.3201.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 556 061, 15 ASC 1, 15 ASC 181, 15 ASC 261, 15 ASC 341, 15 ASC 941, 15 ASC 4801, 15 ASC 4802.

## **Chapter 32**

### **LIABILITY**

#### **Sections:**

- 46.3201 Voluntary act.**
- 46.3202 Culpable mental state-Definition.**
- 46.3203 Culpable mental state- Application.**
- 46.3204 Culpable mental state-When not required.**
- 46.3205 Ignorance and mistake.**
- 46.3206 Accountability for conduct.**
- 46.3207 Responsibility for the conduct of another.**
- 46.3208 Defense precluded.**
- 46.3209 Conviction of different degrees of offenses.**
- 46.3210 Liability of corporations and unincorporated associations.**
- 46.3211 Liability of individual for conduct on behalf of corporation or unincorporated association.**
- 46.3212 Entrapment.**
- 46.3213 Duress.**
- 46.3214 Intoxicated or drugged condition.**
- 46.3215 Nonliability of infants.**
- 46.3216 Lack of responsibility because of mental disease or defect.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978. MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC—Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.3201 Voluntary act.**

(a) A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act.

(b) A “voluntary act” is:

(1) a bodily movement performed while conscious as a result of effort or determination; or

(2) an omission to perform an act of which the actor is physically capable.

(c) Possession is a voluntary act if the possessor knowingly procures or receives the thing possessed, or having acquired control of it was aware of his control for a sufficient time to have enabled him to dispose of it or terminate his control.

(d) A person is not guilty of an offense based solely upon an omission to perform an act unless the law defining the offense provides expressly, or a duty to perform the omitted act is otherwise imposed by law.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC562.011, 15 ASC 4801.

#### **46.3202 Culpable mental state-Definition.**

(a) Except under 46.3204, a person is not guilty of an offense unless he acts with a culpable mental state, that is, unless he acts purposely or knowingly or recklessly or with criminal negligence, as the statute defining the offense may require with respect to the conduct, the result of it, or the attendant circumstances which constitute the material elements of the crime.

(b) A person “acts purposely”, or with purpose, with respect to his conduct or to a result thereof when it is his conscious object to engage in that conduct or to cause that result.

(c) A person “acts knowingly”, or with knowledge:

(1) with respect to his conduct or to attendant circumstances when he is aware of the nature of his conduct or that those circumstances exist; or

(2) with respect to a result of his conduct when he is aware that his conduct is practically certain to cause that result.

(d) A person “acts recklessly” or is reckless when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and that disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

(e) A person “acts with criminal negligence” or is criminally negligent when he fails to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, and that failure constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

**History:** 1979, PL 16-43 § 2.

#### **Case Notes:**

Absent clear legislative dimension of causation, proof as to causation required for conviction is proof beyond a reasonable doubt that proximately because of the neglect of duty or act of the defendant, the injury to the victim occurred. Intoxicated defendant acquitted where deceased darted from behind bus. *Government v. Pulu*, ASR (1976).

**Research Guide:** MCC562.016, 15 ASC 341, 15 ASC 4801.

**46.3203 Culpable mental state-Application.**

(a) If the definition of an offense prescribes a culpable mental state but does not specify the conduct, attendant circumstances or result to which it applies, the prescribed culpable mental state applies to each material element unless a contrary purpose plainly appears.

(b) Except under 46.3204, if the definition of an offense does not expressly prescribe a culpable mental state, a culpable mental state is nonetheless required and is established if a person acts purposely or knowingly or recklessly, but criminal negligence is not sufficient.

(c) If the definition of an offense prescribes criminal negligence as the culpable mental state, it is also established if a person acts purposely or knowingly or recklessly. When recklessness suffices to establish a culpable mental state, it is also established if a person acts purposely or knowingly. When acting knowingly suffices to establish a culpable mental state, it is also established if a person acts purposely.

(d) Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense is not an element of an offense unless the statute clearly provides it.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 562.021, 15 ASC 4801.

**46.3204 Culpable mental state-When not required.**

A culpable mental state is not required:

(1) if the offense is an infraction and no culpable mental state is prescribed by the law defining the offense; or

(2) if the statute defining the offense clearly indicates a purpose to dispense with the requirement of any culpable mental state as to a specific element of the offense.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 562.026, 15 ASC 4801.

**46.3205 Ignorance and mistake.**

(a) A person is not relieved of criminal liability for conduct because he engages in that conduct under a mistaken belief of fact or law unless that mistake negatives the existence of the mental state required by the offense.

(b) A person is not relieved of criminal liability for conduct because he believes his conduct does not constitute an offense unless his belief is reasonable, and:

(1) the offense is defined by an administrative rule or order which is not known to him and has not been published or otherwise made reasonably available to him, and he could not have acquired that knowledge by the exercise of due diligence pursuant to facts known to him; or

(2) he acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in:

(A) a statute;

(B) an opinion or order of court; or

(C) an official interpretation of the statute, rule, or order defining the offenses made by a public official or agency legally authorized to interpret that statute, rule, or order.

(c) The burden of injecting the issue of reasonable belief that conduct does not constitute an offense under paragraph (b) (1) and (2) is on the defendant.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 562 031, 15 ASC 4801.



**46.3206 Accountability for conduct.**

A person with the required culpable mental state is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is criminally responsible, or both.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 562 031, 15 ASC 4801.

**46.3207 Responsibility for the conduct of another.**

- (a) A person is criminally responsible for the conduct of another when:
  - (1) the statute defining the offense makes him responsible; or
  - (2) either before or during the commission of an offense with the purpose of promoting the commission of an offense, he aids or agrees to aid or attempts to aid the other person in planning, committing or attempting to commit the offense.
- (b) However, a person is not responsible if:
  - (1) he is the victim of the offense committed or attempted;
  - (2) the offense is so defined that his conduct was necessarily incident to the commission or attempt to commit the offense. If his conduct constitutes a related but separate offense, he is criminally responsible for that offense but not for the conduct or offense committed or attempted by the other person; or
  - (3) before the commission of the offense he abandons his purpose and gives timely warning to law enforcement authorities or otherwise makes proper effort to prevent the commission or the offense.
- (c) The defense provided by paragraph (b) (3) is an affirmative defense.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 562.041, 15 ASC 2, 15 ASC 3, 15 ASC 4801.

**46.3208 Defense precluded.**

It is no defense to any prosecution for an offense in which the criminal responsibility of the defendant is based upon the conduct of another that:

- (1) the other person has been acquitted or has not been convicted or has been convicted of some other offense or degree of offense or lacked criminal capacity or was unaware of the defendant's criminal purpose or is immune from prosecution or is not amenable to Justice; or
- (2) the defendant does not belong to that class of persons who was legally capable of committing the offense in an individual capacity.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 562.046, 15 ASC 2, 15 ASC 3.

**46.3209 Conviction of different degrees of offenses.**

Except as otherwise provided, when 2 or more persons are criminally responsible for an offense which is divided into degrees, each person is guilty of that degree as is compatible with his own culpable mental state and with his own accountability for an aggravating or mitigating fact or circumstance.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 562.051.

**46.3210 Liability of corporations and unincorporated associations.**

- (a) A corporation is guilty of an offense if:

(1) the conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law;

(2) the conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation, and the offense is a misdemeanor or an infraction, or the offense is one defined by a statute that clearly indicates a legislative intent to impose that criminal liability on a corporation; or

(3) the conduct constituting the offense is engaged in, authorized, solicited, requested, commanded or knowingly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation.

(b) An unincorporated association is guilty of an offense if:

(1) the conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on the association by law; or

(2) the conduct constituting the offense is engaged in by an agent of the association while acting within the scope of his employment and in behalf of the association and the offense is one defined by a statute that clearly indicates a legislative intent to impose that criminal liability on the association.

(c) As used in this section:

(1) "Agent" means any director, officer, or employee of a corporation or unincorporated association or any other person who is authorized to act in behalf of the corporation or unincorporated association.

(2) "High managerial agent" means an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 562.056.

#### **46.3211 Liability of individual for conduct on behalf of corporation or unincorporated association.**

A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or in behalf of a corporation or unincorporated association to the same extent as if the conduct were performed in his own name or behalf.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 562.061.

#### **46.3212 Entrapment.**

(a) The commission of acts which would otherwise constitute an offense is not criminal if the actor engaged in the prescribed conduct because he was entrapped by a law enforcement officer or a person acting in cooperation with such an officer.

(b) An "entrapment" is perpetrated if a law enforcement officer or a person acting in cooperation with an officer, for the purpose of obtaining evidence of the commission of an offense, solicits, encourages, or otherwise induces another person to engage in conduct when he was not ready and willing to engage in that conduct.

(c) The relief afforded by subsection (a) is not available as to any crime which involves causing physical injury to or placing in danger of physical injury a person other than the person perpetrating the entrapment.

(d) The defendant has the burden of injecting the issue of entrapment.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 562.066.

**46.3213 Duress.**

(a) It is an affirmative defense that the defendant engaged in the conduct charged to constitute an offense because he was coerced to do so, by the use of or threatened imminent use of, unlawful physical force upon him or a 3d person, which force or threatened force a person of reasonable firmness in his situation would have been unable to resist.

(b) The defense of “duress” as defined in subsection (a) is not available

(1) as to the crime of murder; or

(2) as to any offense when the defendant recklessly places himself in a situation in which it is probable that he will be subjected to the force of threatened force described in subsection (a).

History: 1979, PL 16-43 § 2.

Research Guide: MCC 562.071, 15 ASC 4801.

**46.3214 Intoxicated or drugged condition.**

(a) A person who is in an intoxicated or drugged condition whether from alcohol, drugs, or other substance, is criminally responsible for conduct unless that condition:

(1) negatives the existence of the mental states of purpose or knowledge when those mental states are elements of the offense charged or of an included offense; or

(2) is involuntarily produced and substantially deprives him of the capacity to know or appreciate the nature, quality, or wrongfulness of his conduct or to conform his conduct to the requirements of law.

(b) The defendant has the burden of injecting the issue of intoxicated or drugged condition.

History: 1979, PL 16-43 § 2.

Research Guide: MCC 562.076, 15 ASC 4801.

**46.3215 Nonliability of infants.**

(a) Children under 10 years of age are conclusively presumed to be incapable of committing any crime.

(b) Children between 10 and 14 years of age are conclusively presumed to be incapable of committing any crime, except for felonies, in which case the presumption is rebuttable.

(c) The provisions of this section do not prevent proceedings against, or the disciplining of any person under 18 years of age as a delinquent child, a child in need of supervision, a neglected or dependent child, or under the certification provisions of 45.0340 through 45.0344.

(d) “Age” means age at the time of the alleged offense.

(e) The defendant has the burden of injecting the issue of infancy.

History: 1979, PL 16-43 § 2; 2004, PL 28-9.

Research Guide: 15 ASC 4802.

**46.3216 Lack of responsibility because of mental disease or defect.**

(a) A person is not responsible for criminal conduct if at the time of the conduct as a result of mental disease or defect he did not know or appreciate the nature, quality, or wrongfulness of his conduct or was incapable of conforming his conduct to the requirements of law.

(b) The procedures for the defense of lack of responsibility because of mental disease or defect are governed by 46.1301 through 46.1310.

History: 1979, PL 16-43 § 2.

Research Guide: MCC 562.086.

## Chapter 33

### DEFENSE OF JUSTIFICATION

#### Sections:

- 46.3301 Definitions.**
- 46.3302 Civil remedies unaffected.**
- 46.3303 Execution of public duty.**
- 46.3304 Justification-Avoidance of harm or evil.**
- 46.3305 Use of force in defense of persons.**
- 46.3306 Use of physical force in defense of premises.**
- 46.3307 Use of physical force in defense of property.**
- 46.3308 Law enforcement officer's use of force in making an arrest.**
- 46.3309 Private person's use of force in making an arrest.**
- 46.3310 Use of force to prevent escape from confinement.**
- 46.3311 Use of force by persons with responsibility for care, discipline, or safety of others.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978.

MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC—Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.3301 Definitions.**

As used in this chapter:

- (a) "Deadly force" means physical force which the actor uses with the purpose of causing or which he knows to create a substantial risk of causing death or serious physical injury.
- (b) "Dwelling" means any building or inhabitable structure, whether permanent, movable, or temporary, or a portion of it, which is for the time being the actor's home or place of lodging.
- (c) "Premises" includes any building, inhabitable structure and any real property.
- (d) "Private person" means any person other than a law enforcement officer.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 563.011.

#### **46.3302 Civil remedies unaffected.**

The fact that conduct is justified under this chapter does not abolish nor impair any remedy for that conduct which is available in any civil action.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 563 016.

#### **46.3303 Execution of public duty.**

(a) Unless inconsistent with the provisions of this chapter defining the justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when that conduct is required or authorized by a statutory provision or by a judicial decree. Among those kinds of provisions and decrees are:

- (1) laws defining duties and functions of public servants;
- (2) laws defining duties of private persons to assist public servants in the performance of their functions;

- (3) laws governing the execution of legal process;
- (4) laws governing the military services and the conduct of war; and
- (5) judgments and orders of courts.
- (b) The defense of justification afforded by subsection (a) applies:
  - (1) when a person reasonably believes his conduct to be required or authorized by the judgment or directions of a competent court or tribunal or in the legal execution of legal process, in spite of lack of jurisdiction of the court or defect in the legal process;
  - (2) when a person reasonably believes his conduct to be required or authorized to assist a public servant in the performance of his duties, in spite of that the public servant exceeded his legal authority;
- (c) The defendant has the burden of injecting the issue of justification under this section.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 563 021.

#### **46.3304 Justification-Avoidance of harm or evil.**

- (a) Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable; provided, that:
  - (1) the harm or evil sought to be avoided by the conduct is greater than that sought to be prevented by the law defining the offense charged;
  - (2) neither this title nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and
  - (3) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.
- (b) When the defendant was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 563.026.

#### **46.3305 Use of force in defense of persons.**

- (a) A person may, subject to subsection (b), use physical force upon another person when and to the extent he reasonably believes it to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful force by the other person unless:
  - (1) the actor was the initial aggressor; except that in that case his use of force is nevertheless justifiable, provided:
    - (A) he has withdrawn from the encounter and effectively communicated that withdrawal to the other person but the latter persists in continuing the incident by the use or threatened use of unlawful force
    - (B) he is a law enforcement officer and as such is an aggressor under 46.3308;
    - (C) the aggressor is justified under some other provision of this chapter or other provision of law; or
    - (D) under the circumstances as the actor reasonably believes them to be, the person whom he seeks to protect would not be justified in using that protective force.
- (b) A person may not use deadly force upon another person under the circumstances specified in subsection (a) unless he reasonably believes that the deadly force is necessary to protect himself or another against death, serious physical injury, rape, sodomy, or kidnapping.
- (c) The justification afforded by this section extends to the use of physical restraint as protective force provided that the actor takes all reasonable measures to terminate the restraint as soon as it is reasonable to do so.

(d) The defendant has the burden of injecting the issue of justification under this section.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

A finding of self-defense is a complete defense to a criminal charge of third-degree assault. A.S.C.A. §§ 46.3305 & 46.3522(a). *Galea'i v. Atofau*, 16 A.S.R.2d 76 (1990).

**Research Guide:** MCC 563.031.

**46.3306 Use of physical force in defense of premises.**

(a) A person in possession or control of premises or a person who is licensed or privileged to be there, may, subject to subsection (b), use physical force upon another person when and to the extent that he reasonably believes it necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission of the crime of trespass by the other person.

(b) A person may use deadly force under circumstances described in subsection (a) only:

(1) when the use of deadly force is authorized under other sections of this chapter; or

(2) when he reasonably believes it necessary to prevent what he reasonably believes to be an attempt by the trespasser to commit arson or burglary upon his dwelling.

(c) The defendant has the burden of injecting the issue of justification under this section.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 563.036.

**46.3307 Use of physical force in defense of property.**

(a) A person may, subject to the limitations of subsection (b) use physical force upon another person when and to the extent that he reasonably believes it necessary to prevent what he reasonably believes to be the commission or attempted commission by that person of stealing, property damage, or tampering in any degree.

(b) A person may use deadly force under circumstances described in subsection (a) only when the use of deadly force is authorized under other sections of this chapter.

(c) The jurisdiction afforded by this section extends to the use of physical restraint as protective force provided that the actor takes all reasonable measures to terminate the restraint as soon as it is reasonable to do so.

(d) The defendant has the burden of injecting the issue of justification under this section.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 563.041.

**46.3308 Law enforcement officer's use of force in making an arrest.**

(a) A law enforcement officer need not retreat nor desist from efforts to effect the arrest, or from efforts to prevent the escape from custody, of a person he reasonably believes to have committed an offense because of resistance or threatened resistance of the arrested person. In addition to the use of physical force authorized under other sections of this chapter he is subject to subsections (b) and (c) justified in the use of the physical force as he reasonably believes is immediately necessary to effect the arrest or to prevent the escape from custody.

(b) The use of any physical force in making an arrest is not justified under this section unless the law enforcement officer reasonably believes the arrest is lawful.

(c) A law enforcement officer in effecting an arrest or in preventing an escape from custody is justified in using deadly force only:

(1) when it is authorized under other sections of this chapter; or

(2) when he reasonably believes that the use of deadly force is immediately necessary to

effect the arrest and also reasonably believes that the person to be arrested may endanger life or inflict serious physical injury unless arrested without delay.

(d) The defendant has the burden of injecting the issue of justification under this section.

**History:** 1979, PL 16-43 § 2.

**46.3309 Private person's use of force in making an arrest.**

(a) A private person who has been directed by a person he reasonably believes to be a law enforcement officer to assist that officer to effect an arrest or to prevent escape from custody may, subject to the limitations of subsection (c), use physical force when and to the extent that he reasonably believes it to be necessary to carry out that officer's direction unless he knows or believes that, the arrest or prospective arrest is not or was not authorized.

(b) A private person acting on his own account may, subject to the limitations of subsection (c), use physical force to effect arrest or prevent escape only when and to the extent it is immediately necessary to effect the arrest, or to prevent escape from custody, of a person whom he reasonably believes to have committed a crime.

(c) A private person in effecting an arrest or in preventing escape from custody is justified in using deadly force only:

(1) when it is authorized under other sections of this chapter;

(2) when he reasonably believes it to be authorized under the circumstances and he is directed or authorized by a law enforcement officer to use deadly force; or

(3) when he reasonably believes the use of deadly force is immediately necessary to effect the arrest of a person who at that time and in his presence:

(A) committed or attempted to commit a class A felony or murder; or

(B) is attempting to escape by use of a deadly weapon.

(d) The defendant has the burden of injecting the issue of justification under this section.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 563.051.

**46.3310 Use of force to prevent escape from confinement.**

(a) A guard or other law enforcement officer may, subject to subsection (b), use physical force when he reasonably believes it to be immediately necessary to prevent escape from confinement or in transit to it or from it.

(b) A guard or other law enforcement officer may use deadly force under circumstances described in subsection (a) only:

(1) when the use of deadly force is authorized under other sections of this chapter: or

(2) when he reasonably believes there is a substantial risk that the escapee will endanger human life or cause serious physical injury unless the escape is prevented.

(c) The defendant has the burden of injecting the issue of justification under this section.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 563.056.

**46.3311 Use of force by persons with responsibility for care, discipline, or safety of others.**

(a) The use of physical force by an actor upon another person is justifiable when the actor is a parent, guardian, or other person entrusted with the care and supervision of a minor or an incompetent person or when the actor is a teacher or other person entrusted with the care and supervision of a minor for a special purpose; and

(1) the actor reasonably believes that the force used is necessary to promote the welfare of a minor or incompetent person, or, if the actor's responsibility for the minor is for special purposes, to further that special purpose or to maintain reasonable discipline in a school, class

or other group; and

(2) the force used is not designed to cause or believed to create a substantial risk of causing death, serious physical injury, disfigurement, extreme pain, or extreme emotional distress.

(b) A warden or other authorized official of a jail, prison, or correctional facility may, in order to maintain order and discipline, use whatever physical force, is authorized by law, including deadly force.

(c) The use of physical force by an actor upon another person is justifiable when the actor is a person responsible for the operation of or the maintenance of order in a vehicle or other carrier of passengers and the actor reasonably believes that that force is necessary to prevent interference with its operation or to maintain order in the vehicle or other carrier; except, that deadly force may be used only when the actor reasonably believes it necessary to prevent death or serious physical injury.

(d) The use of physical force by an actor upon another person is justified when the actor is a physician or a person assisting at his direction: and

(1) the force is used for the purpose of administering a medically acceptable form of treatment which the actor reasonably believes to be adapted to promoting the physical or mental health of the patient; and

(2) the treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of the parent, guardian, or other person legally competent to consent on his behalf, or the treatment is administered in an emergency when the actor reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

(e) The use of physical force by an actor upon another person is justifiable when the actor acts under the reasonable belief that:

(1) the other person is about to commit suicide or to inflict serious physical injury upon himself; and

(2) the force used is necessary to thwart the result.

(f) The defendant has the burden of injecting the issue of justification under this section.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 563.061.

## **Chapter 34**

### **INCHOATE OFFENSES**

#### **Sections:**

- 46.3401 Attempt-Guilty when.**
- 46.3402 Attempt-No defense to prosecution.**
- 46.3403 Attempt-Affirmative defense.**
- 46.3404 Attempt-Classification.**
- 46.3405 Conspiracy-Guilty when.**
- 46.3406 Conspiracy-With unidentified person.**
- 46.3407 Conspiracy-Multiple offenses.**
- 46.3408 Conspiracy-Prevention of accomplishment.**
- 46.3409 Conspiracy-Termination-Abandonment.**
- 46.3410 Conspiracy-Effect of commission of offense.**
- 46.3411 Conspiracy-Classification.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC — American Samoa Code as of 13 December 1978.

MICC — Missouri Criminal Code, enacted as Senate Bill 60 in 1977. effective 1 January 1979

MPC — Model Penal Code.



**46.3401 Attempt-Guilty when.**

(a) A person is guilty of attempt to commit an offense when, with the purpose of committing the offense, he does any act which is a substantial step towards the commission of the offense.

(b) A “substantial step” is conduct which is strongly corroborative of the firmness of the actor’s purpose to complete the commission of the offense.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 564 011, 15 ASC 2.

**46.3402 Attempt-No defense to prosecution.**

It is no defense to a prosecution under 46.3401 through 46.3404, that the offense attempted was, under the actual attendant circumstances, factually or legally impossible of commission if the offense could have been committed had the attendant circumstances been as the actor believed them to be.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 564.011, 15 ASC 2, 15 ASC 2

**46.3403 Attempt-Affirmative defense.**

(a) When the actor’s conduct would otherwise constitute an attempt under 36.3401 through 46.3404, it is an affirmative defense that he abandoned his effort to commit the crime or otherwise presented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of the defense does not, however, affect the liability of an accomplice who did not join in that abandonment or prevention. Renunciation of criminal purpose is not voluntary if it is motivated in whole or in part, by circumstances not present or apparent at the inception of the actor’s course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

(b) The defendant has the burden of injecting the issue of renunciation of criminal purpose under 46.3401.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MPC 5.01(4).

**46.3404 Attempt-Classification.**

Unless otherwise provided, an attempt to commit an offense is a:

- (1) class B felony if the offense attempted is a class A felony;
- (2) class C felony if the offense attempted is a class B felony;
- (3) class D felony if the offense attempted is a class C felony;
- (4) class A misdemeanor if the offense attempted is a class D felony;
- (5) class C misdemeanor if the offense attempted is a misdemeanor of any degree.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 564 011, 15 ASC 2.

**46.3405 Conspiracy-Guilty when.**

(a) A person is guilty of conspiracy with another person or persons to commit an offense if, with the purpose of promoting or facilitating its commission, he agrees with the other person or persons that they or one or more of them will engage in conduct which constitutes the offense.

(b) No person may be convicted of conspiracy to commit an offense unless an overt act in pursuance of the conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 564 016, 15 ASC 301, 15 ASC 302.

**46.3406 Conspiracy-With unidentified person.**

If a person guilty of conspiracy knows that a person with whom he conspires to commit an offense has conspired with another person or persons to commit the same offense, he is guilty of conspiring with the other person or persons to commit that offense, whether or not he knows their identity.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 564.016, 15 ASC 301, 15 ASC 302.

**46.3407 Conspiracy-Multiple offenses.**

If a person conspires to commit a number of offenses, he is guilty of only 1 conspiracy so long as the multiple offenses are the object of the same agreement.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 564.016, 15 ASC 301, 15 ASC 302.

**46.3408 Conspiracy-Prevention of accomplishment.**

(a) Persons may not be convicted of conspiracy if, after conspiring to commit the offense, they prevented the accomplishment of the objectives of the conspiracy under circumstances manifesting a renunciation of their criminal purpose.

(b) The defendant has the burden of injecting the issue of renunciation of criminal purpose under subsection (a).

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 564 016, 15 ASC 301, 15 ASC 302.

**46.3409 Conspiracy-Termination-Abandonment.**

For the purpose of time limitations on prosecutions,

(a) Conspiracy is a continuing course of conduct which terminates when the offense or offenses which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired.

(b) If an individual abandons the agreement, the conspiracy is terminated as to him only if he advises those with whom he has conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation in it.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 564.016, 15 ASC 301, 15 ASC 302.

**46.3410 Conspiracy-Effect of commission of offense.**

A person may not be charged, convicted, or sentenced on the basis of the same course of conduct of both the actual commission of an offense and a conspiracy to commit that offense.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 564.016, 15 ASC 301, 15 ASC 302.

**46.3411 Conspiracy-Classification.**

Unless otherwise provided, a conspiracy to commit an offense is a:

- (1) class B felony if the object of the conspiracy is a class A felony;
- (2) class C felony if the object of the conspiracy is a class B felony;
- (3) class D felony if the object of the conspiracy is a class C felony;
- (4) class A misdemeanor if the object of the conspiracy is a class D felony;
- (5) class C misdemeanor if the object of the conspiracy is a misdemeanor of any degree.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 564 016, 15 ASC 301, 15 ASC 302.

**Chapter 35****OFFENSES AGAINST THE PERSON****Sections:**

- 46.3501 Definitions.**
- 46.3502 Murder in the 1<sup>st</sup> degree.**
- 46.3503 Murder in the 2<sup>nd</sup> degree.**
- 46.3504 Manslaughter.**
- 46.3505 Criminally negligent homicide.**
- 46.3506 Promoting suicide.**
- 46.3510 Determination of guilt prior to sentencing.**
- 46.3511 Verdict of guilty-Presentence hearing-Determination of punishment.**
- 46.3512 Error in presentence hearing-Reversal of trial court.**
- 46.3513 Death penalty-Life imprisonment.**
- 46.3514 Evidence to be considered in 1st degree murder cases.**
- 46.3515 High Court to review all death sentences.**
- 46.3516 Effect of finding unconstitutional provisions.**
- 46.3520 Assault in the 1st degree.**
- 46.3521 Assault in 2nd degree.**
- 46.3522 Assault in the 3rd degree.**
- 46.3523 Consent as a defense.**
- 46.3524 Harassment.**
- 46.3525 Stalking.**
- 46.3530 Lack of consent in kidnapping and crimes involving restraint.**
- 46.3531 Kidnapping.**
- 46.3532 Felonious restraint.**
- 46.3533 False imprisonment.**
- 46.3534 Defenses to false imprisonment.**
- 46.3535 Interference with custody.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978 MCC—Missouri Criminal Code, enacted as Senate Bill

in 1977. effective 1 January 1979.

MPC—Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.3501 Definitions.**

The following definitions are applicable in this chapter unless the context otherwise requires:

(a) “Criminal homicide” means conduct which causes the death of a person under circumstances constituting murder in the 1st or 2nd degree, manslaughter, or criminally negligent homicide.

(b) “Person”, when referring to the victim of a homicide, means a human being who had been born and was alive at the time of the homicidal act.

(c) “Course of conduct” means following by maintaining visual or physical proximity to a specific person or directing verbal, written or other threats, whether express or implied, to a specific person on two or more occasions over a period of time, however short, but does not include constitutionally protected activity.

(d) “Immediate family member” means a spouse, parent, child or sibling or any other person who regularly resides in a person’s household or resided in a person’s household within the past six months.

**History:** 1979, PL 16-43 § 2; amd 2010, PL 31-10.

#### **46.3502 Murder in the 1st degree.**

(a) A person commits the crime of murder in the 1st degree if:

(1) intending or knowing that his conduct will cause death or serious bodily injury, he causes the death of another person with deliberation; or

(2) acting either alone or with 1 or more other persons, he commits or attempts to commit any class A felony and in the course of and in furtherance of the offense or immediate flight from it, he or another person who is a party to the offense recklessly causes the death of a person other than 1 of the parties to the commission of the offense:

(3) it is an affirmative defense to a charge of violation subparagraph (a)(2) that the defendant:

(A) was not the only participant in the underlying crime:

(B) did not commit the homicidal act or in any way solicit, request, command importune, cause, or aid the commission of it:

(C) was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons;

(D) had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(E) had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(b) For the purposes of this section, “deliberation” means that the defendant acts with either the intention or the knowledge that he will kill another human being or cause him serious bodily injury, when the intention or knowledge precedes the killing by an appreciable length of time to permit reflection; an act is not done with deliberation if it is the instant effort of impulse.

(c) The penalties for murder in the 1st degree are provided for in 46.3510 through 46.3516.

**History:** 1979, PL 16-43 § 2.

#### **Case Notes:**

“Malice aforethought” is satisfied by defendant acting from anger, spite and revenge, while aware that shooting 16-gauge shotgun could cause case grave injury to victims. *Government v. Patu*, ASR (1976).

**46.3503 Murder in the 2nd degree.**

- (a) A person commits the crime of murder in the 2nd degree if:
- (1) he intentionally causes the death of another person;
  - (2) knowing that his conduct will cause death or serious physical injury, he causes the death of another person; or
  - (3) under circumstances manifesting extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death and thereby causes the death of another person.
- (b) Murder in the 2nd degree is a class A felony.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

Where a statute requires that a person act intentionally, knowingly, or purposefully, or "attempt" to commit a crime, proof of specific intent is required. A.S.C.A. §§ 46.3503 (a)(1), 46.3503 (a)(2), 46.3520 (a)(1), 46.3520 (a)(2). *Tauasosi v. American Samoa Government*, 7 A.S.R.2d 5 (1988).

No proof of specific intent is required by statute providing that a person commits a crime if "under circumstances manifesting extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death. A.S.C.A. §§ 46.3503 (a)(3), 46.3520 (a)(3). *Tauasosi v. American Samoa Government*, 7 A.S.R.2d 5 (1988).

**46.3504 Manslaughter.**

- (a) Criminal homicide constitutes manslaughter when:
- (1) it is committed recklessly; or
  - (2) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse; the reasonableness of the explanation or excuse is determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be;
  - (3) at the time of the killing, he believes the circumstances to be that, if they existed, would justify the killing under 46.3301 et seq., but his belief is unreasonable.
- (b) Manslaughter is a class C felony.

**History:** 1979, PL 16-43 § 2.

**46.3505 Criminally negligent homicide.**

- (a) A person commits the crime of criminally negligent homicide if, with criminal negligence, he causes the death of another person.
- (b) Criminally negligent homicide is a class D felony.

**History:** 1979, PL 16-43 § 2.

**46.3506 Promoting suicide.**

- (a) A person is guilty of promoting suicide when he intentionally causes or aids another person to attempt suicide, or when he intentionally aids another person to commit suicide.
- (b) Promoting suicide is a class D felony.

**History:** 1979, PL 16-43 § 2.

**46.3510 Determination of guilt prior to sentencing.**

- (a) At the conclusion of all trials upon an indictment or information for murder in the 1st degree heard by a jury, and after argument of counsel and proper charge from the court, the jury retires to consider a verdict of guilty or not guilty without any consideration of punishment, and by their verdict ascertains, whether the defendant is guilty of murder in the 1st degree, murder in the 2nd degree, manslaughter, criminally negligent homicide, or is not guilty of any offense.
- (b) In nonjury murder cases, the court likewise first considers a finding of guilty or not guilty without any consideration of punishment, and by its verdict ascertains, whether the defendant is

guilty of murder in the 1st degree, murder in the 2nd degree, manslaughter, criminally negligent homicide, or is not guilty of any offense.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 565 .066

**46.3511 Verdict of guilty-Presentence hearing-Determination of punishment.**

(a) Where the jury or judge returns a verdict or finding of guilty of murder in the 1st degree, the court resumes the trial and conducts a presentence hearing before the jury or judge at which time the only issue is the determination of the punishment to be imposed. In the hearing, subject to the laws or rules of evidence, the jury or judge hears additional evidence in mitigation and aggravation of punishment. Only the evidence in aggravation as the prosecution has made known to the defendant prior to his trial and as provided in 46.3514 is admissible.

(b) The jury or judge also hears argument by the defendant or his counsel and the prosecuting attorney regarding the punishment to be imposed. The additional procedure provided in 46.3514 is followed. The prosecuting attorney opens and the defendant concludes the argument to the jury or judge.

(c) Upon conclusion of the evidence and arguments, the judge gives the jury appropriate instructions and the jury retires to determine the punishment to be imposed. The jury, or the judge in cases tried by a judge, fixes a sentence within the limits prescribed by law.

(d) The judge imposes the sentence fixed by the jury or judge. If the jury cannot, within a reasonable time, agree to the punishment, the judge imposes sentence within the limits of the law, except that, the judge in no instance imposes the death penalty when, in cases tried by a jury, the jury cannot agree upon the punishment.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 565 .066.

**46.3512 Error in presentence hearing-Reversal of trial court.**

If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered applies only to the issue of punishment.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 565 .066.

**46.3513 Death penalty-Life imprisonment.**

Persons convicted of the offense of murder in the 1st degree shall, if the judge or jury so recommends after complying with the provisions of 46.3510 through 46.3512 and 46.3514, be punished by death. If the judge or jury does not recommend the imposition of the death penalty on a finding of guilty of murder in the 1st degree, the convicted person is punished by imprisonment by the corrections division for life and is not to be eligible for probation or parole until he has served a minimum of 40 years of his sentence.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 565 .008, 15 ASC 541

**46.3514 Evidence to be considered in 1<sup>st</sup> degree murder cases.**

(a) In cases of 1st degree murder, the judge or jury may impose the death penalty only if one or more of the statutory aggravating circumstances is proven. There is no mandatory death penalty.

(b) One or more of the statutory aggravating circumstances must be proved to impose the

death penalty. In these cases the judge or jury must consider in determining the defendant's sentence any mitigating circumstances before the death penalty may be imposed.

(c) When 1 or more of the statutory aggravating circumstances is proved, the judge or jury must decide whether the mitigating circumstances outweigh the aggravating circumstances.

(d) Statutory aggravating circumstances are limited to:

- (1) the defendant previously has been convicted of 1st or 2nd degree murder;
- (2) at the time of the murder, the defendant committed another murder;
- (3) the defendant created a grave risk of death to many persons;
- (4) the murder was especially heinous, atrocious, or cruel, involving torture or other depravity;
- (5) the murder was purposely committed for pecuniary gain for the defendant or another person.

(e) Statutory mitigating circumstances include:

- (1) the defendant has no significant history of prior felony convictions within the last 10 years;
- (2) the murder was committed while the defendant was under the influence of mental or emotional disturbance;
- (3) the victim was a participant in or consented to the murder;
- (4) the defendant was an accomplice in a murder and his role in the murder was relatively minor;
- (5) the defendant acted under duress or under the domination of another person;
- (6) the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform to the law was substantially impaired;
- (7) the defendant believed the conduct of the victim provided moral justification for the murder;
- (8) the defendant was of a young age at the time of the murder;
- (9) any other factors the defendant desires to be considered in imposition of sentence.

**History:** 1979, PL 16-43 § 2.

#### **46.3515 High Court to review all death sentences.**

(a) Whenever the death penalty is imposed in any case, and upon the judgment becoming final in the trial court, the sentence is reviewed on the record by the High Court of American Samoa.

(b) The High Court considers the punishment as well as any errors listed by way of appeal.

(c) With regard to the sentence, the High Court determines:

- (1) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor; and
- (2) whether the evidence supports the jury's or judge's finding of a statutory aggravating circumstance as listed in 46.3514; and
- (3) whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

(d) Both the defendant and the territory have the right to submit briefs within the time provided by the High Court, and to present oral argument to the High Court.

(e) The High Court includes in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the High Court, with regard to review of death sentences, is authorized to:

- (1) affirm the sentence of death; or
- (2) set the sentence aside and remand the case for resentencing by the trial judge based on the record and argument of counsel. The records of those similar cases referred to by the High Court in its decision shall be provided to the resentencing judge for his consideration.

(f) The sentence review is in addition to direct appeal, if taken, and the review and appeal is consolidated for consideration. The court renders its decision on legal errors listed, the factual substantiation of the verdict, and the validity of the sentence.

(g) Decisions of the High Court affirming sentences of death are subject to review by the

Governor.

(h) Decisions of the Governor affirming sentences of death are subject to review by the Secretary of the Interior.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 565.014, 15 ASC 5101, 15 ASC 5103, 15 ASC 5104.

**46.3516 Effect of finding unconstitutional provisions.**

If the United States Supreme Court or the High Court of American Samoa declares the death penalty to be in violation of any provision of the Constitution of the United States or the Constitution of American Samoa, any killing in which the death penalty could otherwise be properly imposed shall be charged and, if convicted, punished as provided by law, except that, the defendant shall not be eligible for probation or parole until he has served a minimum of 40 years of his sentence.

**History:** 1979, PL 1643 § 2.

**Research Guide:** MCC 565 .016

**46.3520 Assault in the 1st degree.**

- (a) A person commits the crime of assault in the 1st degree if:
  - (1) he purposely or knowingly causes serious physical injury to another person; or
  - (2) he attempts to kill or to cause serious physical injury to another person; or
  - (3) under circumstances manifesting extreme indifference to the value of human life he recklessly engages in conduct which creates a grave risk of death to another person and thereby causes serious physical injury to another person.
- (b) Assault in the 1st degree is a class B felony unless committed by means of a deadly weapon or dangerous instrument, then it is a class A felony.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

Court interprets word ‘murder’ to have been intended, by the Legislature, to encompass murder in both first and second degree; thus, proof of either is sufficient hereunder. *Government v. Patu*, ASR (1976).

Statute providing that assault in the first degree is committed when a person "attempts to kill or cause serious physical injury to another person" requires proof of specific intent. A.S.C.A. § 46.3520 (a)(2). *Tauasosi v. American Samoa Government*, 7 A.S.R.2d 5 (1988).

Where a statute requires that a person act intentionally, knowingly, or purposefully, or "attempt" to commit a crime, proof of specific intent is required. A.S.C.A. §§ 46.3503 (a)(1), 46.3503 (a)(2), 46.3520 (a)(1), 46.3520 (a)(2). *Tauasosi v. American Samoa Government*, 7 A.S.R.2d 5 (1988).

No proof of specific intent is required by statute providing that a person commits a crime if "under circumstances manifesting extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death. A.S.C.A. §§ 46.3503 (a)(3), 46.3520 (a)(3). *Tauasosi v. American Samoa Government*, 7 A.S.R.2d 5 (1988).

**Research Guide:** MCC 565 050, 15 ASC 201-206.

**46.3521 Assault in the 2nd degree.**

- (a) A person commits the crime of assault in the 2nd degree if:
  - (1) he knowingly causes or attempts to cause physical injury to another person by means of a deadly weapon or dangerous instrument;
  - (2) he recklessly causes serious physical injury to another person; or
  - (3) he attempts to kill or to cause serious physical injury or causes serious physical injury under circumstances that would constitute assault in the 1st degree under 46.3520, but:
- (A) acts under the influence of extreme emotional disturbance for which there is a reasonable



explanation or excuse; the reasonableness of the explanation or excuse is determined from the viewpoint of an ordinary person in the actor's situation under the circumstances as the actor believes them to be; or

(B) at the time of the act, he believes the circumstances to be that, if they existed, would justify killing or inflicting serious physical injury under the provisions of 46.3301 et seq., but his belief is unreasonable.

(b) The defendant has the burden of injecting the issues of extreme emotional disturbance under subparagraph (a) (3) (A) or belief in circumstances amounting to justification under subparagraph (a) (3) (B).

(c) Assault in the 2nd degree is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

Immigration officer became trespasser when he transgressed bounds of authority, property owner may use force to protect property from trespasses without being guilty of assault and battery. *Government v. Yan*. ASR (1976).

**Research Guide:** MCC 565 060, 15 ASC 201 —206.

**46.3522 Assault in the 3rd degree.**

(a) A person commits the crime of assault in the 3rd degree if:

(1) he attempts to cause or recklessly causes physical injury to another person;  
(2) with criminal negligence he causes physical injury to another person by means of a deadly weapon; or

(3) he purposely places another person in apprehension of immediate physical injury;

(4) he recklessly engages in conduct which creates a grave risk of death or serious physical injury to another person; or

(5) he knowingly causes physical contact with another person knowing the other person will regard the contact as offensive or provocative.

(b) Assault in the 3rd degree is a class A misdemeanor unless committed under paragraph (a) (3) or (5): then it is a class C misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

Justification of self-defense requires showing defendant was actually in fear of his life or serious bodily injury and conduct of other party was such to produce state in mind of a reasonable person. Injury to himself by others, fully warranted his fears. *Government v. Fun*. ASR (1976).

Because third-degree assault can be committed "recklessly" or even "with criminal negligence," a guilty plea does not establish what injuries, if any, were inflicted upon plaintiff, nor does it establish that defendant acted intentionally, an essential element of the tort of battery. A.S.C.A. § 46.3522(a)(1) & (4). *Galea'i v. Atofau*, 16 A.S.R.2d 76 (1990).

A finding of self-defense is a complete defense to a criminal charge of third-degree assault. A.S.C.A. §§ 46.3305 & 46.3522(a). *Galea'i v. Atofau*, 16 A.S.R.2d 76 (1990).

**Research Guide:** MCC 565.070, 15 ASC 201 —206.

**46.3523 Consent as a defense.**

(a) When conduct is charged to constitute an offense because it causes or threatens physical injury, consent to that conduct or to the infliction of the injury is a defense only if:

(1) the physical injury consented to or threatened by the conduct is not serious physical injury; or

(2) the conduct and the harm are reasonably foreseeable hazards of:

(A) the victim's occupation or profession; or

(B) Joint participation in a lawful athletic contest or competitive sport; or

(3) the consent establishes a justification for the conduct under 46.3301 et seq.

(b) The defendant has the burden of injecting the issue of consent.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

American Samoa's criminal law does not, except in a few extraordinary circumstances, allow consent as a justification for the infliction of serious injuries. A.S.C.A. § 46.3523. *Galea'i v. Atofau*, 16 A.S.R.2d 76 (1990).

**Research Guide:** MCC 565 080.

**46.3524 Harassment.**

(a) A person commits the crime of harassment if, with the purpose to harass, annoy, or alarm another person, he:

(1) communicates with a person by telephone, telegraph, mail, or any other form of written communication in a manner which he knows is likely to cause annoyance or alarm including, but not limited to, telephone calls initiated by vendors for the purpose of selling goods or services; or

(2) makes repeated or anonymous telephone calls to another person, whether or not conversation ensues, knowing that he is thereby likely to cause annoyance or alarm; or

(3) knowingly permits any telephone under his control to be used for a purpose prohibited by this section.

(b) Harassment is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**46.3525 Stalking.**

(a) A person commits the crime of stalking if he purposely or knowingly engages in a course of conduct that is directed toward another person and that conduct:

(1) causes reasonable fear of harm to the physical health, safety, or property of such person, a member of his immediate family, or a third party with whom he is acquainted; or

(2) causes harm to the mental or emotional health of such person after the actor was previously clearly informed to cease that conduct; or

(3) is likely to cause such person to reasonably fear that his employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at his place of employment or business, and the actor was previously clearly informed to cease that conduct.

(b) Stalking is a class B misdemeanor, unless the offense was committed when there is a temporary restraining order or an injunction, or both, or any other court order in effect prohibiting the conduct by the offender, then it is a Class A misdemeanor.

**History:** 2010, PL 31-10 § 2.

**46.3530 Lack of consent in kidnapping and crimes involving restraint.**

(a) It is an element of the offenses described in 46.3531 through 46.3533 that the confinement, movement, or restraint be committed without the consent of the victim.

(b) Lack of consent results from:

(1) forcible compulsion; or

(2) incapacity to consent.

(c) A person is considered incapable of consent if he is

(1) less than 14 years old, or

(2) incapacitated.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 565 100, 15 ASC 4801, 15 ASC 4802.

**46.3531 Kidnapping.**

(a) A person commits the crime of kidnapping if he unlawfully removes another without his consent from the place where he is found or unlawfully confines another without his consent for a substantial period, for the purpose of:

- (1) holding that person for ransom or reward or for any other act to be performed or not performed for the return or release of that person;
- (2) using the person as a shield or as a hostage;
- (3) interfering with the performance of any governmental or political function;
- (4) facilitating the commission of any felony or flight thereafter; or
- (5) inflicting physical injury on or terrorizing the victim or another.

(b) Kidnapping is a class A felony unless committed under paragraph (a) (4) or (5), in which case it is a class B felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 565 110, 15 ASC 622—624.

**46.3532 Felonious restraint.**

(a) A person commits the crime of felonious restraint if he knowingly restrains another unlawfully and without consent interferes substantially with his liberty and exposes him to a substantial risk of serious physical injury.

(b) Felonious restraint is a class C felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 565 120, 15 ASC 622.

**46.3533 False imprisonment.**

(a) A person commits the crime of false imprisonment if he knowingly restrains another unlawfully and without consent interferes substantially with his liberty.

(b) False imprisonment is a class A misdemeanor unless the person unlawfully restrained is removed from the territory, then it is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 565 130, 15 ASC 603.

**46.3534 Defenses to false imprisonment.**

(a) A person does not commit false imprisonment under 46.3533 if the person restrained is a child under the age of 17, and:

- (1) a parent, guardian, or other person responsible for the general supervision of the child's welfare has consented to the restraint; or
- (2) the actor is a relative of the child; and
- (A) the actor's sole purpose is to assume control of the child; and
- (B) the child is not taken out of the territory.

(b) For purposes of this section, "relative" means a parent or stepparent, ancestor, sibling, uncle or aunt, including an adoptive relative of the same degree through marriage or adoption n.

(c) The defendant has the burden of injecting the issue of a defense under this section.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 565.140.

**46.3535 Interference with custody.**

(a) A person commits the crime of interference with custody if, knowing that he has no legal right to do so he takes or entices from lawful custody any person entrusted by order of a court to the custody of another person or institution.

(b) Interference with custody is a class A misdemeanor unless the person taken or enticed away from legal custody is removed from the territory, then it is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 565.150.

**Chapter 36**

**SEXUAL OFFENSES**

**Sections:**

- 46.3601 Definitions.**
- 46.3602 Determination of marriage.**
- 46.3603 Mistake as to incapacity or age.**
- 46.3604 Rape.**
- 46.3610 Sexual assault.**
- 46.3611 Sodomy.**
- 46.3612 Deviate sexual assault.**
- 46.3615 Sexual abuse in the first degree.**
- 46.3616 Sexual abuse in the second degree.**
- 46.3617 Indecent exposure.**
- 46.3618 Child molesting.**
- 46.3619 Mandatory HIV testing for persons convicted of sexual offenses, or adjudicated as a juvenile offender.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978. MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC—Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

**46.3601 Definitions.**

As used in this chapter:

(a) “Deviate sexual intercourse” means any sexual act involving the genitals of one person and the mouth, tongue, hand, or anus of another person.

(b) “Sexual contact” means any touching of the genitals or anus of any person, or the breast of any female person, or any such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person.

(c) “Sexual intercourse” means any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

Element of sexual contact of “purpose of arousing or gratifying sexual desire” may be inferred from defendant’s conduct. *A.S.G. v. Masaniai*, 4 A.S.R.3d 156 (1987) (mem).

**Research Guide:** MCC 566.010, 15 ASC 981.

**46.3602 Determination of marriage.**

Persons living together as man and wife are married for purposes of this chapter, regardless of the legal status of their relationship otherwise. Spouses living apart under a decree of judicial separation are not married to one another for purposes of this chapter.

**History:** 1979, PL 16-43 § 2.

**46.3603 Mistake as to incapacity or age.**

(a) Whenever in this chapter the criminality of conduct depends upon a victim's being incapacitated, no crime is committed if the defendant reasonably believed that the victim consented to the act. The defendant has the burden of injecting the issue of belief as to capacity and consent.

(b) Whenever in this chapter the criminality of conduct depends upon a child's being under the age of 14, it is no defense that the defendant believed the child to be 14 years old or older.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 566.020, 15 ASC 581, 15 ASC 901.

**46.3604 Rape.**

(a) A person commits the crime of rape if:

(1) he has sexual intercourse with another person without that person's consent by the use of forcible compulsion; or

(2) he has sexual intercourse with another person who is 16 years of age or less.

(b) Rape is a class B felony unless in the course of it the actor inflicts serious physical injury on any person or displays a deadly weapon in a threatening manner, then rape is a class A felony.

**History:** 1979, PL 16-43 § 2; amd 1992, PL 22-26; amd 2004, PL 28-16.

**Case Notes:**

Proof of element of force requires only the act shall have been consummated with sufficient force to overbear the protests of the woman; the woman is not required to resist "tooth and nail" until she is beaten into insensibility. *Taukoko V. Government*, ASR (1977).

Element of force is missing where defendant places his trousers on ground and prosecutrix lays on them. *Government v. Maleko*, ASR (1976).

Elements of fornication are necessarily included within elements of unlawful carnal knowledge, an element of raw. *Government v. Maleko*, ASR (1976).

**Research Guide:** MCC 566.030, 15 ASC 901.

**46.3610 Sexual assault.**

(a) A person commits the crime of sexual assault if he has sexual intercourse with another person who is incapacitated or 16 years of age or less.

(b) Sexual assault is a class C felony unless in the course of it the actor inflicts serious physical injury on any person or displays a deadly weapon in a threatening manner, then the crime is a class B felony.

**History:** 1979, PL 16-43 § 2; 2004, PL 28-16.

**Research Guide:** MCC 566.040, 15 ASC 901.

**46.3611 Sodomy.**

(a) A person commits the crime of sodomy if:

(1) he has deviate sexual intercourse with another person without that person's consent or by

the use of forcible compulsion; or

(2) he has deviate sexual intercourse with another person who is 16 years of age or less.

(b) Sodomy is a class B felony unless in the course of it the actor inflicts serious physical injury on any person or displays a deadly weapon, then sodomy is a class A felony.

**History:** 1979, PL 16-43 § 2; amd 2004, PL, 28-16.

**Case Notes:**

Crime of sodomy does not include element of intent to arouse or gratify sexual desire. A.S.G. v. Masaniai 4 A.S.R.2d 156 (1986) (mem).

The overlap of the statutes defining sodomy and deviate sexual assault does not violate a criminal defendant's due process. A.S.C.A. §§ 46.3611, 46.3612. American Samoa Government v. Whitney, 20 A.S.R.2d 29 (1991).

Statute defining the crime of sodomy does not require proof that defendant committed the act with the purpose of arousing or gratifying sexual desire. A.S.C.A. § 46.3611. American Samoa Government v. Masaniai, 4 A.S.R.2d 156 (1987).

That defendant's conduct was similar to pre-Christian ceremonial practices was no defense in prosecution for sexual abuse and sodomy, since territorial legislature enacted no statutory exception for such practices. A.S.C.A. §§ 46.3611, 3612. American Samoa Government v. Masaniai, 4 A.S.R.2d 156 (1987).

In passing both a sodomy and a deviate sexual assault statute, the Fono has indicated that a prosecutor has the discretion to chose between charging a Class B or Class C felony for the same conduct. A.S.C.A. §§ 46.3611, 46.3612. American Samoa Government v. Whitney, 20 A.S.R.2d 29 (1991).

**Research Guide:** MCC 566.060, 15 ASC 981.

**46.3612 Deviate sexual assault.**

(a) A person commits the crime of deviate sexual assault if he has deviate sexual intercourse with another person without consent or who is incapacitated or who is 16 years of age or less.

(b) Deviate sexual assault is a class C felony unless in the course of it the actor inflicts serious physical injury on any person or displays a deadly weapon in a threatening manner, then the crime is a class B felony.

**History:** 1979, PL 16-43 § 2; amd 2004, PL, 28-16.

**Case Notes:**

The overlap of the statutes defining sodomy and deviate sexual assault does not violate a criminal defendant's due process. A.S.C.A. §§ 46.3611, 46.3612. American Samoa Government v. Whitney, 20 A.S.R.2d 29 (1991).

Statute defining the crime of sodomy does not require proof that defendant committed the act with the purpose of arousing or gratifying sexual desire. A.S.C.A. § 46.3611. American Samoa Government v. Masaniai, 4 A.S.R.2d 156 (1987).

That defendant's conduct was similar to pre-Christian ceremonial practices was no defense in prosecution for sexual abuse and sodomy, since territorial legislature enacted no statutory exception for such practices. A.S.C.A. §§ 46.3611, 3612. American Samoa Government v. Masaniai, 4 A.S.R.2d 156 (1987).

In passing both a sodomy and a deviate sexual assault statute, the Fono has indicated that a prosecutor has the discretion to chose between charging a Class B or Class C felony for the same conduct. A.S.C.A. §§ 46.3611, 46.3612. American Samoa Government v. Whitney, 20 A.S.R.2d 29 (1991).

**Research Guide:** MCC 566.070, 15 ASC 981.

**46.3615 Sexual abuse in the first degree.**

(a) A person commits the crime of sexual abuse in the first degree if:

(1) he subjects another person to sexual contact without that person's consent or by the use of forcible compulsion; or

(2) he subjects another person who is 16 years of age or less to sexual contact.

(b) Sexual abuse in the first degree is a class D felony unless in the course of it the actor inflicts serious physical harm on any person or displays a deadly weapon in a threatening manner, then the crime is a class C felony.

**History:** 1979, PL 16-43 § 2; amd 2004, PL 28-16.

**Research Guide:** MCC 566.100, 15 ASC 662, 15 ASC 663.

**46.3616 Sexual abuse in the second degree.**

(a) A person commits the crime of sexual abuse in the second degree if he subjects another person to sexual contact without that person's consent.

(b) Sexual abuse in the second degree is a class B misdemeanor unless in the course of it the actor displays a deadly weapon in a threatening manner, then the crime is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2; amd, 2004, PL 28-16.

**Case Notes:**

Element of sexual contact of "purpose of arousing or gratifying sexual desire" may be inferred from defendant's conduct. *A.S.G. v. Masaniai*, 4 A.S.R.3d 156 (1987) (mem).

**Research Guide:** MCC 566.120, 15 ASC 662, 15 ASC 663.

**46.3617 Indecent exposure.**

(a) A person commits the crime of indecent exposure if he knowingly exposes his genitals under the circumstances in which he knows that his conduct is likely to cause affront or alarm.

(b) Indecent exposure is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 566.1 30, 15 ASC 661.

**46.3618 Child molesting.**

(a) Notwithstanding any other provision of this chapter, a person commits the crime of child molesting if he engages in sexual intercourse or deviate sexual intercourse with a minor of the age of 12 years or under.

(b) Child molesting is a class A felony, the sentence of imprisonment for which must include a prison term of at least 10 years. This prison term is served without probation or parole.

**History:** 1981, PL 17-27 § 1.

**46.3619 Mandatory HIV testing for persons convicted of sexual offenses, or adjudicated as a juvenile offender.**

(a) Where a person is convicted as an adult or adjudicated as a juvenile offender under 46.3604, 46.3610, 46.3611, 46.3612, 46.3615, 46.3616 or 46.3618, the court shall order the following:

(1) That as a condition of sentence, the defendant shall, within thirty days, undergo testing performed by the American Samoa Government department of health to determine whether the defendant has the acquired immune deficiency syndrome (AIDS), or its precursor, human immunodeficiency virus (HIV) in his or her body.

(b) That the results of such tests shall be submitted to the court and made available only to the victim and to the defendant.

(c) That upon the victim's request, the Office of the Attorney General shall provide the victim with referrals to the Department of Health and Department of Human Resources for counseling, health care, medical testing, and support services relating to the acquired immune deficiency syndrome (AIDS), or precursor, human immunodeficiency virus (HIV).

**History:** 1994, PL 23-11.

## Chapter 37

### PROSTITUTION

#### Sections:

- 46.3701 Definitions.**
- 46.3702 Prostitution.**
- 46.3703 Patronizing prostitution.**
- 46.3704 Prostitution and patronizing prostitution—Sex of parties no defense when.**
- 46.3705 Promoting prostitution in the first degree.**
- 46.3706 Promoting prostitution in the second degree.**
- 46.3707 Prostitution houses considered public nuisances.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

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MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.3701 Definitions.**

As used in this chapter:

(a) Patronizes prostitution: a person “patronizes prostitution” if:

(1) under a prior understanding, he gives something of value to another person as compensation for that person or a third person having engaged in sexual conduct with him or with another;

(2) he gives or agrees to give something of value to another person on an understanding that in return there for that person or a third person will engage in sexual conduct with him or with another; or

(3) he solicits or requests another person to engage in sexual conduct with him or with another, or to secure a third person to engage in sexual conduct with him or with another, in return for something of value.

(b) Promoting prostitution: a person “promotes prostitution” if, acting other than as a prostitute or a patron of a prostitute, he knowingly:

(1) causes or aids a person to commit or engage in prostitution;

(2) procures or solicits patrons for prostitution;

(3) provides persons or premises for prostitution purposes;

(4) operates or assists in the operation of a house of prostitution or a prostitution enterprise;

(5) accepts or receives or agrees to accept or receive something of value under an agreement or understanding with any person where he participates or is to participate in proceeds of prostitution activity; or

(6) engages in any conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(c) Prostitution: a person commits “prostitution” if he engages or offers or agrees to engage in sexual conduct with another person in return for something of value to be received by the person or by a third person;

(d) “Sexual conduct” occurs when there is:

(1) “sexual intercourse” which has the meaning specified in subsection (c) of 46.3601;

(2) “deviate sexual intercourse” which has the meaning specified in subsection (a) of 46.3601;

(3) “sexual contact” which has the meaning specified in subsection (b) of 46.3601.

(e) “Something of value” means any money or property, or any token, object or article exchangeable for money or property.



**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 567.010, 15 ASC 881.

**46.3702            Prostitution.**

- (a) A person commits the crime of prostitution if he performs an act of prostitution.
- (b) Prostitution is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 567.020, 15 ASC 881.

**46.3703            Patronizing prostitution.**

- (a) A person commits the crime of patronizing prostitution if he patronizes prostitution.
- (b) Patronizing prostitution is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 567.030, 15 ASC 881.

**46.3704            Prostitution and patronizing prostitution-Sex of parties no defense when.**

In any prosecution for prostitution or patronizing a prostitute, the sex of the 2 parties or prospective parties to the sexual conduct engaged in, contemplated, or solicited is immaterial, and it is no defense that:

- (1) both persons were of the same sex; or
- (2) the person who received, agreed to receive, or solicited something of value was a male and the person who gave or agreed or offered to give something of value was a female.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 567.040, 15 ASC 881.

**46.3705            Promoting prostitution in the first degree.**

- (a) A person commits the crime of promoting prostitution in the first degree if he knowingly:
  - (1) promotes prostitution by compelling a person to enter into, engage in, or remain in prostitution; or
  - (2) promotes prostitution of a person less than 16 years old.
- (b) The term “compelling” includes:
  - (1) the use of forcible compulsion;
  - (2) the use of a drug or intoxicating substance to render a person incapable of controlling his conduct or appreciating its nature; or
  - (3) withholding or threatening to withhold dangerous drugs or a narcotic from a drug dependent person.
- (c) Promoting prostitution in the first degree is a class B felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 567.050, 15 ASC 881.

**46.3706            Promoting prostitution in the second degree.**

- (a) A person commits the crime of promoting prostitution in the second degree if he knowingly promotes prostitution by managing, supervising, controlling, or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by 2 or more prostitutes.
- (b) Promoting prostitution in the second degree is a class C felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 567.060, 15 ASC 881.

**46.3707            Prostitution houses considered public nuisances.**

(a) Any room, building or other habitable structure regularly used for sexual conduct for pay as defined in 46.3701 or any unlawful prostitution activity prohibited by this chapter is a public nuisance.

(b) The Attorney General may, in addition to all criminal sanctions, prosecute a suit in equity to enjoin the nuisance. If the court finds that the owner of the room, building, or habitable structure knew or had reason to believe that the premises were being used regularly for sexual conduct for pay or unlawful prostitution activity, the court may order that the premises may not be occupied or used for a period as the court may determine, not to exceed 1 year.

(c) All persons, including owners, lessees, officers, agents, inmates, or employees, aiding or facilitating that nuisance may be made defendants in any suit to enjoin the nuisance, and they may be enjoined from engaging in any sexual conduct for pay or unlawful prostitution activity anywhere within the territory.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 567 080, 15 ASC 881.

## **Chapter 38**

### **OFFENSES AGAINST THE FAMILY**

**Sections:**

- 46.3801            Bigamy.**
- 46.3802            Incest.**
- 46.3805            Abandonment of child.**
- 46.3806            Criminal nonsupport.**
- 46.3810            Endangering the welfare of a child.**
- 46.3811            Abuse of a child.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

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MPCC — Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code.  
October 1973.

**46.3801            Bigamy.**

- (a) A married person commits the crime of bigamy if he:
  - (1) purports to contract another marriage in this territory; or
  - (2) cohabits in this territory after a bigamous marriage in another jurisdiction.
- (b) A married person does not commit bigamy if, at the time of the subsequent marriage ceremony, he believes that he is legally eligible to remarry.
- (c) The defendant has the burden of injecting the issue of belief of eligibility to remarry.
- (d) An unmarried person commits the crime of bigamy if he:
  - (1) purports to contract marriage knowing that the other person is married; or
  - (2) cohabits in this territory after a bigamous marriage in another jurisdiction.
- (e) “Bigamous marriage” has the meaning specified in this section.
- (f) Bigamy is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 568 010, 15 ASC 142.

**46.3802 Incest.**

(a) A person commits the crime of incest if he marries or purports to marry or engages in sexual intercourse or deviate sexual intercourse with a person he knows to be:

- (1) his ancestor or descendant by blood or adoption;
- (2) his stepchild or stepparent, while the marriage creating that relationship exists and while the stepchild is 18 years of age or less;
- (3) his brother or sister of the whole or half-blood; or
- (4) his uncle, aunt, nephew, or niece of the whole blood.

(b) For purposes of this section:

- (1) “Sexual intercourse” has the meaning specified in subsection (c) of 46.2001.
- (2) “Deviate sexual intercourse” has the meaning specified in subsection (a) of 46.3601.
- (3) Incest is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 568.020, 15 ASC 581.

**46.3805 Abandonment of child.**

(a) A person commits the crime of abandonment of a child if, as a parent, guardian, or other person legally charged with the care or custody of a child less than 8 years old, he leaves the child in any place with purpose wholly to abandon it, under circumstances which may result in serious physical injury, illness or death.

(b) Abandonment of a child is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 568.030, 15 ASC 1022, 21 ASC 2901— 2914.

**46.3806 Criminal nonsupport.**

(a) A spouse commits the crime of nonsupport if he knowingly fails to provide, without good cause, adequate support for his spouse; a parent commits the crime of nonsupport if such parent knowingly fails to provide, without good cause, adequate support which the parent is legally obligated to provide for his minor child or his minor stepchild.

(b) For purposes of this section:

- (1) “Child” means any natural or adoptive, legitimate or illegitimate person under 18 years of age or a mentally retarded or developmentally disabled person regardless of age.
- (2) “Good cause” includes any substantial reason why the defendant is unable to provide adequate support. Good cause does not exist if the defendant purposely maintains his in-ability to support.

(3) “Support” means food, clothing, lodging, and medical or surgical attention.

(c) The defendant has the burden of injecting the issues raised by paragraph (b) (2).

(d) Criminal nonsupport is a class A misdemeanor, unless the actor leaves the territory for the purpose of avoiding his obligation to support, then it is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 568.040, 15 ASC 1021, 15 ASC 1022, 21 A5C2901—2904.

**46.3810 Endangering the welfare of a child.**

(a) A person commits the crime of endangering the welfare of a child if:

- (1) he knowingly acts in a manner that creates a substantial risk to the life, body, or health of

a child less than 18 years old;

(2) he knowingly encourages, aids or causes a child less than 18 years old to engage in any conduct which causes or tends to cause a substantial risk to the life, body, or health of the child; or

(3) being a parent, guardian, or other person legally charged with the care or custody of a child less than 18 years old, he recklessly fails or refuses to exercise reasonable diligence in the care or control of the child to prevent a substantial risk to the life, body, or health of the child.

(b) Endangering the welfare of a child is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 568.050, 15 ASC 1021, 15 ASC 1022, 21 ASC 2901.

#### **46.3811 Abuse of a child.**

(a) A person commits the crime of “child abuse” or “abuse of a child” if he purposely or knowingly:

(1) causes injury to a child by unreasonable force by:

(A) burning, biting, or cutting a child;

(B) striking a child with a closed fist;

(C) shaking, kicking, or throwing the child;

(D) interfering with the child’s breathing;

(E) threatening a child with a dangerous instrument or injuring a child with such a dangerous instrument. For purposes of this chapter, a dangerous instrument means any instrument, article, or substance which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury; or

(F) other act that creates a substantial risk of harm or death to a child. The acts in subparagraphs (A) through (F) may be evidenced by any skin bruising, bleeding, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition that imperils the health or welfare of the victim, or can lead to death; or

(2) inflicts serious emotional damage to a child which is injury to the emotional condition of a child as evidenced by severe anxiety, depression, withdrawal, substantial change in behavior, emotional response, cognition or untoward aggressive behavior, and such injury is diagnosed by a medical doctor or psychologist.

(b) Abuse of a child is a class D felony.

**History:** 1979, PL 16-43 § 2; amd 2014, PL 33-10 § 17.

**Research Guide:** MCC 568.060, 21 ASC 2901.

#### **46.3812 Child neglect.**

(a) A parent, guardian, or other person legally charged with the care or custody of a child is guilty of “Neglect or Child Neglect” if he purposely or knowingly:

(1) fails or refuses to provide a child with necessary food, clothing, shelter, mental health, guidance, or well being;

(2) fails to provide the necessary education to a child as required by 16.0302;

(3) fails to protect a child from conditions or actions that seriously endanger or can be injurious to a child’s physical, mental, or emotional health;

(4) fails to provide the necessary supervision or childcare arrangements for a child;

(5) uses an illegal substance while pregnant, as may be evidenced by the presence of illegal substance in the child’s or mother’s bodily fluids or bodily substances, withdrawal symptoms in

the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance; or

(6) abandons or ceases providing care for a child without making appropriate provisions for substitute care.

(b) A parent, guardian, or other person legally charged with the care or custody of a child is guilty of Child Neglect if he knowingly allows another to mistreat or abuse a child through acts prohibited in paragraphs 1 through 6 above, and he is reasonably able to prevent it from occurring.

(c) Child neglect is a Class A misdemeanor.

**History:** 2014, PL 33-10 § 18.

## **Chapter 39**

### **ABORTION**

#### **Sections:**

- 46.3901 Definitions.**
- 46.3902 Unlawful abortion.**
- 46.3903 Authorized abortions.**
- 46.3904 Conscientious objections to abortion-Liability.**
- 46.3905 Concealing birth of an infant.**
- 46.3906 Distributing abortifacients.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978. MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC —Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.3901 Definitions.**

(a) "Abortion" means the termination of human pregnancy for purposes other than delivery of a viable fetus.

(b) "Hospital" means the Lyndon B. Johnson Tropical Medical Center.

(c) "Physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery in this Territory.

(d) "Viable fetus" means a fetus potentially able to live outside the mother's womb, even though artificial aid may be required.

(e) "First trimester of pregnancy" means the first 13 weeks of a pregnancy.

(f) "Second trimester of pregnancy" means that portion of a pregnancy following the thirteenth week and preceding the twenty-fourth week of pregnancy.

(g) "Third trimester of pregnancy" means that portion of a pregnancy after the twenty-third week of pregnancy and includes the entire period after the fetus is or may be viable.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MPCC 13.080.

#### **46.3902 Unlawful abortion.**

(a) A person commits the crime of unlawful abortion if he uses any instrument or device or prescribes or administers any medicine, drug, or other substance which is likely to produce an abortion of a pregnant woman, with purpose to produce an abortion unless the abortion is

authorized under 46.3903.

(b) The defendant has the burden of injecting the issue of authorized abortion.

(c) Unlawful abortion is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MPCC 13.090.

#### **46.3903 Authorized abortions.**

An authorized abortion is an abortion performed by a physician upon a consenting woman under the following conditions:

(1) the life of the patient would be endangered by continuance of the pregnancy; or

(2) the continuance of the pregnancy would substantially impair the physical or mental health of the patient.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MPCC 13.100.

#### **46.3904 Conscientious objections to abortion-Liability.**

No physician or hospital employee is required against his conscience to perform, or participate in any abortion, and the failure or refusal to do so may not be the basis for any civil, criminal, administrative or disciplinary action, proceeding, penalty, or punishment. If any request for an abortion is denied, the patient is notified immediately.

**History:** 1979, PL 16-43 § 2.

#### **46.3905 Concealing birth of an infant.**

(a) A person commits the crime of concealing the birth of an infant if he conceals the body of a child with the purpose to conceal the fact of its birth or to prevent a determination of whether it was a live birth or stillbirth.

(b) Concealing the birth of an infant is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MPCC 13.110,15 ASC 1121.

#### **46.3906 Distributing abortifacients.**

(a) A person commits the crime of distributing abortifacients if he gives, distributes or sells any drug, medicine, or other abortifacient or anything specially designed to terminate a pregnancy and:

(1) he knows it to be an abortifacient or something specially designed to terminate a pregnancy; or

(2) he reasonably believes it will be used as an abortifacient or to terminate a pregnancy.

(b) Subsection (a) does not apply to any gift, distribution, or sale to a physician or a licensed pharmacist or to an intermediary in a chain of distribution to physicians or pharmacists, nor to any gift, distribution, or sale made upon the prescription of a physician.

(c) The defendant has the burden of injecting the issue of lawful distribution under subsection (b).

(d) Distributing abortifacients is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MPCC 13.120.

## Chapter 40

### ROBBERY, ARSON, BURGLARY AND RELATED OFFENSES

#### Sections:

- 46.4001 Definitions.
- 46.4002 Robbery in the first degree.
- 46.4003 Robbery in the second degree.
- 46.4010 Arson in the first degree.
- 46.4011 Arson in the second degree.
- 46.4012 Arson in the third degree.
- 46.4020 Tampering in the first degree.
- 46.4021 Tampering in the second degree.
- 46.4022 Property damage in the first degree.
- 46.4023 Property damage in the second degree.
- 46.4024 Property damage in the third degree.
- 46.4025 Claim of right.
- 46.4026 Trespass.
- 46.4030 Burglary in the first degree.
- 46.4031 Burglary in the second degree.
- 46.4032 Possession of burglar's tools.

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978.

MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC—Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.4001 Definitions.**

As used in this chapter:

(a) Enter unlawfully or remain unlawfully: a person “enters unlawfully” or “remains unlawfully” in or upon premises when he is not licensed or privileged to do so. A person who, regardless of his purpose, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of the premises or another authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

(b) Forcibly steals: a person “forcibly steals” and thereby commits robbery when, in the course of stealing as defined in 46.4103, he uses or threatens the immediate use of physical force upon another person for the purpose of:

(1) preventing or overcoming resistance to the taking of the property or to the retention of it immediately after the taking; or

(2) compelling the owner of the property or another person to deliver up the property or to engage in other conduct which aids in the commission of the theft.

(c) “Inhabitable structure” includes a house, fale, building, ship, trailer, airplane, or any other vehicle or structure:

(1) where any person lives or carries on business or other calling;

(2) where people assemble for purposes of business, government, education, religion, entertainment, or public transportation; or

(3) which is used for overnight accommodation of persons. Any vehicle or structure is “inhabitable” regardless of whether a person is actually present.

(d) If a building or structure is divided into separately occupied units, any unit not occupied

by the actor is an “inhabitable structure of another”.

(e) Of another: property is that “of another” if any natural person, corporation, partnership, association, governmental subdivision, or instrumentality, other than the actor, has a possessory or proprietary interest in it.

(f) “To tamper” means to interfere with something improperly, to meddle with it, displace it, make unwarranted alterations in its existing condition, or to deprive, temporarily, the owner or possessor of that thing.

(g) “Utility” means an enterprise which provides gas, electric, water, sewage disposal, or communication services and any common carrier. It may be either publicly or privately owned or operated.

(h) “Vital public facility” includes a facility maintained for use as a bridge whether over land or water, dam, reservoir, communication installation, or power station.

**History:** 1979, PL 16-43 § 2; amd 1981, PL 17-11 § 1.

**Research Guide:** MCC 569.010, 15 ASC 601, 15 ASC 941.

#### **46.4002 Robbery in the first degree.**

(a) A person commits the crime of robbery in the first degree when he forcibly steals property and in the course of it he, or another participant in the crime:

- (1) causes serious physical injury to any person;
  - (2) is armed with a deadly weapon;
  - (3) uses or threatens the immediate use of a dangerous instrument against any person;
  - (4) displays or threatens the use of what reasonably appears to any person present to be a deadly weapon or dangerous instrument; or
  - (5) commits the crime at night.
- (b) Robbery in the first degree is a class A felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.020, 15 ASC 941.

#### **46.4003 Robbery in the second degree.**

(a) A person commits the crime of robbery in the second degree when he forcibly steals property.

(b) Robbery in the second degree is a class B felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.030, 15 ASC 941.

#### **46.4010 Arson in the first degree.**

(a) A person commits the crime of arson in the first degree when he knowingly damages a building or inhabitable structure, and when any person is then present or in near proximity to it, by starting a fire or causing an explosion and thereby recklessly places the person in danger of death or serious physical injury.

(b) Arson in the first degree is a class B felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.040, 15 ASC 181, 15 ASC 182.

#### **46.4011 Arson in the second degree.**

(a) A person commits the crime of arson in the second degree when he knowingly damages a building or inhabitable structure by starting a fire or causing an explosion.



- (b) A person does not commit a crime under this section if:
  - (1) no person other than himself has a possessory, proprietary, or security interest in the damaged building, or if other persons have those interests, all of them consented to his conduct; and
  - (2) his sole purpose was to destroy or damage the building for a lawful and proper purpose.
- (c) The defendant has the burden of injecting the issue under subsection (b).
- (d) Arson in the second degree is a class C felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.050, 15 ASC 181, 15 ASC 182.

**46.4012 Arson in the third degree.**

- (a) A person commits the crime of arson in the third degree when he damages property of another by starting a fire or causing an explosion.
- (b) Arson in the third degree is:
  - (1) a class D felony if the defendant acted knowingly;
  - (2) a class A misdemeanor if the defendant acted recklessly; or
  - (3) a class B misdemeanor if the defendant acted with criminal negligence.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 15 ASC 181, 15 ASC 182.

**46.4020 Tampering in the first degree.**

- (a) A person commits the crime of tampering in the first degree if, for the purpose of causing a substantial interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection, he damages or tampers with property or facilities of that utility or institution, and thereby causes substantial interruption or impairment of service.
- (b) Tampering in the first degree is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.080, 15 ASC 722, 15 ASC 724, 15 ASC 725, 15 ASC 801, 15 ASC 802.

**46.4021 Tampering in the second degree.**

- (a) A person commits the crime of tampering in the second degree if he:
  - (1) tampers with property of another for the purpose of causing substantial inconvenience to that person or to another;
  - (2) unlawfully operates or rides in or upon another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle; or
  - (3) tampers or makes connection with property of a utility.
- (b) Tampering in the second degree is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.090, 15 ASC 721 —723, 15 ASC 725.

**46.4022 Property damage in the first degree.**

- (a) A person commits the crime of property damage in the first degree if:
  - (1) he knowingly damages property of another to an extent exceeding \$1,000; or
  - (2) he damages property to an extent exceeding \$1,000 for the purpose of defrauding an insurer.
- (b) Property damage in the first degree is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.100, 15 ASC 502, 15 ASC 721, 15 ASC 722.

**46.4023 Property damage in the second degree.**

- (a) A person commits the crime of property damage in the second degree if:
  - (1) he knowingly damages property of another to an extent exceeding \$100; or
  - (2) he damages property to an extent exceeding \$100 for the purpose of defrauding an insurer.
- (b) Property damage in the second degree is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.110, 15 ASC 502, 15 ASC 721, 15 ASC 722.

**46.4024 Property damage in the third degree.**

- (a) A person commits the crime of property damage in the third degree if:
  - (1) he knowingly damages property of another; or
  - (2) he damages property for the purpose of defrauding an insurer.
- (b) Property damage in the third degree is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.120, 15 ASC 502, 15 ASC 721, 15 ASC 722.

**46.4025 Claim of right.**

- (a) A person does not commit an offense by damaging, tampering with, operating, riding in or upon, or making connection with property of another if he does so under a claim of right and has reasonable grounds to believe he has that right.
- (b) The defendant has the burden of injecting the issue of claim of right.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.130.

**46.4026 Trespass.**

- (a) A person commits the crime of trespass if he knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure or upon real property.
- (b) A person does not commit the crime of trespass by entering or remaining upon real property unless the real property is fenced or otherwise enclosed in a manner designed to exclude intruders or as to which notice against trespass is given by:
  - (1) actual communication to the actor; or
  - (2) posting in a manner reasonably likely to come to the attention of intruders.
- (c) Trespass is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.140, 15 ASC 727.

**Case Notes:**

We conclude in this case that we are justified in applying the construction that appellant entered the house when he passed under the eaves with the criminal intent of viewing the occupant for possible sexual purpose. *Tolo Bernard Aka Alapati Bernard v. Government of American Samoa*, ASR (1980).

**46.4027 Trespass on public or private school grounds.**

(a) A person commits the crime of trespass on public or private school grounds if he is found, without prior permission, on public or private school grounds during the hours of 10:00pm and 5:00am.

(b) A person caught trespassing on public or private school grounds between these hours shall be charged with a class A misdemeanor.

**History:** 2018, PL 35-12 § 1.

**46.4030 Burglary in the first degree.**

(a) A person commits the crime of burglary in the first degree if he knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure for the purpose of committing a crime there, and when in effecting entry or while in the building or inhabitable structure or in immediate flight from there, he or another participant in the crime:

(1) is armed with explosives or a deadly weapon;

(2) causes or threatens immediate physical injury to any person who is not a participant in the crime; or

(3) commits the crime at night.

(b) Burglary in the first degree is a class B felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.160, 15 ASC 261—263.

**46.4031 Burglary in the second degree.**

(a) A person commits the crime of burglary in the second degree when he knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure for the purpose of committing a crime there.

(b) Burglary in the second degree is a class C felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.170, 15 ASC 26 1—263.

**46.4032 Possession of burglar's tools.**

(a) A person commits the crime of possession of burglar's tools if he possesses any tool, instrument, or other article adapted, designed, or commonly used for committing or facilitating offenses involving forcible entry into premises, with a purpose to use or knowledge that some person has the purpose of using them in making an unlawful forcible entry into a building or inhabitable structure or a room of it.

(b) Possession of burglar's tools is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 569.180.

**Chapter 41**

**STEALING AND RELATED OFFENSES**

**Sections:**

**46.4101 Definitions.**

**46.4102 Determination of value.**

**46.4103 Stealing.**

**46.4104 Embezzlement.**

**46.4105 Aggregation of amounts involved in stealing.**

46.4106	Lost property.
46.4107	Receiving stolen property.
46.4108	Claim of right.
46.4115	Forgery.
46.4116	Possession of a forging instrumentality.
46.4117	Issuing a false instrument or certificate.
46.4118	Passing bad checks.
46.4119	Fraudulent use of a credit device.
46.4120	Deceptive business practice.
46.4125	Commercial bribery.
46.4126	False advertising.
46.4127	Bait advertising.
46.4128	Defrauding secured creditors.
46.4129	Criminal fraud.
46.4130	Offering a false instrument for filing.

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978.

MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC —Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.4101 Definitions.**

As used in this chapter:

(a) “Adulterated” means varying from the standard of composition or quality prescribed by statute or lawfully adopted administrative rules of this Territory lawfully filed, or if none, as set by commercial usage.

(b) “Appropriate” means to take, obtain, use, transfer, conceal, or retain possession of.

(c) “Coercion” means a threat, however communicated to:

(1) commit any crime;

(2) inflict physical injury in the future on the person threatened or another;

(3) accuse any person of any crime;

(4) expose any person to hatred, contempt or ridicule;

(5) harm the credit or business repute of any person;

(6) take or withhold action as a public servant, or to cause a public servant to take or withhold action; or

(7) inflict any other harm which would not benefit the actor.

A threat of accusation, lawsuit, or other invocation of official action is not coercion if the property sought to be obtained by virtue of the threat was honestly claimed as restitution or indemnification for harm done in the circumstances to which the accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful service. The defendant has the burden of injecting the issue of justification as to any threat.

(d) “Credit device” means a writing, number, or other device purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(e) “Dealer” means a person in the business of buying and selling goods.

(f) “Deceit” means purposely making a representation which is false and which the actor does not believe to be true and upon which the victim relies, as to a matter of fact, law, value, intention, or other state of mind. The term “deceit” does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. Deception as to the actor’s intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.

(g) “Defraud” means to swindle, cheat or trick; a deliberate deception practiced so as to

secure unfair or unlawful gain.

(h) "Deprive" means to:

- (1) withhold property from the owners permanently;
- (2) restore property only upon payment of reward or other compensation; or
- (3) use or dispose of property in a manner that makes recovery of the property by the owner unlikely;

(i) "Misabeled" means varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully adopted administrative rules of this territory lawfully filed, or if none, as set by commercial usage; or represented as being another person's product, though otherwise accurately labeled as to quality and quantity.

(j) Of another: property or services means that "of another" if any natural person, corporation, partnership, association, governmental subdivision, or instrumentality, other than the actor, has a possessory or proprietary interest in it; except, that property is not considered property of another who has only a security interest in it, even if legal title is in the creditor under a conditional sales contract or other security arrangement.

(k) "Property" means anything of value whether real or personal, tangible or intangible, in possession or in action, and includes but is not limited to the evidence of a debt actually executed but not delivered or issued as a valid instrument.

(l) "Receiving" means acquiring possession, control, or title or lending on the security of the property.

(m) "Services" includes transportation, telephone, electricity, gas, water, or other public service, accommodation in hotels, restaurants, or elsewhere, admission to exhibitions and use of vehicles.

(n) "Writing" includes printing, any other method of recording information, money, coins, negotiable instruments, tokens, stamps, seals, credit cards, badges, trademarks and any other symbols of value, right, privilege, or identification.

**History:** 1979, PL 16-43 § 2; 2003, PL 28-3.

**Research Guide:** MCC 570.010, 10 ASC 1101(23), 22 ASC 1(5).

#### **46.4102 Determination of value.**

For the purposes of this chapter, the value of property is ascertained as follows:

(a) Except as otherwise specified in this section, "value" means the market value of the property at the time and place of the crime, or if it cannot be satisfactorily ascertained the cost of replacement of the property within a reasonable time after the crime.

(b) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value (e.g., some public and corporate bonds and securities) are evaluated as follows:

(1) the value of an instrument constituting evidence of debt (e.g., a check, draft, or promissory note) is considered the amount due or collectible on it, the figure ordinarily being the face amount of the indebtedness less any portion of it which has been satisfied;

(2) the value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege, or obligation is considered the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) When the value of property cannot be satisfactorily ascertained under the standards set forth under subsections (a) and (b), its value is considered to be an amount less than \$100.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 5 70.020.

#### **46.4103 Stealing.**

(a) A person commits the crime of stealing if he appropriates property or services of another

with the purpose to deprive him of it, either without his consent or by means of deceit or coercion.

(b) Stealing is a class C felony if:

(1) the value of the property or services appropriated is \$100 or more;

(2) the actor physically takes the property appropriated from the person of the victim; or

(3) the property appropriated consists of:

(A) any motor vehicle, watercraft or aircraft;

(B) any will or unrecorded deed affecting real property;

(C) any credit card or letter of credit;

(D) any firearms;

(E) any original copy of an act, bill or resolution, introduced or acted upon by the Legislature of the territory of American Samoa;

(F) any pleading, notice, judgment, or any other record or entry of any court of this territory, any other state or territory or of the United States; or

(G) any book of registration or list of qualified electors required by 6.0210: or

(H) any animal other than domesticated dogs or cats; or

(I) any controlled substance as defined by subsection (1) of 13.1001.

(c) All other stealing is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 570.030, 15 ASC 502, 15 ASC 504, 15 ASC 641.

#### **46.4104            Embezzlement.**

(a) A person commits the crime of embezzlement if he knowingly misappropriates property of another which has been entrusted to him or which has lawfully come under his control.

(b) Embezzlement is a class C felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 15 ASC 642.

#### **46.4105            Aggregation of amounts involved in stealing.**

Amounts stolen under 1 scheme or a single course of conduct, whether from the same or several owners and whether at the same or different times, constitute a single criminal episode and may be aggregated in determining the grade of the offense.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 570.050.

#### **46.4106            Lost property.**

(a) A person who appropriates lost property is not considered to have stolen that property within the meaning of 46.4103 unless the property is found under circumstances which gave the finder knowledge of or means of inquiry as to the true owner.

(b) The defendant has the burden of injecting the issue of lost property.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 570.060

#### **46.4107            Receiving stolen property.**

(a) A person commits the crime of receiving stolen property if, for the purpose of depriving the owner of a lawful interest in it, he receives, retains, or disposes of property of another knowing that it has been stolen, or believing that it has been stolen.

(b) Evidence of the following is admissible in any criminal prosecution under this section to prove the requisite knowledge or belief of the alleged receiver:

(1) that he was found in possession or control of other property stolen on separate occasions from 2 or more persons;

(2) that he knowingly received other stolen property in another transaction within 1 year preceding the transaction charged; or

(3) that he acquired the stolen property for a consideration which he knew was far below its reasonable value.

(c) Receiving stolen property is a class A misdemeanor unless the property involved has a value of \$100 or more, or the person receiving the property is a dealer in goods of the type in question, then receiving stolen property is a class C felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 570 080, 15 ASC 921

#### **46.4108 Claim of right.**

(a) A person does not commit an offense under 46.4103 or 46.4104 if, at the time of the appropriation, he

(1) acted in the honest belief that he had the right to do so; or

(2) acted in the honest belief that the owner, if present, would have consented to the appropriation.

(b) The defendant has the burden of injecting the issue of claim of right.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 570.070.

#### **46.4115 Forgery.**

(a) A person commits the crime of forgery if, with the purpose to defraud, he:

(1) makes, completes, alters, or authenticates any writing so that it purports to have been made by another or at another time or place or in a numbered sequence other than was in fact the case or with different terms or by authority of one who did not give that authority;

(2) makes or alters anything other than a writing, so that it purports to have a genuineness, antiquity, rarity, ownership, or authorship which it does not possess; or

(3) uses as genuine, or possesses for the purpose of using as genuine, or transfers with the knowledge or belief that it will be used as genuine, any writing or other thing which the actor knows has been made or altered in the manner described in this section.

(b) Forgery is a class C felony.

**History:** 1979, PL 16-43 § 2.

#### **Case Notes:**

Territorial forgery statute requires that defendant have created the false writing with intent to defraud, not that he have actually succeeded in defrauding anyone. A.S.C.A. § 46.4115. *American Samoa Government v. Lefai*, 6 A.S.R.2d 78 (1987).

**Research Guide:** MCC 570.090. 15 ASC 441.

#### **46.4116 Possession of a forging instrumentality.**

(a) A person commits the crime of possession of a forging instrumentality if, with the purpose of committing forgery, he makes, causes to be made or possesses any device for making or altering any writing.

(b) Possession of a forging instrumentality is a class C felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 570.100, 15 ASC 441.

**46.4117 Issuing a false instrument or certificate.**

(a) A person commits the crime of issuing a false instrument or certificate when, being authorized by law to take proof or acknowledgment of any instrument which by law may be recorded, or being authorized by law to make or issue official certificates or other official written instruments, he issues the instrument or certificate, or makes it with the purpose that it be issued, knowing that it contains a false statement or false information.

(b) Issuing a false instrument or certificate is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 570.110, 15 ASC 502—504.

**46.4118 Passing bad checks.**

(a) A person commits the crime of passing a bad check when, with purpose to defraud, he issues or passes a check or other similar sight order for the payment of money, knowing that it will not be paid by the drawee, or that there is no such drawee.

(b) If the issuer had no account with the drawee or if there was no such drawee at the time the check or order was issued, this fact is prima facie evidence of his purpose to defraud and of his knowledge that the check or order would not be paid.

(c) If the issuer has an account with the drawee, failure to pay the check or order within 10 days after notice in writing that it has not been honored because of insufficient funds or credit with the drawee is prima facie evidence of his purpose to defraud and of his knowledge that the check or order would not be paid.

(d) Notice in writing means notice deposited as 1st class mail in the United States mail and addressed to the issuer at his address as it appears on the dishonored check or to his last known address.

(e) The face amounts of any bad checks passed under 1 course of conduct or within any 10-day period may be aggregated in determining the grade of the offense.

(f) Passing bad checks is a class A misdemeanor unless:

(1) the face amount of the check or sight order or the aggregated amounts is \$100 or more or

(2) the issuer had no account with the drawee or there was no such drawee at the time the check or order was issued, then passing bad checks is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 570.120, 15 ASC 502, 15 ASC 641.

**46.4119 Fraudulent use of a credit device.**

(a) A person commits the crime of fraudulent use of a credit device if he uses a credit device for the purpose of obtaining services or property, knowing that:

(1) the device is stolen, fictitious or forged;

(2) the device has been revoked or canceled; or

(3) for any other reason his use of the device is unauthorized.

(b) Fraudulent use of a credit device is a class A misdemeanor unless the value of the property or services obtained or sought to be obtained within any 30-day period is \$100 or more, then fraudulent use of a credit device is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC570.130, 15 ASC 502, 15 ASC 641.



**46.4120 Deceptive business practice.**

(a) A person commits the crime of deceptive business practice if in the course of engaging in a business, occupation, or profession, he recklessly:

(1) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service;

(3) takes more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure;

(4) sells, offers, or exposes for sale adulterated or mislabeled commodities; or

(5) makes a false or misleading written statement for the purpose of obtaining property or credit.

(b) Deceptive business practice is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 570.140, 15 ASC 502.

**46.4125 Commercial bribery.**

(a) A person commits the crime of commercial bribery:

(1) if he solicits, accepts, or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as:

(A) agent or employee of another;

(B) trustee, guardian or other fiduciary;

(C) lawyer, physician, accountant, appraiser, or other professional adviser;

(D) officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or

(E) arbitrator or other purportedly disinterested adjudicator or referee;

(2) if as a person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal or criticism of commodities or services, he solicits, accepts, or agrees to accept any benefit to influence his selection, appraisal, or criticism; or

(3) if he confers or offers or agrees to confer any benefit the acceptance of which would be criminal under paragraphs (a) (1) and (2).

(b) Commercial bribery is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 570.150, 15 ASC 241, 15 ASC 642.

**46.4126 False advertising.**

(a) A person commits the crime of false advertising if, in connection with the promotion or the sale of property or services, he recklessly makes or causes to be made a false or misleading statement in any advertisement addressed to the public or to a substantial number of persons.

(b) False advertising is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 570.160, 15 ASC 502.

**46.4127 Bait advertising.**

(a) A person commits the crime of bait advertising if he advertises in any manner the sale of property or services with the purpose not to sell or provide the property or services:

(1) at the price which he offered them;

(2) in a quantity sufficient to meet the reasonably expected public demand, unless the quantity is specifically stated in the advertisement; or

- (3) at all.
- (b) Bait advertising is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 570 170,15 ASC 502.

**46.4128        Defrauding secured creditors.**

(a) A person commits the crime of defrauding secured creditors if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with purpose to defraud the holder of the security interest.

(b) Defrauding secured creditors is a class A misdemeanor unless the amount remaining to be paid on the secured debt, including interest, is \$500 or more, then defrauding secured creditors is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 570.180. 15 ASC 502.

**46.4129        Criminal fraud.**

(a) A person commits the crime of fraud if he, through contact or transactions with the American Samoa Government, its departments, agencies, subdivisions and offices, semi-autonomous agencies, or its agents, knowingly and willfully:

(1) obtains money, property or undue advantage by use of any device, scheme or artifice to defraud by means of false or fraudulent pretenses; or

(2) falsifies, misrepresents, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation, or makes, uses, or files any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

(b) Criminal fraud is a class C felony.

**History:** 2003, PL 28-3; amd 2011, PL 32-5.

**46.4130        Offering a false instrument for filing.**

(a) A person is guilty of the offense of offering a false instrument for filing when, knowing that a written instrument contains a false statement or false information, he knowingly and willingly offers or presents it to a department, agency, office or subdivision, or semi-autonomous agency of the government, or any of its agents, with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the record kept with the respective office.

(b) Offering a false instrument for filing is a Class c felony.

**History:** 2011, PL 32-5.

## **Chapter 42**

### **WEAPONS**

**Sections:**

- 46.4201        Definitions.**
- 46.4202        Prohibited weapons.**
- 46.4203        Unlawful use of weapons.**
- 46.4204        Defacing a firearm.**

46.4205	Possession of a defaced firearm.
46.4206	Unlawful transfer of weapons.
46.4207	Unlawful possession of firearms and firearm ammunition.
46.4220	Definitions of “arms”.
46.4221	License-Required when.
46.4222	License-Required for import.
46.4223	License-Required for sale of arms.
46.4224	License-Information required.
46.4225	License-Possession required when carrying arms.
46.4226	License-Revocation.
46.4227	License-Renewal.
46.4228	Marking arms for identification.
46.4229	Sales to persons without licenses.
46.4230	Blasting.
46.4231	Discharge of arms.
46.4232	Searches for arms.
46.4233	Authorized possession and use of arms without license.
46.4234	Violation-Penalty.

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978.

MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC—Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.4201 Definitions.**

(a) “Blackjack” means any instrument that is designed or adapted for the purpose of stunning or inflicting physical injury by striking a person, and which is readily capable of lethal use.

(b) “Deface” means to alter or destroy the manufacturer’s or importer’s serial number or any other distinguishing number or identification mark.

(c) “Explosive weapon” means any explosive, incendiary, or poison gas bomb or similar device designed or adapted for the purpose of inflicting death, serious physical injury, or substantial property damage; or any device designed or adapted for delivering or shooting such a weapon.

(d) “Firearm” means any weapon that is designed or adapted to expel a projectile by the action of an explosive.

(e) “Firearm silencer” means any instrument, attachment, or appliance that is designed or adapted to muffle the noise made by the firing of any firearm.

(f) “Gas gun” means any gas ejective device, weapon, cartridge, container or contrivance other than a gas bomb, that is designed or adapted for the purpose of ejecting any poison gas that will cause death or serious physical injury but not any device that ejects mace or other repellant or temporary incapacitating substance.

(g) “Intoxicated” means substantially impaired mental or physical capacity resulting from introduction of any substance into the body.

(h) “Knife” means any dagger, dirk, stiletto, or bladed hand instrument that is readily capable of inflicting serious physical injury or death by cutting or stabbing a person. For purposes of this chapter, “knife” does not include an ordinary pocket knife with no blade more than 4” in length.

(i) “Knuckles” means any instrument that consists of finger rings or guards made of a hard substance that is designed or adapted for the purpose of inflicting serious physical injury or death by striking a person with a fist enclosed in the knuckles.

(j) “Machine gun” means any firearm that is capable of firing more than 2 shots automatically, without manual reloading, by a single function of the trigger.

(k) “Projectile weapon” means any bow, crossbow, pellet gun, slingshot, or other weapon that is not a firearm, which is capable of expelling a projectile that could inflict serious physical injury or death by striking or piercing a person.

(l) “Rifle” means any firearm designed or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed metallic cartridge to fire a projectile through a rifled bore by a single function of the trigger.

(m) “Short barrel” means a barrel length of less than 16” for a rifle and 18” for a shotgun, or an overall rifle or shotgun length of less than 26”.

(n) “Shotgun” means any firearm designed or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed shotgun shell to fire a number of shot or a single projectile through a smooth-bore barrel by a single function of the trigger.

(o) “Spring gun” means any fused, timed, or nonmanually controlled trap or device designed or adapted to set off an explosion for the purpose of inflicting serious physical injury or death.

(p) “Switchblade knife” means any knife which has a blade that folds or closes into the handle or sheath, and

(1) that opens automatically by pressure applied to a button or other device located on the handle or

(2) that opens or releases from the handle or sheath by the force of gravity or by the application of centrifugal force.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MPCC 16.010, 23 ASC1—15.

#### **46.4202 Prohibited weapons.**

(a) A person commits a crime if he knowingly possesses, manufactures, transports, repairs or sells:

- (1) an explosive weapon;
- (2) a machine gun;
- (3) a gas gun;
- (4) a short barreled rifle or shotgun;
- (5) a firearm silencer;
- (6) a switchblade knife;
- (7) knuckles;

(8) any other arms, as defined in section 46.4220, for which a valid license from the Commissioner of Public Safety has not been obtained.

(b) A person does not commit a crime under this section if his conduct:

(1) was incident to the performance of official duty by the armed forces, a governmental law enforcement agency, or a penal institution;

(2) was incident to engaging in a lawful commercial or business transaction with an organization listed in paragraph (b) (1); or

(3) was incident to using an explosive weapon in a manner reasonably related to a lawful industrial or commercial enterprise;

(4) was incident to displaying the weapon in a public museum or exhibition; or

(5) was incident to dealing with the weapon solely as a curio, ornament, or keepsake, or to using it in a manner reasonably related to a lawful dramatic performance; but if the weapon is a type described in paragraph (a) (1), (3), (4) or (5), it must be in a nonfunctioning condition that it cannot readily be made operable. No machine gun may be possessed, manufactured, transported, repaired, or sold as a curio, ornament, or keepsake even if it is inoperable and cannot readily be made operable.

(c) The defendant has the burden of injecting the issue of an exemption under subsection (b).

(d) A crime under paragraph (a) (1), (2), (3), (4) or (5) is a class C felony; a crime under paragraph (a) (6), (7) or (8) is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2; amd 1991, PL 22-8.

**Research Guide:** MPCC 16.020, 23 ASC 1-15.

**46.4203 Unlawful use of weapons.**

- (a) A person commits the crime of unlawful use of weapons if he knowingly:
  - (1) carries concealed on or about his person a knife, a firearm, a blackjack or any other weapon readily capable of lethal use;
  - (2) sets a spring gun;
  - (3) discharges or shoots a firearm into an inhabitable structure, boat, aircraft, vehicle, or any building or structure used for the assembling of people;
  - (4) aims a firearm or projectile weapon at another person in an angry or threatening manner, or possesses a knife, firearm, blackjack, or any other weapon readily capable of lethal use with purpose to unlawfully use the weapon against another person;
  - (5) possesses or discharges a firearm or projectile weapon while intoxicated;
  - (6) discharges a firearm within 100 yards of any occupied school house, courthouse, or church building;
  - (7) discharges or shoots a firearm at a mark, at any object, or at random, on, along or across a public highway or discharges or shoots a firearm into any out-building; or
  - (8) carries a knife, firearm, blackjack, or any other weapon readily capable of lethal use into any church or place where people have assembled for worship, or into any school, or into any election district on any election day, or into any building owned or occupied by any agency of the federal government, territorial government, or political subdivision of them, or into any public assemblage of persons met for any lawful purpose.
- (b) Exemptions.
  - (1) Paragraphs (a) (1), (3), (4), (6), (7) and (8) do not apply to or affect any of the following:
    - (A) peace officers, or any person summoned by these officers to assist in making arrests or preserving the peace while actually engaged in assisting the officer;
    - (B) wardens, superintendents and keepers of prisons, jails and other institutions for the detention of persons accused or convicted of crime;
    - (C) members of the armed forces while performing their official duty.
  - (2) Paragraph (a) (1) does not apply when the actor is transporting the weapons in a nonfunctioning state or when not readily accessible.
- (c) The defendant has the burden of injecting the issue of an exemption under subsection (b).
- (d) Unlawful use of weapons is a class D felony unless committed under paragraph (a) (5), (6), (7) or (8), then it is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MPCC 16.030, 23 ASC 1—15, 15 ASC 11-22.

**46.4204 Defacing a firearm.**

- (a) A person commits the crime of defacing a firearm if he knowingly defaces any firearm.
- (b) Defacing a firearm is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MPCC 16.040, 23 ASC 1—15.

**46.4205 Possession of a defaced firearm.**

- (a) A person commits the crime of possession of a defaced firearm if he knowingly possesses a firearm which does not have the manufacturer's or importer's serial number engraved or cast on the receiver or frame of the firearm.
- (b) Possession of a defaced firearm is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

**46.4206 Unlawful transfer of weapons.**

- (a) A person commits the crime of unlawful transfer of weapons if he:
- (1) knowingly sells, leases, loans, gives away, or delivers a firearm or ammunition for a firearm to any person who, under the provisions of 46.4207, is not lawfully entitled to possess it;
  - (2) knowingly sells, leases, loans, gives away, or delivers a knife, rifle, shotgun or blackjack to a person less than 18 years old without the consent of the child's custodial parent or guardian, or recklessly sells, leases, loans, gives away, or delivers any other firearm to a person less than 18 years old; provided, that this does not prohibit the delivery of those weapons to any peace officer or member of the armed forces while performing his official duty; or
  - (3) recklessly sells, leases, loans, gives away, or delivers a firearm or ammunition for a firearm to a person who is intoxicated.
- (b) Unlawful transfer of weapons under paragraph (a) (1) is a class D felony; unlawful transfer of weapons under paragraphs (a) (2) and (3) is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MPCC 16.060, 23 ASC 1—15.

**46.4207 Unlawful possession of firearms and firearm ammunition.**

- (a) A person commits the crime of unlawful possession of a firearm or firearm ammunition if he has any firearm or firearm ammunition in his possession, and
- (1) he has been convicted of a dangerous felony or confined therefor in this territory or elsewhere during the 5-year period immediately preceding the date of that possession; or
  - (2) he is a fugitive from justice, an habitual drunkard, a drug addict, or is currently adjudged mentally incompetent.
- (b) Unlawful possession of a firearm or firearm ammunition is a class C felony.

**History:** 1979, PL 16-43 § 2.

**46.4220 Definition of “arms”.**

As used in 46.4220 through 46.4234, “arms”, includes guns, rifles, pistols, air rifles, air pistols, gas rifles, gas pistols, ammunition, shells, cartridges, gunpowder, dynamite, nitroglycerine, blasting powder, fireworks, and all other firearms and explosives and materials for the manufacture of the same.

**History:** 1962, PL 7-13; 1969, PL 11-51.

**46.4221 License-Required when.**

- (a) It is unlawful for any person, whether permanently or temporarily resident within American Samoa or whether on shore or on board any vessel, anchored, moored, or docked in any harbor in American Samoa, to have in his possession any arms without first having obtained a license therefor from the Commissioner of Public Safety.
- (b) A license to possess arms shall not be issued by the Commissioner of Public Safety unless the application therefor has been approved by the attorney general, and that such approval shall be given only after a background investigation has been conducted on the applicant; and that the:
- (1) applicant is not a convicted felon; and
  - (2) applicant does not have any mental disorder or any disease which may endanger the public if a license to possess arm(s) is issued to him; and
  - (3) applicant is not a member of any organization that advocates the overthrowing of the Government of American Samoa or that of the United States.

(c) A license shall be issued only for the ownership and possession of 12, 16, 20 and 410 gauge shotguns and shotgun shells and 22 caliber rifles and their ammunitions.

(d) Licenses issued prior to the enactment of subsection (c) remain valid. No additional licenses shall be issued for renewals of existing licenses provided in 46.4227 and transfers of arms validly licensed provided in 46.4229(b).

**History:** 1962, PL 7-13; 1990 PL 21-36; 1991 PL 22-8; amd 1999, PL 26-4.

**46.4222 License-Required for import.**

(a) It is unlawful for any person to import arms into American Samoa without having obtained a license therefor from the Commissioner of Public Safety.

(b) A license to import arms shall not be issued by the Commissioner of Public Safety unless the application for the license has been approved by the Attorney General.

(c) Unless otherwise authorized, only those shotguns and rifles referred to in section 46.4221(c) A.S.C.A., may be imported with license.

(d) The customs officers may confiscate any guns that are being imported into the Territory in violation of law. Confiscated guns must be surrendered to the custody of the Commissioner of Public Safety within 5 days of confiscation.

**History:** 1962, PL 7-13; amd 1991, PL 22-8.

**46.4223 License-Required for sale of arms.**

(a) It is unlawful for any person to sell or in any other way transfer the right of possession of any arms without having obtained from the Commissioner of Public Safety a license to sell arms. The application for such license shall contain such information as may be required by the Commissioner of Public Safety.

(b) A license to sell arms shall not be issued by the Treasurer unless the application for the license has been approved by the Governor or his designated representative. No license shall be issued for the sale of arms other than shotguns and .22 caliber rifles as set out in 46.4221 (c) and ammunition therefor.

**History:** 1962, PL 7-13; 1969, PL 11-44; 1990, PL 21-36; amd 1991, PL 22-8.

**46.4224 License-Information required.**

(a) Every person who obtains a license to possess, import, or sell arms shall, upon the written request of the Governor or his designated representative, furnish such information concerning such arms as may be reasonably required.

(b) Each license issued shall specify the number, quantity, and description of the arms which may be possessed, imported, or sold, or otherwise transferred under it.

**History:** 1962, PL 7-13.

**46.4225 License-Possession required when carrying arms.**

Every person to whom a license to possess arms is issued shall, when carrying such arms or any part thereof, have with him the license to possess such arms, and shall produce the same for inspection upon demand of any officer or official of the government.

**History:** 1962, PL 7-13.

**46.4226 License-Revocation.**

Any license issued under authority of this title may be altered or revoked by the Governor or his designated representative at any time for good cause.

**History:** 1962, PL 7-13.

**46.4227 License-Renewal.**

(a) Licenses to possess arms shall expire on 10 January of the year following their issue. Each holder of a license to possess arms shall between the 1st and 10th of January of each year, submit his license to possess arms for the previous year, together with the annual license fee, to the Commissioner of Public Safety.

(b) The Commissioner of Public Safety may renew the license with or without examining the arms for which the license is to be issued; but the holder of the license shall, upon the demand of the Commissioner of Public Safety, submit the arms to him for examination.

**History:** 1962, PL 7-13; amd 1991 PL 22-8.

**46.4228 Marking arms for identification.**

Each person to whom a license to possess arms is issued shall, upon receipt of such arms, produce at the office of the Commissioner of Public Safety his license to possess arms, together with the arms specified in said license. Such arms shall be examined and compared with the license and, if found to correspond therewith, shall be marked with such letters as may be designated by the Commissioner of Public Safety and also marked with a number indicating the order of the license, and registration as specified in the license, unless the arm has a plainly visible and distinctive serial number stamped on it. Such arms when duly marked shall be redelivered to the licensee, together with the license. If the provisions of this section are not complied with, the license shall be revoked, and the arms may be confiscated as though no license had been issued.

**History:** 1962, PL 7-13; amd 1991, PL 22-8.

**46.4229 Sales to persons without licenses-Grandfather clause.**

(a) No person shall sell or otherwise transfer any arms to any person who does not hold a valid and existing license to possess the particular firearms to be sold.

(b) Arms no longer permitted to be licensed but for which current, valid licenses were issued prior to the effective date of section 46.4221(c) may, in the discretion of the Commissioner of Public Safety and in the manner provided in this chapter, be transferred to persons obtaining licenses therefor.

**History:** 1962, PL 7-13; amd 1991, PL 22-8.

**46.4230 Blasting.**

(a) Any person desirous of obtaining gunpowder, dynamite, nitroglycerine, or other explosive for the purpose of blasting shall first obtain from the Commissioner of Public Safety a license specifically authorizing the use of the gunpowder, dynamite, nitroglycerine, or other explosive.

(b) No such license may be issued until the application therefor has been approved by the Governor upon the recommendation of the Director of Public Works, and the license and the application therefor shall specify the place and the manner of using the explosive.

(c) Any person who possesses or uses any explosive without first obtaining a license, or uses an explosive in a place or manner not authorized by such license, is guilty of a violation of this chapter.

**History:** 1962, PL 7-13; amd 1991, PL 22-8.

**46.4231 Discharge of arms.**

It is unlawful for any person to discharge, explode, or set off any arms within 30 yards of any public road or highway, house, building, or airport in American Samoa except that the Commissioner of Public Safety may authorize the discharge of firearms for the purpose of an Honor Guard or authorized ceremonial occasion.



**History:** 1962, PL 7-13; amd 1991, PL 22-8.

#### **46.4232 Searches for arms.**

The Chief Justice, the Associate Justice or a district court judge, upon the filing of a complaint sworn to or affirmed by the complainant, which describes the place to be searched and the person or things to be seized, may issue a warrant authorizing any police officer to search for arms on any person or on any vessel, land, building or vehicle within American Samoa. In issuing such warrant, the Chief Justice, Associate Justice or District Court Judge may impose any condition or conditions he may think fit for the proper execution of the warrant.

**History:** 1962, PL 7-13; 1966, PL 9-50; amd 1979, PL 16-53 § 72.

**Amendments:** 1979 Added references to “district court judge” at beginning of section and near end of section.

#### **46.4233 Authorized possession and use of arms without license.**

(a) This chapter does not prohibit the possession and use of arms and other police weapons by any member of the police force, armed forces of the United States or employees of the government of the United States and law enforcement officers of other states or territories if these arms are properly issued by the issuing authorities and are brought into the Territory in the course of performing official duties.

(b) The Governor or his designated representative may authorize the pulenu’u or police of any village to possess and use arms in connection with his official duties without first obtaining a license therefor.

(c) The Governor may enter into reciprocal agreements with states whose law enforcement officers may be assigned on official duty in the Territory to permit these law enforcement officers to carry firearms without registration.

**History:** 1962, PL 7-13; 1981, PL 17-30 § 2; amd 1991, PL 22-8.

#### **46.4234 Violation-Penalty.**

(a) Any person who violates any of the provisions of this chapter or who refuses to obey any lawful order issued under the authority of this chapter is guilty of a class A misdemeanor and shall, upon conviction, be sentenced accordingly, and any arms involved may be confiscated by the government.

(b) All arms confiscated as provided in subsection (a) shall be delivered to the Commissioner of Public Safety who shall, within thirty days of receipt of the confiscated arms, file a return under oath with the court ordering the confiscation informing the court that the arms have been destroyed or assigned to the inventory of a territorial law enforcement agency. A copy of said report shall be filed with the Attorney General at the same time.

**History:** 1962, PL 7-13; 1980, PL 16-90 § 71; amd 1991, PL 22-8.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

## **Chapter 43**

## **GAMBLING**

### **Sections:**

- |                |   |
|----------------|---|
| <b>46.4301</b> | <b>Definition.</b>                      |
| <b>46.4302</b> | <b>Exception for bingo and raffles.</b> |
| <b>46.4303</b> | <b>Misdemeanor.</b>                     |

**46.4301 Definition.**

A person commits the crime of gambling if he engages in gambling in any form with cards, dice, or other implements or devices of any kind, where anything of value is wagered upon the outcome, or who keeps any establishment, place, equipment, or apparatus for gambling, or any agents or employees for that purpose, or who knowingly lets any establishment, structure, place, equipment, or apparatus be used for gambling.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

Gambling and the keeping of gaming facilities is a criminal offense, though an exception exists for occasional bingo games whose profits are used for charitable, religious, or educational purposes. A.S.C.A. § 46.4301-46.4302. *Le Vaomatua v. American Samoa Government*, 23 A.S.R.2d 11 (1992).

**Research Guide:** 15 ASC 521.

**46.4302 Exception for bingo and raffles.**

Nothing contained in this chapter prohibits the occasional playing of bingo or the selling of chances for the raffling of an item of value when the profits from the bingo game or raffle are used for religious, educational or charitable purposes.

**History:** 1979, PL 16-43 § 2.

**Case Notes:**

Gambling and the keeping of gaming facilities is a criminal offense, though an exception exists for occasional bingo games whose profits are used for charitable, religious, or educational purposes. A.S.C.A. § 46.4301-46.4302. *Le Vaomatua v. American Samoa Government*, 23 A.S.R.2d 11 (1992).

**Research Guide:** 15 ASC 521.

**46.4303 Misdemeanor.**

Gambling is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 15 ASC 521.

## Chapter 44

### PORNOGRAPHY AND RELATED OFFENSES

**Sections:**

- 46.4401 Definitions.**
- 46.4402 Promoting pornography in the first degree.**
- 46.4403 Promoting pornography in the second degree.**
- 46.4404 Furnishing pornographic materials to minors.**
- 46.4405 Public display of explicit sexual material.**
- 46.4406 Evidence in pornography cases.**
- 46.4407 Injunctions and declaratory judgments.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978. MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPG—Model Penal Code.

#### **46.4401 Definitions.**

As used in this chapter:

(a) “Displays publicly” means exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway, or public sidewalk, or from the property of others.

(b) “Explicit sexual material” means any pictorial or three dimensional material depicting sexual conduct, unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of postpubertal human genitals; provided, however, that works of art or of anthropological significance are not considered within the foregoing definition.

(c) “Furnish” means to issue, sell, give, provide, lend, mail, deliver, transfer, circulate, disseminate, present, exhibit or otherwise provide.

(d) “Material” means anything printed or written, or any picture, drawing, photograph, motion picture film, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates and other latent representational objects.

(e) “Minor” means any person under the age of 18 years.

(f) “Nudity” means the showing of postpubertal human genitals or pubic area, with less than a fully opaque covering.

(g) “Performance” means any play, motion picture film, dance or exhibition performed before an audience.

(h) Pornographic: any material or performance is “pornographic” if, considered as a whole, applying contemporary community standards:

- (1) its predominant appeal is to prurient interest in sex;
- (2) it depicts or describes sexual conduct in a patently offensive way; and
- (3) it lacks serious literary, artistic, political or scientific value.

In determining whether any material or performance is pornographic, it is judged with reference to its impact upon ordinary adults.

(i) Pornographic for minors: any material or performance is pornographic for minors if it is primarily devoted to description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, and:

- (1) its predominant appeal is to prurient interest in sex;
- (2) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (3) it lacks serious literary, artistic, political, or scientific value for minors.

(j) “Promote” means to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do those.

(k) “Sadomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

(l) “Sexual conduct” has the meaning specified in subsection (d) of 46.3701.

(m) “Sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or gratification.

(n) “Wholesale promote” means to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, or to offer or agree to do those for purposes of resale.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 573.010, 15 ASC 371.

**46.4402 Promoting pornography in the first degree.**

(a) A person commits the crime of promoting pornography in the first degree if, knowing its content and character:

(1) he wholesale promotes or possesses with the purpose to wholesale promote any pornographic material; or

(2) he wholesale promotes for minors or possesses with the purpose to wholesale promote for minors any material pornographic for minors.

(b) Promoting pornography in the first degree is a class C felony.

**History:** 1979, PL 16-43 § 2; 1988, PL 20-55.

**Research Guide:** MCC 573.020, 15 ASC 373.

**46.4403 Promoting pornography in the second degree.**

(a) A person commits the crime of promoting pornography in the second degree if, knowing its content and character, he:

(1) promotes or possesses with the purpose to promote any pornographic material for pecuniary gain; or

(2) produces, presents, directs, or participates in any pornographic performance for pecuniary gain.

(b) Promoting pornography in the second degree is a class D felony.

**History:** 1979, PL 16-43 § 2; 1988, PL 20-55.

**Research Guide:** MCC 573.030, 15 ASC 372.

**46.4404 Furnishing pornographic materials to minors.**

(a) A person commits the crime of furnishing pornographic material to minors if, knowing its content and character, he:

(1) furnishes any material pornographic for minors, knowing that the person to whom it is furnished is a minor or acting in reckless disregard of the likelihood that the person is a minor; or

(2) produces, presents, directs, or participates in any performance pornographic for minors that is furnished to a minor knowing that any person viewing the performance is a minor or acting in reckless disregard of the likelihood that a minor is viewing the performance.

(b) Furnishing pornographic material to minors is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 573.040, 15 ASC 372.

**46.4405 Public display of explicit sexual material.**

(a) A person commits the crime of public display of explicit sexual material if he knowingly:

(1) displays publicly explicit sexual material or

(2) fails to take prompt action to remove that display from property in his possession after learning of its existence.

(b) Public display of explicit sexual material is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 573.060.

**46.4406 Evidence in pornography cases.**

(a) In any prosecution under this chapter evidence is admissible to show:

(1) what the predominant appeal of the material or performance would be for ordinary adults

or minors;

- (2) the literary, artistic, political or scientific value of the material or performance;
- (3) the degree of public acceptance in this Territory and in the local community;
- (4) the appeal to prurient interest in advertising or other promotion of the material or performance; and
- (5) the purpose of the author, creator, promoter, furnisher, or publisher of the material or performance.

(b) Testimony of the author, creator, promoter, furnisher, publisher, or expert testimony, relating to factors entering into the determination of the issues of pornography, is admissible.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 573.050.

#### **46.4407 Injunctions and declaratory judgments.**

(a) Whenever material or a performance is being or is about to be promoted, furnished or displayed in violation of 46.4402 through 46.4405, a civil action may be instituted by the Attorney General against any person violating or about to violate those sections in order to obtain a declaration that the promotion, furnishing, or display of that material or performance is prohibited. The action may also seek an injunction appropriately restraining promotion furnishing or display.

(b) The action may be brought only in the Trial Division of the High Court.

(c) Any promoter, furnisher, or displayer of, or a person who is about to be a promoter, furnisher, or displayer of, the material or performances involved may intervene as of right as a party defendant in the proceedings.

(d) The Trial and Appellate Divisions of the High Court shall give expedited consideration to actions and appeals brought under this section. The defendant is entitled to a trial of the issues within one day after the issuance of any injunction or restraining order and a decision is rendered by the court within 2 days of the conclusion of the trial. No restraining order or injunction of any kind shall be issued restraining the promotion, furnishing, or display of any material or performance without a prior adversary hearing before the court.

(e) A final declaration obtained under this section may be used to form the basis for an injunction and for no other purpose.

(f) All laws regulating the procedure for obtaining declaratory judgments or injunctions which are inconsistent with the provisions of this section are inapplicable to proceedings brought under this section. There is no right to jury trial in any proceedings under this section.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 573.070.

## **Chapter 45**

### **OFFENSES AGAINST PUBLIC ORDER**

#### **Sections:**

- 46.4501 Disturbing public peace.**
- 46.4502 Disturbing private peace.**
- 46.4503 Definitions for peace disturbance.**
- 46.4504 Unlawful assembly.**
- 46.4505 Rioting.**
- 46.4506 Refusal to disperse.**

- 46.4510      Peace bond-Complaint and warrant.**
- 46.4511      Peace bond-Discharge of person complained of.**
- 46.4512      Peace bond-Discharge or commitment.**
- 46.4513      Peace bond-Breach.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978.

MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC —Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.4501            Disturbing public peace.**

(a) A person commits the crime of public peace disturbance if, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk of it, he:

- (1) engages in fighting or in violent, tumultuous, or threatening behavior;
- (2) makes unreasonable noise;
- (3) in a public place uses abusive or obscene language, or makes an obscene gesture;
- (4) without lawful authority, disturbs any lawful assembly or meeting of persons;
- (5) obstructs vehicular or pedestrian traffic;
- (6) congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse;
- (7) creates a hazardous or physically offensive condition by any act that serves no legitimate purpose; or
- (8) commits any indecent conduct upon the death of a person of rank or during a “lagi” ceremony.

(b) It is a defense to prosecution under this section that the actor had significant provocation for his conduct.

(c) Public peace disturbance is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

#### **46.4502            Disturbing private peace.**

(a) A person commits the crime of private peace disturbance if he is on private property and unreasonably and purposely causes alarm to another person or persons on those premises by:

- (1) threatening to commit a crime against any person or
- (2) fighting.

(b) It is a defense to prosecution under this section that the actor had significant provocation for his conduct.

(c) Private peace disturbance is a class C misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 574.020, 15 ASC 221, 15 ASC 602, 15 ASC 801, 15 ASC 802.

#### **46.4503            Definitions for peace disturbance.**

For the purposes of 46.4501 and 46.4502:

(a) “Private property” means any place which at the time is not open to the public. It includes property which is owned publicly or privately.

(b) “Public place” means any place which at the time is open to the public. It includes property which is owned publicly or privately; and if a building or structure is divided into separately occupied units, those units are separate premises.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 574 030.

**46.4504 Unlawful assembly.**

(a) A person commits the crime of unlawful assembly if he knowingly assembles with 6 or more other persons and agrees with those persons to violate any of the criminal laws of this Territory or of the United States with force or violence.

(b) Unlawful assembly is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 574 .040, 15 ASC 222

**46.4505 Rioting.**

(a) A person commits the crime of rioting if he knowingly assembles with 6 or more other persons and agrees with those persons to violate any of the criminal laws of this Territory or of the United States with force or violence, and later, while still assembled, violates any of those laws with force or violence.

(b) Rioting is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 574.050, 15 ASC 222.

**46.4506 Refusal to disperse.**

(a) A person commits the crime of refusal to disperse if, being present at the scene of an unlawful assembly, or at the scene of a riot, he knowingly fails or refuses to obey the lawful command of a law enforcement officer to depart from the scene of that unlawful assembly or riot.

(b) Refusal to disperse is a class C misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 574.060, 15 ASC 222, 15 ASC 801, 15 ASC 802.

**46.4510 Peace bond-Complaint and warrant.**

A complaint verified by the oath of the complainant may be presented by the Attorney General to the Chief Justice or the Associate Justice that a person has threatened to commit an offense against the person or property of another. If it appears from the complaint that there is just reason to fear the commission of the offense threatened by the person complained of, the Chief Justice or the Associate Justice shall issue a warrant, directed to the Chief of Police, reciting the substance of the complaint and commanding the Chief of Police or other police officer forthwith to arrest the person complained of, and to bring him before the court.

**History:** 1963, PL 8-3; 1966, PL 9-45.

**46.4511 Peace bond-Discharge of person complained of.**

When the person complained of is brought before the Chief Justice or the Associate Justice, he shall take testimony in relation thereto if the charge is controverted. If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged. If it appears that there is just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking running to the government, in such sum not exceeding \$750, as the Chief Justice or the Associate Justice may direct, with one or more sufficient sureties approved by the court, to keep the peace, particularly toward the complainant, for a period of one year.

**History:** 1963, PL 8-3; 1966, PL 9-45.

**46.4512 Peace bond-Discharge or commitment.**

(a) If the undertaking required by 46.4511 is given, the party complained of must be discharged. If he does not give it, the court shall commit him to prison for such term as it sees fit, which may not exceed the maximum sentence for the completion of the threatened offense.

(b) If the person complained of is committed for not giving security, he shall be discharged by the court upon giving the same.

**History:** 1963, PL 8-3.

**46.4513 Peace bond-Breach.**

An undertaking to keep the peace is broken upon the conviction of the person complained against of a breach of the peace. Upon receiving proof of such a conviction, the court shall order the undertaking to be prosecuted, and the Attorney General shall commence an action thereon in the name of the government. The fact of conviction of the offense must be alleged as the breach of the undertaking, and the record of any conviction so alleged is conclusive evidence thereof.

**History:** 1963, PL 8-3.

## **Chapter 46**

### **OFFENSES AGAINST THE ADMINISTRATION OF JUSTICE**

**Sections:**

- 46.4601 Definitions.**
- 46.4602 Concealing an offense.**
- 46.4603 Hindering prosecution.**
- 46.4604 Right to avoid prosecution or giving of testimony.**
- 46.4605 Perjury.**
- 46.4606 False affidavit.**
- 46.4607 False declarations.**
- 46.4608 Proof of falsity of statements.**
- 46.4609 False reports.**
- 46.4610 False bomb report.**
- 46.4611 Tampering with or fabricating physical evidence.**
- 46.4612 Tampering with a public record.**
- 46.4613 False impersonation.**
- 46.4614 Simulating legal process.**
- 46.4615 Resisting or interfering with arrest.**
- 46.4616 Interference with legal process.**
- 46.4617 Criminal contempt.**
- 46.4618 Refusal to identify as a witness.**
- 46.4625 Escape from commitment.**
- 46.4626 Escape from custody.**
- 46.4627 Escape from confinement.**
- 46.4628 Failure to return to confinement.**
- 46.4629 Aiding escape of a prisoner.**
- 46.4630 Permitting escape.**
- 46.4631 Disturbing a judicial proceeding.**
- 46.4632 Tampering with a judicial proceeding.**
- 46.4633 Tampering with a witness.**
- 46.4634 Acceding to corruption.**



- 46.4635 Improper communication.**
- 46.4636 Misconduct by a juror.**
- 46.4637 Misconduct in selecting or summoning a juror.**
- 46.4638 Misconduct in administration of justice.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978. MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC —Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.4601 Definitions.**

The following definitions apply to chapters 46 and 47 of this part:

(a) “Affidavit” means any written statement which is authorized or required by law to be made under oath, and which is sworn to before a person authorized to administer oaths.

(b) “Government” means any branch or agency of the government of this territory or of any political subdivision of it.

(c) “Judicial proceeding” means any official proceeding in court, or any proceeding authorized by or held under the supervision of a court.

(d) “Juror” means a grand or petit juror, including a person who has been drawn or summoned to attend as a prospective juror.

(e) “Jury” means any panel which has been drawn or summoned to attend as prospective jurors.

(f) “Official proceeding” means any cause, matter, or proceeding where the laws of this territory require that evidence considered in it is under oath or affirmation.

(g) “Public record” means any document which a public servant is required or permitted by law to keep.

(h) “Testimony” means any oral statement under oath or affirmation.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.010.

#### **46.4602 Concealing an offense.**

(a) A person commits the crime of concealing an offense if:

(1) he confers or agrees to confer any pecuniary benefit or other consideration to any person in consideration of that person’s concealing of any offense, refraining from initiating or aiding in the prosecution of an offense, or withholding any evidence of it; or

(2) he accepts or agrees to accept any pecuniary benefit or other consideration in consideration of his concealing any offense, refraining from initiating or aiding in the prosecution of an offense, or withholding any evidence of it.

(b) Concealing an offense is a class D felony if the offense concealed is a felony, otherwise concealing an offense is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575 .020, 15 ASC 241.

#### **46.4603 Hindering prosecution.**

(a) A person commits the crime of hindering prosecution if for the purpose of preventing the apprehension, prosecution, conviction, or punishment of another for conduct constituting a crime he:

(1) harbors or conceals the person;

(2) warns the person of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring another into compliance with the law;

(3) provides the person with money, transportation, weapon, disguise, or other means to aid him in avoiding discovery or apprehension; or

(4) prevents or obstructs, by means of force, deception, or intimidation, anyone from performing an act that might aid in the discovery or apprehension of the person.

(b) Hindering prosecution is a class D felony if the conduct of the other person constitutes a felony; otherwise hindering prosecution is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.030, 15 ASC 761, 15 ASC 781.

#### **46.4604 Flight to avoid prosecution or giving of testimony.**

(a) A person commits the crime of flight to avoid prosecution or giving of testimony if he knowingly leaves the jurisdiction of the government to avoid prosecution or to avoid giving testimony in any criminal proceeding.

(b) Flight to avoid prosecution or giving of testimony is a class C felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 15 ASC 762.

#### **46.4605 Perjury.**

(a) A person commits the crime of perjury if, with the purpose to deceive, he knowingly testifies falsely or procures another to testify falsely to any material fact upon oath or affirmation legally administered, in any official proceeding before any court, the Legislature or either House or a committee thereof, public body, notary public, or other officer authorized to administer oaths.

(b) A fact is material, regardless of its admissibility under rules of evidence, if it could substantially affect, or did substantially affect, the course or outcome of the cause, matter, or proceeding.

(c) Knowledge of the materiality of the statement is not an element of this crime, and it is no defense that:

(1) the defendant mistakenly believed the fact to be immaterial or

(2) the defendant was not competent for reasons other than mental disability or immaturity to make the statement.

(d) It is a defense to a prosecution under subsection (a) that the actor retracted the false statement in the course of the official proceeding in which it was made provided he did so before the falsity of the statement was exposed. Statements made in separate hearings at separate stages of the same proceeding, including but not limited to statements made before a grand jury, at a preliminary hearing at the taking of a deposition or at previous trial are made in the course of the same proceeding.

(e) The defendant shall have the burden of injecting the issue of retraction under subsection (d).

(f) Perjury committed in any proceeding not involving a felony charge is a class D felony.

(g) Perjury committed in any proceeding not involving a felony charge is a class C felony unless:

(1) it is committed during a criminal trial for the purpose of securing the conviction of an accused for murder, then it is a class A felony; or

(2) it is committed during a criminal trial for the purpose of securing the conviction of an accused for any felony except murder, then it is a class B felony.

**History:** 1979, PL 16-43 § 2; amd 1988, PL 20-78.

**Research Guide:** MCC 575.040, 15 ASC 504, 15 ASC 821.

**46.4606 False affidavit.**

(a) A person commits the crime of making a false affidavit if, with purpose to mislead any person, he, in any affidavit, swears falsely to a fact which is material to the purpose for which the affidavit is made.

(b) The provisions of subsections (b) and (c) of 46.4605 apply to prosecutions under subsection (a).

(c) It is a defense to a prosecution under subsection (a) that the actor retracted the false statement by affidavit or testimony but this defense does not apply if the retraction was made after:

(1) the falsity of the statement was exposed or

(2) any person took substantial action in reliance on the statement.

(d) The defendant has the burden of injecting the issue of retraction under subsection (c).

(e) Making a false affidavit is a class A misdemeanor if done for the purpose of misleading a public servant in the performance of his duty; otherwise making a false affidavit is a class C misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.050, 15 ASC 504, 15 ASC 821.

**46.4607 False declarations.**

(a) A person commits the crime of making a false declaration if, with the purpose to mislead a public servant in the performance of his duty, he:

(1) submits any written false statement which he does not believe to be true:

(A) in an application for any pecuniary benefit or other consideration; or

(B) on a form bearing notice, authorized by law, that false statements made therein are punishable; or

(2) submits or invites reliance on:

(A) any writing which he knows to be forged, altered or otherwise lacking in authenticity or

(B) any sample, specimen, map, boundary mark, or other object which he knows to be false.

(b) The falsity of the statement or the item under subsection (a) must be as to a fact which is material to the purposes for which the statement is made or the item submitted, and the provisions of subsections (b) and (c) of 46.4605 apply to prosecutions under subsection (a).

(c) It is a defense to a prosecution under subsection (a) that the actor retracted the false statement or item but this defense does not apply if the retraction was made after:

(1) the falsity of the statement or item was exposed or

(2) the public servant took substantial action in reliance on the statement or item.

(d) The defendant has the burden of injecting the issue of retraction under subsection (c).

(e) Making a false declaration is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.060, 15 ASC 502—504, 15 ASC 821.

**46.4608 Proof of falsity of statements.**

Persons may not be convicted of a violation of 46.4605, 46.4606, or 46.4607 based upon the making of a false statement except upon proof of the falsity of the statement by:

(1) the direct evidence of 2 witnesses;

(2) the direct evidence of 1 witness together with strongly corroborating circumstances;

(3) demonstrative evidence which conclusively proves the falsity of the statement; or

(4) a directly contradictory statement by the defendant under oath together with:

(A) the direct evidence of 1 witness; or

(B) strongly corroborating circumstances; or

(5) a judicial admission by the defendant that he made the statement knowing it was false. An admission, which is not a judicial admission, by the defendant that he made the statement knowing it was false may constitute strongly corroborating circumstances.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.070, 15 ASC 502, 15 ASC 504.

**46.4609 False reports.**

- (a) A person commits the crime of making a false report if he knowingly:
  - (1) gives false information to a law enforcement officer for the purpose of implicating another person in a crime;
  - (2) makes a false report to a law enforcement officer that a crime has occurred or is about to occur;
  - (3) makes a false report or causes a false report to be made to a law enforcement officer, security officer, fire department or other organization official or volunteer, which deals with emergencies involving danger to life or property that a fire or other incident calling for an emergency response has occurred.
- (b) It is a defense to a prosecution under subsection (a) that the actor retracted the false statement or report before the law enforcement officer or any other person took substantial action in reliance on it.
- (c) The defendant has the burden of injecting the issue of retraction under subsection (b).
- (d) Making a false report is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.080, 15 ASC 504.

**46.4610 False bomb report.**

- (a) A person commits the crime of making a false bomb report if he knowingly makes a false report or causes a false report to be made to any person that a bomb or other explosive has been placed in any public or private place or vehicle.
- (b) Making a false bomb report is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.090.

**46.4611 Tampering with or fabricating physical evidence.**

- (a) A person commits the crime of tampering with or fabricating physical evidence if he:
  - (1) alters, destroys, suppresses, or conceals any record, document, or thing with purpose to impair its verity, legibility, or availability in any official proceeding or investigation; or
  - (2) makes, presents or uses any record, document, or thing knowing it to be false with purpose to mislead a public servant who is or may be engaged in any official proceeding or investigation.
- (b) Tampering with or fabricating physical evidence is a class D felony if the actor impairs or obstructs the prosecution or defense of a felony; otherwise tampering with or fabricating physical evidence is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**46.4612 Tampering with a public record.**

- (a) A person commits the crime of tampering with a public record when, knowing that he does not have the authority of anyone entitled to grant it, he knowingly and willfully removes, mutilates, destroys, suppresses, conceals, makes a false entry in or falsely alters any record or

other written instrument files with, deposited in, or otherwise constituting a record kept or issued by any government office or its agents or any record required by law to be kept.

(b) Tampering with a public record is a class C felony.

**History:** 1979, PL 16-43 § 2; amd 2011, PL 32-5.

**Research Guide:** MCC 575.110, 15 ASC 504.

**46.4613 False impersonation.**

- (a) A person commits the crime of false impersonation if he:
- (1) falsely represents himself to be a public servant with purpose to induce another to submit to his pretended official authority or to rely upon his pretended official acts; and:
    - (A) performs an act in that pretended capacity; or
    - (B) causes another to act in reliance upon his pretended official authority; or
  - (2) falsely represents himself to be a person licensed to practice or engage in any profession for which a license is required by the laws of this territory with purpose to induce another to rely upon that representation, and
    - (A) performs an act in that pretended capacity; or
    - (B) causes another to act in reliance upon that representation.
- (b) False impersonation is a class B misdemeanor unless the person represents himself to be a law enforcement officer, then false impersonation is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575 120, 15 ASC 501.

**46.4614 Simulating legal process.**

- (a) A person commits the crime of simulating legal process if, with purpose to mislead the recipient and cause him to take action in reliance on it, he delivers or causes to be delivered:
- (1) a request for the payment of money on behalf of any creditor that in form and substance simulates any legal process issued by any Court of this Territory or
  - (2) any purported summons, subpoena, or other legal process knowing that the process was not issued or authorized by any court.
- (b) This section does not apply to a subpoena properly issued by a notary public.
- (c) Simulating legal process is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.130, 15 ASC 501.

**46.4615 Resisting or interfering with arrest.**

- (a) A person commits the crime of resisting or interfering with arrest, detention, or stop if, knowing that a law enforcement officer is making an arrest, or attempting to lawfully detain or stop an individual or vehicle, or the person reasonably should know that a law enforcement officer is making an arrest or attempting to lawfully detain or lawfully stop an individual or vehicle, for the purpose of preventing the officer from effecting the arrest, stop or detention, the person:
- (1) resists the arrest of himself by using or threatening the use of violence or physical force or by fleeing from that officer or
  - (2) interferes with the arrest of another person by using or threatening the use of violence, physical force, or physical interference.
- (b) This section applies to arrest, stops or detention with or without warrants amid to arrest, stops or detention for any crime or ordinance violation.
- (c) A person is presumed to be fleeing a vehicle stop if that person continues to operate a motor vehicle after that person has seen or should have seen clearly visible emergency lights or

has heard or should have heard an audible signal emanating from the law enforcement vehicle pursuing that person.

(d) It is no defense to a prosecution under subsection (a) as further defined by subsection (b) that the law enforcement officer was acting unlawfully in making the arrest, stop or detention. However, nothing in this section is construed to bar civil suits for unlawful arrest.

(e) Resisting or interfering with an arrest, stop or detention for a felony is a Class D felony. Resisting or interfering with an arrest, stop or detention by fleeing in such a manner that the person fleeing creates a substantial risk of serious physical injury or death to any person is a class D felony; otherwise resisting or interfering with arrest, stop or detention is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2; 2005, PL 29-8.

**Research Guide:** MCC 575.150, 15 ASC 782.

#### **46.4616 Interference with legal process.**

(a) A person commits the crime of interference with legal process if, knowing any person is authorized by law to serve process, he interferes with or obstructs such person for the purpose of preventing the service of any process.

(b) "Process" includes any writ, summons, subpoena, warrant other than an arrest warrant, or other process or order of a court.

(c) Interference with legal process is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.160, 15 ASC 761.

#### **46.4617 Criminal contempt.**

(a) A person commits the crime of criminal contempt when he engages in any of the following conduct:

(1) disorderly, contemptuous, or insolent behavior committed during the sitting of a court, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority;

(2) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceedings;

(3) intentional disobedience or resistance to the process, injunction, or other mandate of a court;

(4) contumacious refusal to be sworn as a witness in any court proceeding or, after being sworn, to answer any proper interrogatory;

(5) knowingly publishing a false or grossly inaccurate report of a court's proceedings;

(6) intentional refusal to serve as a juror;

(7) intentional and unexcused failure by a juror to attend a trial at which he has been chosen to serve as a juror; or

(8) intentional failure to appear personally on the required date, having been released from custody, with or without bail, by court order or by other lawful authority, upon condition that he will subsequently appear personally in connection with a criminal action or proceeding.

(b) Criminal contempt is a class A misdemeanor, except for violations of paragraph (a) (1). A violation of paragraph (a) (1) is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

#### **Case Notes:**

Criminal contempt statute authorizing the executive to prosecute certain conduct as criminal contempt of court does not limit court's power to act on its own under general contempt statute. A.S.C.A. §§ 3.0203, 46.4617. American Samoa Government v. Godinet, 7 A.S.R.2d 127 (1988).

General contempt statute may give rise to criminal liability despite existence of separate statute making certain acts criminal offenses. A.S.C.A. §§ 3.0203, 46.4617. *American Samoa Government v. Godinet*, 7 A.S.R.2d 127 (1988).

**46.4618 Refusal to identify as a witness.**

(a) A person commits the crime of refusal to identify as a witness if, knowing he has witnessed any portion of a crime, or any other incident resulting in physical injury or substantial property damage, upon demand by a law enforcement officer engaged in the performance of his official duties, he knowingly refuses to give or gives a false report of his name and present address to that officer.

(b) Refusal to identify as a witness is a class C misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.190, 15 ASC 761.

**46.4625 Escape from commitment.**

(a) A person commits the crime of escape from commitment if he has been committed to a territorial correctional facility under 46.1301 through 46.1310, and he escapes from commitment.

(b) Escape from commitment is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.195, 15 ASC 381, 15 ASC 382, 15 ASC 7808.

**46.4626 Escape from custody.**

(a) A person commits the crime of escape from custody if, while being held in custody after arrest for any crime, he escapes from custody.

(b) Escape from custody is a class A misdemeanor unless:

(1) it is effected by means of a deadly weapon or dangerous instrument or by holding any person as hostage, then escape from custody is a class A felony; or

(2) the person escaping is under arrest for a felony, then escape from custody is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.200, 15 ASC 382.

**46.4627 Escape from confinement.**

(a) A person commits the crime of escape from confinement if, while being held in confinement after arrest for any crime, or while serving a sentence after conviction for any crime, he escapes from confinement.

(b) Escape from confinement is a class A misdemeanor except that it is:

(1) a class A felony if it is effected by means of a deadly weapon or dangerous instrument or by holding any person as hostage;

(2) a class D felony if:

(A) the person escapes while being held on a felony charge or while serving a sentence after conviction of a felony or

(B) the escape is facilitated by striking or beating any person.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.210, 15 ASC 381, 15 ASC 382.

**46.4628 Failure to return to confinement.**

(a) A person commits the crime of failure to return to confinement if, while serving a sentence for any crime under a work-release program, or while under sentence of any crime to serve a term of confinement which is not continuous, or while serving any other type of sentence for any crime where he is temporarily permitted to go at large without guard, he purposely fails to return to confinement when he is required to do so.

(b) This section does not apply to persons who are free on bond, bail or recognizance, personal or otherwise, nor to persons who are on probation or parole, temporary or otherwise.

(c) Failure to return to confinement is a class C misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.220.

**46.4629 Aiding escape of a prisoner.**

(a) A person commits the crime of aiding escape of a prisoner if he:

(1) introduces into any place of confinement a deadly weapon or dangerous instrument, or other thing adapted or designed for use in making an escape, with the purpose of facilitating the escape of any confined prisoner, or of facilitating the commission of any other crime or

(2) assists or attempts to assist any prisoner who is being held in custody or confinement for the purpose of effecting the prisoner's escape from custody or confinement.

(b) Aiding escape of a prisoner by introducing a deadly weapon or dangerous instrument into a place of confinement is a class B felony. Aiding escape of a prisoner being held in custody or confinement on the basis of a felony charge or conviction is a class D felony; otherwise aiding escape of a prisoner is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.230, 15 ASC 383.

**46.4630 Permitting escape.**

(a) A public servant who is authorized and required by law to have charge of any person charged with or convicted by any crime commits the crime of permitting escape if he knowingly:

(1) suffers, allows, or permits any deadly weapon or dangerous instrument, or anything adapted or designed for use in making an escape, to be introduced into or allowed to remain in any place of confinement, in violation of law, regulations, or rules governing the operation of the place of confinement or

(2) suffers, allows, or permits a person in custody or confinement to escape.

(b) Permitting escape by suffering, allowing, or permitting any deadly weapon or dangerous instrument to be introduced into a place of confinement is a class B felony; otherwise permitting escape is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.240, 15 ASC 383.

**46.4631 Disturbing a judicial proceeding.**

(a) A person commits the crime of disturbing a judicial proceeding if, with purpose to intimidate a judge, attorney, juror, party, or witness, and thus influence a judicial proceeding, he disrupts or disturbs a judicial proceeding by participating in an assembly and calling aloud, shouting, or holding or displaying a placard or sign containing written or printed matter, concerning the conduct of the judicial proceeding or the character of a judge, attorney, juror, party, or witness engaged in that proceeding, or calling for or demanding any specified action or determination by the judge, attorney, juror, party, or witness in connection with that proceeding.



(b) Disturbing a judicial proceeding is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.250, 15 ASC 761.

**46.4632 Tampering with a judicial proceeding.**

(a) A person commits the crime of tampering with a judicial proceeding if, with purpose to influence the official action of a judge, juror, special master, referee, or arbitrator in a judicial proceeding, he:

- (1) threatens or causes harm to any person or property;
- (2) engages in conduct reasonably calculated to harass or alarm the official or juror; or
- (3) offers, confers, or agrees to confer any benefit, direct or indirect, upon the official or juror.

(b) Tampering with a judicial proceeding is a class C felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.260, 15 ASC 241, 15 ASC 761.

**46.4633 Tampering with a witness.**

(a) A person commits the crime of tampering with a witness if, with purpose to induce a witness or a prospective witness in an official proceeding to disobey a subpoena or other legal process, or to absent himself or avoid subpoena or other legal process, or to withhold evidence, information, or documents, or to testify falsely, he:

- (1) threatens or causes harm to any person or property;
- (2) uses force, threats or deception; or
- (3) offers, confers or agrees to confer any benefit, direct or indirect, upon the witness.

(b) Tampering with a witness is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.270, 15 ASC 241, 15 ASC 761.

**46.4634 Acceding to corruption.**

(a) A person commits the crime of acceding to corruption if:

(1) he is a judge, juror, special master, referee, or arbitrator and knowingly solicits, accepts, or agrees to accept any benefit, direct or indirect, on the representation or understanding that it will influence his official action in a judicial proceeding pending in any court or before the official or juror or

(2) he is a witness or prospective witness in any official proceeding and knowingly solicits, accepts, or agrees to accept any benefit, direct or indirect, on the representation or understanding that he will disobey a subpoena or other legal process, or withhold evidence, information or documents, or testify falsely.

(b) Acceding to corruption under paragraph (a) (1) is a class C felony.

(c) Acceding to corruption under paragraph (a) (2) in a felony prosecution, or on the representation or understanding of testifying falsely is a class D felony, otherwise acceding to corruption is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.280, 15 ASC 241, 15 ASC 761.

**46.4635 Improper communication.**

(a) A person commits the crime of improper communication if he communicates, directly or

indirectly, with any juror, special master, referee, or arbitrator in a judicial proceeding, other than as part of the proceedings in a case, for the purpose of influencing the official action of that person.

(b) Improper communication is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.290, 15 ASC 761.

**46.4636 Misconduct by a juror.**

(a) A person commits the crime of misconduct by a juror if, being a juror, he knowingly:

(1) promises or agrees, prior to the submission of a cause to the jury for deliberation, to vote for or agree to a verdict for or against any party in a judicial proceeding or

(2) receives any paper, evidence or information from anyone in relation to any judicial proceeding for the trial of which he has been or may be sworn, without the authority of the court or officer before whom the proceeding is pending, and does not immediately disclose that fact to the court or officer.

(b) Misconduct by a juror is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575 .300, 15 ASC 761.

**46.4637 Misconduct in selecting or summoning a juror.**

(a) A public servant authorized by law to select or summon any juror commits the crime of misconduct in selecting or summoning a juror if he knowingly acts unfairly, improperly, or not impartially in selecting or summoning any person or persons to be a member or members of a jury.

(b) Misconduct by a juror is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.310, 15 ASC 761.

**46.4638 Misconduct in administration of justice.**

(a) A public servant, in his public capacity or under color of his office or employment, commits the crime of misconduct in administration of justice if:

(1) he is charged with the custody of any person accused or convicted of any crime or ordinance violation and he coerces, threatens, abuses, or strikes that person for the purpose of securing a confession from him;

(2) he knowingly seizes or levies upon any property or dispossesses anyone of any lands or tenements without due and legal process, or other lawful authority;

(3) he is a judge and knowingly accepts a plea of guilty from any person charged with a violation of a statute or ordinance at any place other than at the place provided by law for holding court by the judge;

(4) he is a jailer or keeper of a jail and knowingly refuses to receive, in the jail under his charge, any person lawfully committed to the jail on any criminal charge or criminal conviction by any court of this territory, or on any warrant and commitment order on any criminal charge issued by any court of this territory; or

(5) he is a law enforcement officer and knowingly:

(A) refuses to release any person in custody who is entitled to release;

(B) refuses to permit a person in custody to see and consult with counsel or other persons;

(C) transfers any person in custody to the custody or control of another, or to another place, for the purpose of avoiding the provisions of this section; or

(D) prefers against any person in custody a false charge for the purpose of avoiding the

provisions of this section.

(b) Misconduct in the administration of justice is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 575.320, 15 ASC 761, 15 ASC 3401.

## **Chapter 47**

### **OFFENSES AFFECTING GOVERNMENT**

#### **Sections:**

- 46.4701 Bribery of a public servant.**
- 46.4702 Public servant acceding to corruption.**
- 46.4703 Obstructing government operations or voting rights.**
- 46.4704 Official misconduct.**
- 46.4705 Misuse of official information.**
- 46.4706 Treason.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978.

MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC—Model Penal Code.

MPCC--Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code,  
October 1973.

#### **46.4701 Bribery of a public servant.**

(a) A person commits the crime of bribery of a public servant if he knowingly offers, confers, or agrees to confer upon any public servant any benefit, direct or indirect, in return for:

(1) the recipient's official vote, opinion, recommendation, judgment, decision, action, or exercise of discretion as a public servant; or

(2) the recipient's violation of a known legal duty as a public servant.

(b) It is no defense that the recipient was not qualified to act in the desired way because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(c) Bribery of a public servant is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 576.010, 15 ASC 241, 15 ASC 841.

#### **46.4702 Public servant acceding to corruption.**

(a) A public servant commits the crime of acceding to corruption if he knowingly solicits, accepts, or agrees to accept any benefit, direct or indirect, in return for:

(1) his official vote, opinion, recommendation, judgment, decision, action, or exercise of discretion as a public servant; or

(2) his violation of a known legal duty as a public servant.

(b) Acceding to corruption by a public servant is a class D felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 576.020, 15 ASC 241, 15 ASC 841.

**46.4703 Obstructing government operations or voting rights.**

(a) A person commits the crime of obstructing government operations if he purposely obstructs, impairs, hinders, or perverts the performance of a governmental function by the use or threat of violence, force, or other physical interference or obstacle.

(b) Obstructing government operations or voting rights is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 576.030, 15 ASC 761, 15 ASC 781, 15 ASC 801.

**46.4704 Official misconduct.**

(a) A public servant, in his public capacity or under color of his office or employment, commits the crime of official misconduct if:

(1) he knowingly demands or receives any fee or reward for the execution of any official act or the performance of a duty imposed by law or by the terms of his employment, that is not due, or that is more than is due, or before it is due;

(2) he knowingly collects taxes when none are due, or exacts or demands more than is due;

(3) he knowingly orders the payment of any money, or draws any warrant, or pays over any money for any purpose other than the specific purpose for which it was assessed, levied, and collected unless it is or has become impossible to use the money for that specific purpose;

(4) he is an officer or employee of any court and knowingly charges, collects, or receives less fee for his services than is provided by law; or

(5) he is an officer or employee of any court and knowingly, directly or indirectly, buys, purchases, or trades for any fee taxed or to be taxed as costs in any court of this territory, or any warrant, at less than par value which may be by law due or to become due to any person by or through that court.

(b) Official misconduct is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 576.040.

**46.4705 Misuse of official information.**

(a) A public servant commits the crime of misuse of official information if, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information to which he has access in his official capacity and which has not been made public, he knowingly:

(1) acquires a pecuniary interest in any property, transaction or enterprise which may be affected by the information or official action;

(2) speculates or wagers on the basis of the information or official action; or

(3) aids, advises, or encourages another to do any of the foregoing with purpose of conferring a pecuniary benefit on any person.

(b) Misuse of official information is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 576.050.

**46.4706 Treason.**

(a) A person owing allegiance to the territory commits treason if he purposely levies war against the Territory, or adheres to its enemies by giving them aid and comfort.

(b) Persons may not be convicted of treason unless 1 or more overt acts are alleged in the indictment or information.

(c) In a trial on a charge of treason, evidence may not be given of any overt act that is not specifically alleged in the indictment or information.

(d) Persons may not be convicted of treason except upon the direct evidence of 2 or more witnesses to the same overt act, or upon his confession under oath in open court.

(e) Treason is a class A felony.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 576.070, 15 ASC 1061.

## **Chapter 48**

### **MISCELLANEOUS OFFENSES**

#### **Sections:**

- 46.4801 Curfew and area restrictions on nonresidents.**
- 46.4802 Repealed.**
- 46.4803 Repealed.**
- 46.4804 Repealed.**
- 46.4805 Pollution.**
- 46.4806 Littering.**
- 46.4807 Prohibited fishing.**
- 46.4808 Abandonment of airtight or semi airtight containers.**
- 46.4809 Tampering with monuments or markers.**
- 46.4810 Graffiti prohibited.**
- 46.4811 Deportation-Re-entry.**

**Research Guide:** Following each section of this chapter appear the various codes, and their sections, upon which the criminal code was based. The following abbreviations apply:

ASC—American Samoa Code as of 13 December 1978. MCC—Missouri Criminal Code, enacted as Senate Bill 60 in 1977, effective 1 January 1979.

MPC—Model Penal Code.

MPCC—Proposed Criminal Code for the state of Missouri prepared by the Committee to Draft a Modern Criminal Code, October 1973.

#### **46.4801 Curfew and area restrictions on nonresidents.**

(a) The Governor, by executive order, may restrict aliens to such areas and apply such curfew regulations as he determines to be necessary to protect and preserve the welfare and way of life of the Samoan people.

(b) Violation of an executive order of the Governor made under authority of this section is a class B misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 15 ASC 361.

#### **46.4802 Illegal presence.**

Repealed by PL 19-14 § 3.

#### **46.4803 Harboring or hiring an illegally present alien.**

Repealed by PL 19-14 § 3.

#### **46.4804 Stowaways.**

Repealed by PL 19-14 § 3.

**46.4805 Pollution.**

(a) A person commits the crime of pollution if he, with criminal negligence, pollutes in any manner any well, spring, creek, river, or other source of public water supply used for drinking purposes.

(b) Pollution is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** 15 ASC 861.

**46.4806 Littering.**

Repealed by PL 34-20 § 2.

**History:** 1979, PL 16-43 § 2; 1982, PL 17-34 § 1; amd 1987; PL 20-16 § 1; Repealed 2016, PL 34-20 § 2.

**Amendments:** 1982 Subsection (a) amended to change “crime” to offense”, and added “communal or” before “private real property”; subsection (b) was entirely amended to make littering an infraction rather than a class A misdemeanor; subsections (c) and (d) were added.

1987 Subsection (e): added.

**Research Guide:** MCC 577.070, 15 ASC 726.

**46.4807 Prohibited fishing.**

(a) A person commits the crime of prohibited fishing if that person stuns, injures or kills any fish with any kind of stupefying or poisonous substance or any kind of explosive device, in the inland or coastal waters of the Territory.

(b) Prohibited fishing is a class A misdemeanor.

**History:** 1979, PL 16-43 § 2; 1980, PL 16-58 § 1; and 1987, PL 20-19 § 1.

**Amendments:** 1980 Paragraph (2): changed from class B to class A misdemeanor.

1987 Replaced provisions for crime of fishing with poison with new offense of prohibited fishing to include explosives use.

**Research Guide:** 15 ASC 461.

**46.4808 Abandonment of airtight or semi airtight containers.**

(a) A person commits the crime of abandonment of airtight icebox if he abandons, discards, or knowingly permits to remain on premises under his control, in a place accessible to children, any abandoned or discarded icebox, refrigerator, or other airtight or semi airtight container which has a capacity of 1 and ½ cubic feet or more and an opening of 50 square inches or more and which has a door or lid equipped with hinge, latch, or other fastening device capable of securing the door or lid which can not be opened from within, without rendering the equipment harmless to human life by removing those hinges, latches, or other hardware which may cause a person to be confined in it.

(b) Subsection (a) does not apply to an icebox, refrigerator or other airtight or semi-airtight container located in that part of a building occupied by a dealer, warehouseman, or repairman.

(c) The defendant has the burden of injecting the issue under subsection (b).

(d) Abandonment of an airtight or semi-airtight container is a class B misdemeanor, other substance intended to last on such exterior face for more than 24 hours.

**History:** 1979, PL 16-43 § 2.

**Research Guide:** MCC 577.100.

**46.4809 Tampering with monuments or markers.**

Any person who willfully moves, removes or damages any concrete monument or other permanent marker established in accordance with this title shall be imprisoned not more than 4 months, or fined not more than \$100, or both.

**History:** 1962, PL 7-31.

**46.4810 Graffiti prohibited.**

(a) A person commits the crime of graffiti if he marks the exterior face of any public property, including roads, buildings, and equipment, with any figures, drawings, or other writings, using paint lacquer, varnish, dye or other substance intended to last on such exterior face for more than 24 hours.

(b) Graffiti prohibited by subsection (a) is not an offense if committed under the supervision of public officials who authorize such figures, drawings or writing as part of a beautification project.

(c) Graffiti is punishable, at the discretion of the court, as follows;

(1) as a class B misdemeanor or

(2) by ordering the defendant to do a fixed number of hours of community service work cleaning public property defaced by graffiti.

**History:** 1987, PL 20-2 § 1.

**46.4811 Deportation-Re-entry.**

(a) An alien convicted of a felony in American Samoa who is deported, may not reenter the Territory.

(b) A person who violates this section commits the crime of illegal re-entry of a convicted felon.

(a) The crime of illegal re-entry of a convicted felon is a class B felony.

**History:** 1989, PL 21-16.

## **Chapter 49**

### **WIC AND FOOD STAMP RELATED OFFENSES**

**Sections:**

**46.4901 Violations.**

**46.4902 Administrative malfeasance.**

**46.4903 Unauthorized possession of identification document.**

**46.4904 Penalties.**

**46.4905 Forfeiture.**

**46.4901 Violations.**

A person who knowingly (i) uses, acquires, possesses, or transfers American Samoa Department of Human and Social Services Special Supplemental Food Program for Women, Infants and Children (WIC) Food Instruments or authorizations to participate in the American Samoa Department of Human and Social Services Special Supplemental Food Program for Women, Infants and Children (WIC) in any manner not authorized by law or the rules of the American Samoa Department of Human and Social Services Special Supplemental Food Program for Women, Infants and Children (WIC) and/or American Samoa Nutrition Assistance

Program (Food Stamp) Food Instruments or authorizations to participate in the American Samoa Department of Human and Social Services American Samoa Nutrition Assistance Program (Food Stamp) in any manner not authorized by law or the rules of the American Samoa Nutrition Assistance Program (Food Stamp); (ii) alters, uses, acquires, possesses, or transfers altered American Samoa Department of Human and Social Services special Supplemental Food Program for Women, Infants and Children (WIC) Food Instruments or authorizations to participate in the American Samoa Department of Human and Social Services Special Supplemental Food Program for Women, Infants and Children (WIC) and/or American Samoa Department of Human and Social Services American Samoa Nutrition Assistance Program (Food Stamp) Food Instruments or authorizations to participate in the American Samoa Department of Human and Social Services American Samoa Nutrition Assistance Program (Food Stamp); or (iii) conspires to commit acts set forth in (i) or (ii) is guilty of a violation of this section and shall be punished as provided in section 46.4004.

**History:** 2004, PL 28-14.

**46.4902 Administrative malfeasance.**

(a) A person who misappropriates, misuses, or unlawfully withholds or converts to his or her own use or to the use of another any public funds made available for the American Samoa Department of Human and Social Services Special Supplemental Food Program for Women, Infants and Children (WIC) and/or the American Samoa Department of Human and Social Services American Samoa Nutrition Assistance Program (Food Stamp) is guilty of a violation of this section and shall be punished as provided in section 46.4904.

(b) An official or employee of the American Samoa Government who facilitates, aids, abets, assists or knowingly participates in a violation of this Chapter is guilty of a violation of this section and shall be punished as provided in section 46.4904.

(c) An official or employee of the American Samoa Government who willfully fails to report a known violation of this chapter to the designated personnel as identified in the policy and procedures of the American Samoa Department of Human and Social Services, or the Attorney General, is subject to disciplinary proceedings under the rules of the applicable American Samoa Government agency.

**History:** 2004, PL 28-14.

**46.4903 Unauthorized possession of identification document.**

(a) Any person who possesses for an unlawful purpose another person's identification document issued by the American Samoa Department of Human and Social Services Special Supplemental Food Program for Women, Infants and Children (WIC) is guilty of a violation of the Section and shall be punished for a class D felony. For purposes of this Section, "identification document" includes, but is not limited to, an authorization to participate in the American Samoa Department of Human and Social Services Special Supplemental Food Program for Women, Infants and Children (WIC) or card or other document that identifies a person as being entitled to benefits in the American Samoa Department of Human and Social Services Special Supplemental Food Program for Women, Infants and Children (WIC).

(b) Any person who possesses for an unlawful purpose another person's identification document issued by the American Samoa Department of Human and Social Services American Samoa Nutrition Assistance Program (Food Program) is guilty of a violation of this section and shall be punished for a class D felony. For purposes of this section, "identification document"



includes, but is not limited to, an authorization to participate in the American Samoa Department of Human and Social Services American Samoa Nutrition Assistance Program (Food Stamp) or card or other document that identifies a person as being entitled to benefits in the American Samoa Department of Human and Social Services American Samoa Nutrition Assistance Program (Food Stamp).

**History:** 2004, PL 28-14.

#### **46.4904 Penalties.**

(a) If a person, firm, corporation, association, agency, institution, or other legal entity is found by a court to have engaged in an act, practice, or course of conduct declared unlawful under this chapter and:

(1) the total amount of the money involved in the violation, including the monetary value of the American Samoa Department of Human and Social Services Special Supplemental Food Program for Women, Infants and Children (WIC) Food Instruments, the American Samoa Department of Human and Social Services American Samoa Nutrition Assistance Program (Food Stamp) Food Instruments and the value of commodities, is less than \$100, the violation is a class A misdemeanor and the defendant shall be permanently ineligible to participate in the American Samoa Department of Human and Social Services Special Supplemental Food Program for Women, Infants and Children (WIC) and/or the Department of Human and Social Services American Samoa Nutrition Assistance Program (Food Stamp).

(2) the total amount of money involved in the violation, including the monetary value of the American Samoa Department of Human and Social Services Special Supplemental Food Program for Women, Infants and Children (WIC) Food Instruments, the American Samoa Department of Human and Social Services American Samoa Nutrition Assistance Program (Food Stamp) Food Instruments and/or the value of commodities, is \$100 or more the violation is a class C felony and the defendant shall be permanently ineligible to participate in the American Samoa Department of Human and Social Services Special Supplemental Food Program for Women, Infants and Children (WIC) and/or the Department of Human and Social Services American Samoa Nutrition Assistance Program (Food Stamp).

(b) For purposes of determining the classification of offense under this section, all of the money received as a result of the unlawful act, practice, or course of conduct, including the value of any WIC Food Instruments and/or Food Stamp Food Instruments, shall be aggregated.

**History:** 2004, PL 28-14.

#### **46.4905 Forfeiture.**

(a) A person who commits a felony violation of this chapter shall forfeit, according to this section, (i) any moneys, profits, or proceeds the person acquired in whole or in part, as a result of committing the violation and (ii) any property or interest in property that the sentencing court determines the person acquired, in whole or in part, as a result of committing violation or the person maintained or used, in whole or in part, to facilitate, directly or indirectly, the commission of the violation. The person shall forfeit any interest in, securities of claim against, or contractual right of any kind that affords the person a source of influence over, any enterprise that the person has established, operated, controlled, conducted, or participated in conducting, if the person's relationship to or connection with the interest, security of claim, or contractual right, directly or indirectly, in whole or in part, is traceable to any thing or benefit that the person has obtained or acquired as a result of a felony violation under this chapter.

(b) The following items are subject to forfeiture:

(1) All moneys, things of value, books, records, and research products and materials that are used or intended to be used in committing a felony violation of this chapter.

(2) Everything of value furnished, or intended to be furnished, in exchange for any material or substance in violation of this chapter, all proceeds traceable to that exchange, and all moneys, negotiable instruments, and securities used or intended to be used to commit or in any manner to facilitate the commission of felony violation of this Chapter.

(3) All real property, including any right, title, and interest (including, but not limited to, any leasehold interest or the beneficial interest in a land trust) in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used, in any manner or part, to commit or in any manner to facilitate the commission of a felony violation of this chapter or that is the proceeds of any act that constitutes a felony violation of this chapter.

(c) Property subject to forfeiture under this chapter may be seized by the Department of Public Safety and Attorney General's Office upon process or seizure warrant issued by any court having jurisdiction over the property. The Department of Public Safety and Attorney General's Office may seize property under this Chapter without process under any of the following circumstances:

(1) If the seizure is incident to inspection under an administrative inspection warrant.

(2) If the property subject to seizure has been the subject of a prior judgment in favor of the American Samoa Government criminal proceeding or in an injunction or forfeiture proceeding under this chapter.

(3) If there is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(4) If there is probable cause to believe that the property is subject to forfeiture under this chapter and the property is seized under circumstances in which a warrantless seizure or arrest would be reasonable.

(5) In accordance with any other section within the American Samoa Code Annotated.

(d) Proceedings instituted pursuant to this section shall be subject to and conducted in accordance with the procedures set forth in this subsection.

(1) The sentencing court, on petition by the Attorney General's Office at any time following sentencing of the defendant, shall conduct a hearing to determine whether any property or property interest of the defendant is subject to forfeiture under this section. At the forfeiture hearing the American Samoa Government has the burden of establishing, by a preponderance of the evidence, that the property or property interest is subject to forfeiture.

(2) In an action brought by the American Samoa Government under this section, in which a restraining order, injunction, prohibition, or other action in connection with any property or interest subject to forfeiture under this section is sought, the High Court presiding over the trial of the person charged with a felony violation of this chapter shall first determine whether there is probable cause to believe that the person so charged has committed an offense under this chapter and whether the property or interest is subject to forfeiture under this section. To make that determination, the High Court shall conduct a hearing without a jury, at which the American Samoa Government must establish that there is:

(i) probable cause that the person charged committed a felony offense under this chapter, and

(ii) probable cause that property or interest may be subject to forfeiture under this section. The hearing may be conducted simultaneously with a preliminary hearing or by motion of the American Samoa Government at any stage in the proceedings. The High Court may accept, at

the preliminary hearing the filing of an information or complaint charging that the defendant committed a felony offense under this chapter.

(3) Upon making a finding of probable cause, the High Court shall enter a restraining order, injunction, or prohibition or shall take other action in connection with the property or other interest subject to forfeiture under this section as is necessary to insure that the property is not removed from the jurisdiction of the High Court, concealed, destroyed, or otherwise disposed of by the owner of that property or interest before a forfeiture hearing is convened pursuant to this section. The Attorney General shall file a certified copy of the restraining order, injunction, or other probation issued under this section shall affect the rights of any bona fide purchaser, mortgagee, judgment creditor, or other lienholder that arose before the date the certified copy is filed.

(4) The court may at any time, on verified petition by the defendant, conduct a hearing to determine whether all or any portion of the property or interest, which the court previously determined to be subject to forfeiture or subject to any restraining order, injunction, prohibition, or other action, should be released. The court may in its discretion release the property to the defendant for good cause shown.

(5) Upon conviction of a person for a felony violation of this chapter, the High Court shall authorize the Commissioner of the Department of Public Safety and Attorney General's Office to seize any property or other interest declared forfeited under this section on terms and conditions the High Court deems proper.

(e) Property taken or detained under this section shall be held in the custody of the Attorney General subject only to the order and judgments of the High Court having jurisdiction over the forfeiture proceedings under this section. When property is seized under this section, the Attorney General's Office shall promptly conduct an inventory of the seized property and estimate the property's value to the High Court. Upon receiving the notice of seizure, the Attorney General may do any of the following:

(1) Place the property under seal.

(2) Remove the property to a storage area designated by the Attorney General for safekeeping.

(3) Deposit into an interest bearing account, property in the form of negotiable instruments or money which is not needed for evidentiary purposes.

(4) Place the property under constructive seizure by posting notice of the pending forfeiture on it, by giving notice of the pending forfeiture to its owners and interest holders, or by filing a notice of the pending forfeiture to its owners and interest holders, or by filing a notice of the pending forfeiture in any appropriate public record relating to property.

(5) Provide for another agency or custodian, including an owner, a secured party, or lienholder, to take custody of the property on terms and conditions set by the Attorney General.

(f) When property is forfeited under this section, the Attorney shall sell the property unless the property is required by law to be destroyed or is harmful to the public. The Attorney General shall distribute the proceeds of the sale, together with any moneys forfeited or seized, in accordance with subsection (g). On the application of the prosecutor who was responsible for investigation, arrest, and prosecution that lead to the forfeiture, however, the Attorney General may return any item of forfeited property to the prosecutor for official use in the enforcement of laws relating to this section if the prosecutor can demonstrate that the item requested would be useful to the prosecutor in their enforcement efforts.

(g) All moneys from penalties and the proceeds of sale of all property forfeited and seized under this section shall be distributed to the WIC and Food Stamp programs administered by the American Samoa Department of Human and Social Services.

## CHAPTER 50

### ANTI-HUMAN TRAFFICKING AND INVOLUNTARY SERVITUDE

#### Sections:

- 46.5001**      **Definitions.**
- 46.5002**      **Human trafficking.**
- 46.5003**      **Human trafficking of a minor.**
- 46.5004**      **Involuntary servitude.**
- 46.5005**      **Sentencing considerations.**
- 46.5006**      **American Samoa Human Trafficking Taskforce.**
- 46.5007**      **Mandatory training.**
- 46.5008**      **Mandated reports of trafficking of a minor.**
- 46.5009**      **Mandatory reporting of a minor's death.**
- 46.5010**      **Victim services.**
- 46.5011**      **Temporary protected status.**
- 46.5012**      **Victim confidentiality.**

#### **46.5001**      **Definitions.**

For the purpose of this chapter, the following terms are defined as follows:

(a) “Coercion” includes any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against a person.

(b) “Commercial sex act” means any sex act or sexual conduct on account of which anything of value is given, promised to, or received by any person.

(c) “Debt bondage” means to use any debt, legally owed or otherwise, to force, compel, to pressure another person into doing any act which he or she would otherwise not have submitted to or performed.

(d) “Duress” includes a direct or implied threat of force, violence, danger, hardship, retribution, or serious harm sufficient to cause a person to acquiesce in or perform an act which he or she would otherwise not have submitted to or performed.

(e) “Forced labor or services” means labor or services that are performed or provided by another person and are obtained or maintained through force, fraud, or coercion, deceit, or equivalent conduct that would reasonably overbear the will of the person.

(f) “Liberty” under this chapter means personal freedom; such as, but not limited to freedom from servitude, physical restraint, confinement, forced labor, or sexual exploitation. It also means a person having agency or control over their own actions and choices, and exercising his or her free will.

(g) “Minor” means a person less than 18 years of age.

(h) “Serious harm” includes any harm, whether physical or nonphysical, including psychological, financial, or reputational harm that compels a person to perform or to continue performing forced labor or services, or commercial sex acts in order to avoid incurring that harm. “Serious harm” can also be a direct or implied threat to destroy, conceal, remove, confiscate, or possess any actual or purported passport or immigration document of the victim;

the abuse or threatened abuse of the legal process; debt bondage; or the use or threatened use of controlled substances to impair the person's judgment.

(i) "Sex act" is defined as "sexual intercourse" which means any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results.

(j) "Sexual conduct" is defined as "sexual contact" which means any touching of the genital or anus of any person or the breast of any female person, or any such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person.

(k) "Unlawful deprivation or violation of the personal liberty of another" includes restriction of another's liberty accomplished through fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, where the person receiving or apprehending the threat believes that it is likely that the person making the threat would carry it out, whether the person actually has the authority or legal standing to do so.

**History:** 2014, PL 33-12.

#### **46.5002 Human trafficking.**

Any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, or to engage in a commercial sex act, or both, is guilty of human trafficking as a Class B felony.

**History:** 2014, PL 33-12.

#### **46.5003 Human trafficking of a minor.**

(a) Any person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor to perform forced labor or services, or to engage in a commercial sex act, or both, is guilty of human trafficking as a Class A felony. The sentence of imprisonment must include a prison term of at least 10 years. This prison term is served without probation or parole.

(b) Consent by a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.

(c) Mistake of fact as to the age of a victim of human trafficking who is a minor at the time of the commission of the offenses is not a defense to a criminal prosecution under this section.

**History:** 2014, PL 33-12.

#### **46.5004 Involuntary servitude.**

Any person who holds, or attempts to hold, any person in involuntary servitude, or assumes, or attempts to assume, rights of ownership over any person, or who sells, or attempts to sell, any person to another, or receives, money or anything of value, in consideration of placing any person in the custody, or under the power or control of another, or who buys, or attempts to buy, any person, or pays money, or delivers anything of value, to another, in consideration of having any person placed in his or her custody, or under his or her power or control, or who knowingly aids or assists in any manner anyone who violates this statute, is guilty of involuntary servitude as a Class C felony.

**History:** 2014, PL 33-12.

**46.5005 Sentencing consideration.**

In determining the particular sentence to be imposed on a defendant convicted under section 46.5002, 46.5003, or 46.5004, the court may consider many factors, including the duration of trafficking, the extent of serious harm suffered, the means of force, fraud, or coercion employed.

**History:** 2014, PL 33-12.

**46.5006 American Samoa human trafficking taskforce.**

Within one year, a territory wide task force shall be established under the Office of the Governor. This task force shall be headed by the Department of Homeland Security and shall comprise members from pertinent government agencies and nongovernment organizations to:

- (1) Identify the scope of human trafficking in American Samoa.
- (2) Establish a system for collecting and organizing data on human trafficking.
- (3) Develop interagency procedures to collect, share, and organize data.
- (4) Providing on-going evaluation on American Samoa's progress against human trafficking.
- (5) Develop response and training protocols.
- (6) Identify potential assessment center where first responders can confidentially and safely conduct intakes of potential victims of human trafficking.
- (7) Foster collaboration and consultation with governmental and nongovernmental organizations, and other entities, to advance the purposes of this Act.

**History:** 2014, PL 33-12.

**46.5007 Mandatory training.**

In coordination with the Department of Homeland Security, the Department of Public Safety shall receive mandatory and on-going training on human trafficking for all law enforcement and emergency first responders in American Samoa.

**History:** 2014, PL 33-12.

**46.5008 Mandated reports of trafficking of a minor.**

(a) Any person specified in subsection (b) who has reasonable cause to know or suspect that a minor has been or is a victim of human trafficking shall immediately report or cause a report to be made of that fact to the Child Protection Agency, who immediately informs the Department of Public Safety.

(b) Persons required to report the human trafficking or circumstances or conditions includes any:

- (1) physician or surgeon, including a physician in training;
- (2) child health associate;
- (3) medical examiner or coroner;
- (4) dentist;
- (5) osteopath;
- (6) optometrist;
- (7) chiropractor;
- (8) chiropodist or podiatrist;
- (9) registered nurse or licensed practical nurse;

- (10) hospital personnel engaged in the admission, care, or treatment of patients;
- (11) Christian science practitioner;
- (12) school official or employee;
- (13) social worker or worker in a family care home or child care center; and
- (14) mental health professional.

(c) In addition to those persons specifically required by this section to report known or suspected trafficking of a minor, any other persons are urged and authorized to report known or suspected trafficking of a minor to the Department of Public Safety or the Child Protection Agency.

(d) Any person who willfully violates the provisions of subsection (a):

- (1) commits a Class A misdemeanor; and
- (2) is liable for those damages proximately caused.

**History:** 2014, PL 33-12.

#### **46.5009        Mandatory reporting of a minor's death.**

Any person who is required by 46.5008 A.S.C.A. to report known or suspected trafficking of a minor and anyone who has reasonable cause to suspect that a child died as a result of human trafficking shall report that fact immediately to the Department of Public Safety. The department accepts the report for investigation and reports its findings to the Office of the Attorney General.

**History:** 2014, PL 33-12.

#### **46.5010        Victim services.**

The American Samoa Government shall provide services to victims of human trafficking. The Department of Homeland Security shall be the lead agency for coordinating services to victims of human trafficking. These services shall include but not be limited to the following:

(a) Counseling services as provided by Department of Human and Social Services, Department of Health or LBJ Tropical Medical Center to victims of human trafficking as limited resources and capacity at respective Territorial institutions and facilities allow.

(b) Emergency medical services. Further medical examinations, evaluations, and treatment may be implemented, depending on the limitations on physical capacity or programs at the respective Territorial institutions and facilities.

(c) Education. Teachers, books, or equipment shall be furnished for the proper education of minor victims of human trafficking present in the trafficking shelter, or equivalent housing.

**History:** 2014, PL 33-12.

#### **46.5011        Temporary protected status.**

To encourage victims of human trafficking to come forward and to aid the investigations and prosecutions of violations of human trafficking as defined under this chapter, the Office of the Attorney General may grant "Temporary Protected Status" to potential victims of human trafficking.

**History:** 2014, PL 33-12.

**46.5012 Victim confidentiality.**

Information obtained from victim is privileged and confidential and protected from disclosure. The American Samoa Government shall implement measures to ensure that the victim's name and other personally identifiable information shall remain confidential and private. Department of Homeland Security, in coordination with the Department of Public Safety and the Attorney General's Office shall develop policies on how limited information about human trafficking victims shall be shared among government and nongovernment agencies in responding to victims. A victim's informed consent to limited sharing of information cannot be construed as a waiver of any confidentiality or any privilege."

**History:** 2014, PL 33-12.

## **CHAPTER 51**

### **ELDERLY AND DISABLED ADULT NEGLECT, ABUSE, AND EXPLOITATION OFFENSES**

**Sections:**

**46.5101 Definitions.**

**46.5102 Abuse, aggravated abuse, and neglect of an elderly person or disabled adult—Penalties.**

**46.5103 Sexual offenses committed upon or in the presence of an elderly person or disabled adult.**

**46.5104 Exploitation of an elderly person or disabled adult—Penalties.**

**46.5105 Knowledge of victim's age.**

**46.5106 Good faith assistance.**

**Reviser's comment:** 2018, Section 1 of PL 35-17 created Chapter 51 in Title 46.

**46.5101 Definitions.**

As used in this chapter:

(1) "Business relationship" means a relationship between two or more individuals or entities where there exists an oral or written contract or agreement for goods or services.

(2) "Caregiver" means a person who has been entrusted with or has assumed responsibility for the care or the property of an elderly person or disabled adult. "Caregiver" includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of facilities as defined in subsection (6).

(3) "Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

(4) "Elderly person" means a person 60 years of age or older.

(5) "Endeavor" means to attempt or try.

(6) "Facility" means any location providing day or residential care or treatment for elderly persons or disabled adults. The term "facility" may include, but is not limited to, any hospital, training center, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, group home, mental health treatment center, or continuing care community.



(7) “Lacks capacity to consent” means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person’s or disabled adult’s person or property.

(8) “Lewd” crude and offensive in a sexual manner.

(9) “Obtains or uses” means any manner of:

(A) Taking or exercising control over property; or

(B) Making any use, disposition, or transfer of property.

(10) “Position of trust and confidence” with respect to an elderly person or a disabled adult means the position of a person who:

(A) Is a parent, spouse, adult child, or other relative by blood or marriage of the elderly person or disabled adult;

(B) Is a joint tenant or tenant in common with the elderly person or disabled adult;

(C) Has a legal or fiduciary relationship with the elderly person or disabled adult, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator;

(D) Is a caregiver of the elderly person or disabled adult; or

(E) Is any other person who has been entrusted with or has assumed responsibility for the use or management of the elderly person’s or disabled adult’s funds, assets, or property.

(11) “Property” means anything of value and includes:

(A) Real property, including things growing on, affixed to, and found in land.

(B) Tangible or intangible personal property, including rights, privileges, interests, and claims.

(C) Services.

(12) “Services” means anything of value resulting from a person’s physical or mental labor or skill, or from the use, possession, or presence of property, and includes:

(A) Repairs or improvements to property.

(B) Professional services.

(C) Private, public, or governmental communication, transportation, power, water, or sanitation services.

(D) Lodging accommodations.

(E) Admissions to places of exhibition or entertainment.

(13) “Value” means value determined according to any of the following:

(A)(i) The market value of the property at the time and place of the offense or, if the market value cannot be satisfactorily ascertained, the cost of replacing the property within a reasonable time after the offense.

(ii) In the case of a written instrument such as a check, draft, or promissory note, which does not have a readily ascertainable market value, the value is the amount due or collectible. The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by the loss of the instrument.

(iii) The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner suffered by reason of losing advantage over those who do not know of or use the trade secret.

(B) If the value of the property cannot be ascertained, the trier of fact may find the value to be not less than a certain amount; if no such minimum value can be ascertained, the value is an amount less than \$100.

(C) Amounts of value of separate properties involved in exploitation committed pursuant to one scheme or course of conduct, whether the exploitation involves the same person or several persons, may be aggregated in determining the degree of the offense.

**History:** 2018, PL 35-17.

**46.5102 Abuse, aggravated abuse, and neglect of an elderly person or disabled adult—Penalties.**

(a) “Abuse of an elderly person or disabled adult” means:

(1) Intentional infliction of physical or psychological injury upon an elderly person or disabled adult;

(2) An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or

(3) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult.

A person who knowingly or willfully abuses an elderly person or disabled adult without causing serious bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a Class C felony.

(b) “Aggravated abuse of an elderly person or disabled adult” occurs when a person:

(1) Commits A.S.C.A. 46.3521 on an elderly person or disabled adult;

(2) Willfully tortures, maliciously punishes, or willfully and unlawfully cages an elderly person or disabled adult; or

(3) Knowingly or willfully abuses an elderly person or disabled adult and in so doing causes serious bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult.

A person who commits aggravated abuse of an elderly person or disabled adult commits a class A felony.

(c)(1) “Neglect of an elderly person or disabled adult” means:

(A) A caregiver’s failure or omission to provide an elderly person or disabled adult with the care, supervision, and services necessary to maintain the elderly person’s or disabled adult’s physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the elderly person or disabled adult; or

(B) A caregiver’s failure to make a reasonable effort to protect an elderly person or disabled adult from abuse, neglect, or exploitation by another person.

Neglect of an elderly person or disabled adult may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or psychological injury, or a substantial risk of death, to an elderly person or disabled adult.

(2) A person who willfully or by culpable negligence neglects an elderly person or disabled adult and in so doing causes serious bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a class B felony.

(3) A person who willfully or by culpable negligence neglects an elderly person or disabled adult without causing serious bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a class C felony.

**History:** 2018, PL 35-17.

**46.5103 Sexual offenses committed upon or in the presence of an elderly person or disable adult.**

(a) As used in this section, “sexual activity” means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

(b)(1) “Lewd assault upon an elderly person or disabled person” occurs when a person encourages, forces, or entices an elderly person or disabled person to engage in any act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent.

(2) A person who commits lewd assault upon an elderly person or disabled person commits a class B felony.

(c)(1) “Lewd molestation of an elderly person or disabled person” occurs when a person intentionally touches in a lewd manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of an elderly person or disabled person when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent.

(2) A person who commits the lewd molestation of an elderly person or disabled person commits a class C felony.

(d)(1) “Lewd exhibition in the presence of an elderly person or disabled person” occurs when a person, in the presence of an elderly person or disabled person:

(A) Intentionally masturbates;

(B) Intentionally exposes his or her genitals in a lewd manner; or

(C) Intentionally commits any other lewd act that does not involve actual physical or sexual contact with the elderly person or disabled person, including but not limited to, the simulation of any act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent to having such act committed in his or her presence.

(2) A person who commits lewd exhibition in the presence of an elderly person or disabled person commits a class C felony.

**History:** 2018, PL 35-17.

**46.5104 Exploitation of an elderly person or disabled adult—Penalties.**

(a) “Exploitation of an elderly person or disabled adult” means:

(1) Knowingly obtaining or using, or endeavoring to obtain or use, an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult by a person who:

(A) Stands in a position of trust and confidence with the elderly person or disabled adult; or

(B) Has a business relationship with the elderly person or disabled adult;

(2) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent;

(3) Breach of a fiduciary duty to an elderly person or disabled adult by the person's guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property. An unauthorized appropriation under this paragraph occurs when the elderly person or disabled adult does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates any of these duties:

(A) For agents:

- (i) Committing fraud in obtaining their appointments;
- (ii) Abusing their powers;
- (iii) Embezzling, or intentionally mismanaging the assets of the principal or beneficiary; or
- (iv) Acting contrary to the principal's sole benefit or best interest; or

(B) For guardians and trustees:

- (i) Committing fraud in obtaining their appointments;
- (ii) Abusing their powers; or
- (iii) Embezzling, or intentionally mismanaging the assets of the ward or beneficiary of the trust;

(4) Misappropriating, misusing, or transferring without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor of payee of the funds before the misappropriation, misuse, or unauthorized transfer. This paragraph only applies to the following types of accounts:

(A) Personal accounts;

(B) Joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to moneys deposited into such account; or

(5) Intentionally or negligently failing to effectively use an elderly person's or disabled adult's income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the elderly person or disabled adult.

(b) Any inter vivos transfer of money or property valued in excess of \$10,000 at the time of the transfer, whether in a single transaction or multiple transactions, by a person age 65 or older to a nonrelative who the transferor knew for fewer than 2 years before the first transfer and for which the transferor did not receive the reasonably equivalent financial value in goods or services creates a permissive presumption that the transfer was the result of exploitation.

(1) This subsection applies regardless of whether the transfer or transfers are denoted by the parties as a gift or loan, except that it does not apply to a valid loan evidenced in writing that includes definite repayment dates. However, if repayment of any such loan is in default, in whole or in part, for more than 65 days, the presumption of this subsection applies.

(2) This subsection does not apply to:

(A) Persons who are in the business of making loans.

(B) Bona fide charitable donations to nonprofit organizations that qualify for tax exempt status under the Internal Revenue Code.

(3) In a criminal case to which this subsection applies, if the trial is by jury, jurors shall be instructed that they may, but are not required to, draw an inference of exploitation upon proof beyond a reasonable doubt of the facts listed in this subsection. The presumption of this subsection imposes no burden of proof on the defendant.

(c)(1) If the funds, assets or property involved in the exploitation of the elderly person or disabled adult is valued at \$50,000 or more, that offender commits a class A felony.

(2) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$10,000 or more, but less than \$50,000, the offender commits a class B felony.

(3) If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than \$10,000, the offender commits a class C felony.

(d) If a person is charged with financial exploitation of an elderly person or disabled adult that involves the taking of or loss of property valued at more than \$5,000 and property belonging to a victim is seized from the defendant pursuant to a search warrant, the court shall hold an evidentiary hearing and determine, by a preponderance of the evidence, whether the defendant unlawfully obtained the victim's property. If the court finds that the property was unlawfully obtained, the court may order it returned to the victim for restitution purposes before trial on the charge. This determination is inadmissible in evidence at trial on the charge and does not give rise to any inference that the defendant has committed an offense under this section.

**History:** 2018, PL 35-17.

#### **46.5105 Knowledge of victim's age.**

It does not constitute a defense to a prosecution for any violation of this chapter that the accused did not know the age of the victim.

**History:** 2018, PL 35-17.

#### **46.5106 Good faith assistance.**

This chapter is not intended to impose criminal liability on a person who makes a good faith effort to assist an elderly person or disabled adult in the management of the funds, assets or property of the elderly person or disabled adult, which effort fails through no fault of the person."

**History:** 2018, PL 35-17.