



SAMOA

COMMUNITY JUSTICE ACT 2008

Arrangement of Provisions

PART 1 COMMUNITY BASED JUSTICE SYSTEM

1. Short title and commencement
2. Purpose
3. Objects of the Act
4. Interpretation

PART 2 COMMUNITY BASED SENTENCING

5. Purposes and principles
6. Promotion of custom and tradition
7. Account to be taken of compensation
8. Power to impose substituted or alternative penalty of community work to fine
9. Power to impose substituted or alternative penalty of community work or supervision to imprisonment
10. Pre-sentencing report
11. Diversion

PART 3 COMMUNITY-BASED SENTENCES

Division 1-General

12. Community-based sentences

Division 2 – Sentence of supervision

13. Sentence of supervision
14. Guidance on use of sentence of supervision
15. Sentences of supervision in respect of 2 or more offences must be served concurrently
16. Conditions of sentence of supervision
17. Standard conditions of supervision
18. Special conditions related to programme
19. Meaning of “programme”
20. Other special conditions
21. Defendant to be under supervision of probation officer
22. Variation or cancellation of sentence of supervision

Division 3 – Community work

23. Sentence of community work
24. Guidance on use of sentence of community work
25. Concurrent and cumulative sentences of community work
26. Length of sentence of community work

- 27. Defendant must report to probation office
- 28. Defendant must notify probation office if defendant changes residential address
- 29. Probation officer must determine placement of defendant for community work
- 30. Guidance to probation officer in determining placement of defendant for community work
- 30A. Authorised work for person sentenced to community work
- 30B. When community work must be done
- 31. Supervision of defendant while doing community work
- 31A. Defendant excused from reporting in certain circumstances
- 31B. Court may authorise hours of work to be converted into training
- 32. Some hours of work may be converted to training
- 32A. Consequences of failing without excuse to complete training
- 32B. When hours of community work not counted
- 33. Remission of sentence of community work
- 33A. Variation or cancellation of sentence of community work
- 33B. Extension of period within which community work must be done

**PART 4
ADMINISTRATIVE
RESPONSIBILITY**

- 34. Power and functions of Chief Executive Officer
- 35. Delegation of powers of Chief Executive Officer

**PART 5
PROBATION AND PAROLE
SERVICES**

- 36. Responsibility for Probation and Parole Services
- 37. Principal Probation Officer
- 38. Powers and functions of Principal Probation Officer
- 39. Probation officers and parole officers
- 40. Functions and powers of probation and parole officers
- 41. Delegation to community justice supervisors
- 42. Community justice supervisors

**PART 6
MISCELLANEOUS**

- 43. Protection from liability
- 44. Regulations
- 45. Transitional
- 46. Repeal and savings

COMMUNITY JUSTICE ACT

2008

No.5

AN ACT to promote criminal justice by the provision of a community based justice system that fosters community

based sentencing options and the rehabilitation and reintegration of offenders.

[Assent and commencement date: 25 January 2008]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
COMMUNITY BASED JUSTICE SYSTEM

1. Short title and commencement – (1) This Act may be cited as the Community Justice Act 2008.

(2) This Act commences on the date of assent by the Head of State.

2. Purpose – The purpose of this Act is to administer and operate a community based justice system that promotes public safety and contribute towards the maintenance of a just society by:

- (a) ensuring that sentences are administered in a fair and effective manner; and
- (b) reducing re-offending by managing the rehabilitation of offenders and their reintegration into society; and
- (c) providing useful and timely information to courts and the Prisons Parole Board to assist them in determining decisions relating to the rehabilitation and reintegration of offenders and prisoners; and
- (d) providing opportunities for the community to participate in the rehabilitation and reintegration of offenders; and
- (e) providing opportunities for Samoan custom and tradition to be recognised in the sentencing, rehabilitation and reintegration of offenders; and
- (f) ensuring that Samoan custom and tradition is integrated, where appropriate, in the community justice system.

3. Objects of the Act – The principal objects of this Act are:

- (a) the maintenance of public safety; and
- (b) the consideration of victims' interests; and

- (c) to ensure offenders undertaking sentences of supervision have access to rehabilitative and reintegration programmes; and
- (d) to ensure the fair treatment of offenders undergoing sentences of supervision or community work; and
- (e) to ensure offenders released on parole have access to rehabilitative and reintegration programmes; and
- (f) for offenders, as far as is reasonable and practicable in the circumstances and within the resources available, to be given access to activities that may contribute to their rehabilitation and reintegration into the community; and
- (g) for Samoan custom and tradition, where appropriate, to be applied in the rehabilitation and reintegration of offenders.

4. Interpretation – In this Act, unless the context otherwise requires:

- “Chief Executive Officer” means the person appointed as head of the Ministry of Justice and Courts Administration;
- “Court” means any court exercising jurisdiction in any prosecution for an offence;
- “Minister” means the Minister responsible for the Ministry of Justice and Courts Administration;
- “Ministry” means the Ministry of Justice and Courts Administration;
- “offender” includes a person who is under control or supervision pursuant to a community based sentence and includes a person released from a prison on parole;
- “probation officer” means a person appointed as a probation officer under section 39, and includes a parole officer;
- “Principal Probation Officer” means the person appointed to manage the day to day activities of the Probation and Parole Service;
- “staff or staff member” means all those persons employed in the Ministry including the Principal Probation Officer, probation officers and parole officers.

PART 2

COMMUNITY BASED SENTENCING

5. Purposes and Principles – (1) The purpose of this Part is to provide to a Court a range of sentencing options and means of dealing with offenders other than by imprisonment.

(2) Where an offender is convicted of an offence punishable by imprisonment, the Court when considering the sentence it should impose, must have regard to the desirability of keeping offenders in the community so far as that is practicable and consistent with the safety of the community.

6. Promotion of Custom and Tradition – (1) Despite this Act or any other law, a Court may in criminal cases promote, encourage and facilitate a settlement, according to Samoan custom and tradition of any proceedings for an offence on terms of payment of compensation or other terms approved by the Court, which may in the Court's discretion reduce the sentence it would otherwise have imposed including ordering the discharge, with or without conviction, of the offender.

(2) A Court may order a pre-sentence report if it considers that this would assist it in making a determination under this section and such report may include a recommendation that the offender be diverted in accordance with section 11 on such conditions as it thinks fit.

7. Account to be taken of compensation – Upon entering a conviction, the Court must in determining the nature of the penalty to be imposed, take account of any compensation or reparation made or due by the offender under Samoan custom and tradition and if such has not yet been determined, may, if satisfied that it will not cause undue delay, postpone sentencing for such purpose.

8. Power to impose substituted or alternative penalty of community work to fine – (1) Where in any Act, Regulation, Rule or Order, a penalty of a fine is provided for any offence without any alternative penalty the Court may in its discretion impose a sentence of community work in lieu or as an alternative penalty.

(2) If the Court imposes a sentence of community work under subsection (1), the offender is to be under the management and

supervision of a probation officer as if the offender had been sentenced to community work under Part 3.

9. Power to impose substituted or alternative penalty of community work or supervision to imprisonment – (1) If in any Act, Regulation, Rule or Order, a penalty of imprisonment is provided for any offence without any alternative penalty the Court may in its discretion impose a sentence of community work or supervision instead or as an alternative penalty.

(2) Where the Court imposes a sentence of community work or supervision under subsection (1), the offender is to be under the management and supervision of a probation officer as if the offender had been sentenced to community work or supervision under Part 3.

10. Pre-sentencing report – A court may require a probation officer to prepare a pre-sentencing report pursuant to the Sentencing Act 2016.

11. Diversion – (1) Where a person appearing before a Court:

(a) does not have a previous conviction; and

(b) intimates a plea of guilty,–

the Court may, if it does not consider the offending to be of a serious nature, in chambers or in open Court, instead of proceeding with the prosecution of the charge, refer the person charged to be considered for diversion under this section.

(2) Where the Court refers a person for diversion, the person charged must report within 24 hours to the probation service and a diversion agreement must be prepared by a probation officer.

(3) The diversion agreement must be signed by the probation officer and the person charged.

(4) The diversion agreement must:

(a) include an acknowledgement of guilt and an undertaking by the person charged to complete any conditions contained in the diversion agreement within the specified timeframe; and

(b) specify what will occur to the person charged if the diversion agreement is not adhered to.

(5) The probation officer in preparing a diversion agreement may, where appropriate, encourage and facilitate the person to undertake or attempt to undertake with the complainant and the

respective parties' families, reconciliation according to Samoan custom and tradition.

(6) A probation officer must supervise the diversion agreement and report back to the Court at either the completion of the diversion agreement, or advise of the failure of the person charged to comply.

(7) If the diversion agreement is successfully completed, no further action is to be taken against the person charged for the offence to which the diversion agreement relates and any criminal charge laid, withdrawn.

(8) If the diversion agreement is not complied with, the person charged is to be subject to prosecution as if the diversion agreement had not been entered into.

(9) If, after the person charged is granted diversion, the person charged is subsequently sentenced on another matter to a term of imprisonment, diversion is cancelled from the date that the person charged commences his or her sentence of imprisonment.

(10) An acknowledgment of guilt under subsection (4) is not admissible if diversion does not proceed and the charge against the person proceeds.

PART 3 COMMUNITY-BASED SENTENCES

Division 1 - General

12. Community-based sentences – (1) This Part applies to the Sentencing Act 2016 for community-based sentences in this Part.

(2) In sentencing a defendant to a community-based sentence in this Part, a court may have regard to the potential effect that a particular sentence may have in contributing to the development of a defendant's work and living skills.

Division 2 - Sentence of supervision

13. Sentence of supervision – (1) A court may sentence a defendant to supervision if:

- (a) the defendant is convicted of an offence punishable by imprisonment; or

- (b) the defendant is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.
- (2) The sentence may be for a period, being not less than 6 months and not more than 2 years, that the court thinks fit.
- (3) This section is subject to sections 14 and 15.

14. Guidance on use of sentence of supervision – A court may impose a sentence of supervision only if the court is satisfied that a sentence of supervision would reduce the likelihood of further offending by the defendant through the rehabilitation and reintegration of the defendant.

15. Sentences of supervision in respect of 2 or more offences must be served concurrently – If a court imposes a sentence of supervision for each of 2 or more offences (whether on the same occasion or on different occasions), the sentences must be served concurrently.

16. Conditions of sentence of supervision – A defendant who is sentenced to supervision is subject to any or both of the following:

- (a) the standard conditions in section 17;
- (b) any special conditions imposed by the court under sections 18 and 20.

17. Standard conditions of supervision – (1) If a defendant is sentenced to supervision, the following standard conditions apply:

- (a) the defendant must report in person to a probation officer in the probation area in which the defendant resides as soon as practicable, and not later than 48 hours, after the sentence is imposed;
- (b) the defendant must report to a probation officer as and when required to do so by a probation officer, and must notify the officer of his or her residential address and the nature and place of his or her employment when asked to do so;

- (c) the defendant must not move to a new residential address in another probation area without the prior written consent of a probation officer;
 - (d) if consent is given under paragraph (c), the defendant must report in person to a probation officer in the new probation area in which the defendant is to reside as soon as practicable, and not later than 48 hours, after the defendant's arrival in the new area;
 - (e) if a defendant intends to change his or her residential address within a probation area, the defendant must give a probation officer reasonable notice before moving from his or her residential address (unless notification is impossible in the circumstances) and must advise the probation officer of the new address;
 - (f) the defendant must not reside at any address at which a probation officer has directed the defendant not to reside;
 - (g) the defendant must not engage, or continue to engage, in any employment or occupation in which a probation officer has directed the defendant not to engage or continue to engage;
 - (h) the defendant must not associate with any specified person, or with persons of any specified class, with whom a probation officer has, in writing, directed the defendant not to associate;
 - (i) the defendant must take part in a rehabilitative and re-integrative needs assessment if and when directed to do so by a probation officer.
- (2) The conditions in subsection (1)(c) to (f) do not apply to the extent that they are inconsistent with:
- (a) any special conditions imposed by the court; or
 - (b) for a defendant who is also subject to a sentence of community detention under the Sentencing Act 2016, any condition of that sentence.

18. Special conditions related to programme – A court may impose any special condition or conditions related to a programme if the court is satisfied that:

- (a) there is a significant risk of further offending by the defendant; and
- (b) standard conditions alone would not adequately reduce that risk; and
- (c) the defendant requires a programme to reduce the likelihood of further offending by the defendant through the rehabilitation and reintegration of the defendant.

19. Meaning of “programme” – In section 18, “programme” means any of the following that is not residential in nature:

- (a) any psychiatric or other counselling or assessment;
- (b) attendance at any medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative, or re-integrative programme;
- (c) placement in the care of any appropriate person, persons, or agency, approved by the Commissioner, such as, without limitation -
 - (i) family;
 - (ii) a village;
 - (iii) members or particular members of any of the above.

20. Other special conditions – (1) A court may impose any of the special conditions described in subsection (2) if the court is satisfied that:

- (a) there is a significant risk of further offending by the defendant; and
- (b) standard conditions alone would not adequately reduce that risk; and
- (c) the imposition of special conditions would reduce the likelihood of further offending by the defendant through the rehabilitation and reintegration of the defendant.

(2) The following conditions are referred to in subsection (1):

- (a) any conditions that the court thinks fit relating to the defendant’s place of residence (which may

- include a condition that the defendant not move residence), finances, or earnings;
- (b) conditions requiring the defendant to take prescription medication;
- (c) conditions requiring the defendant to undertake training in basic work and living skills;
- (d) any other conditions that the court thinks fit to reduce the likelihood of further offending by the defendant.

(3) No court may impose a condition under this section that the defendant pay any fine, reparation, or other sum ordered to be paid on conviction, or that the defendant perform any service that he or she could have been required to perform if he or she had been sentenced to community work.

(4) No defendant may be made subject to a special condition that requires the defendant to take prescription medication unless the defendant:

- (a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and
- (b) consents to taking the prescription medication.

(5) A defendant does not breach his or her conditions for the purposes of section 43 of the Sentencing Act 2016 if the defendant withdraws consent to taking prescription medication; but the failure to take the medication may give rise to a ground for variation or cancellation of the sentence of supervision under section 22 of this Act.

21. Defendant to be under supervision of probation officer – A defendant who is subject to a sentence of supervision must be under the supervision of a probation officer in the probation area in which the defendant resides for the time being, or of any other probation officer that the Commissioner may direct.

22. Variation or cancellation of sentence of supervision – (1) A defendant who is subject to a sentence of supervision, or a probation officer, may apply under section 45 of the Sentencing Act 2016 for an order under subsection (3) of this section on the grounds that:

- (a) the defendant is unable to comply, or has failed to comply, with any of the conditions of the sentence;
 - (b) any programme to which the defendant is subject is no longer available or suitable for the defendant;
 - (c) having regard to any change in circumstances since the sentence was imposed and to the manner in which the defendant has responded to the sentence -
 - (i) the rehabilitation and reintegration of the defendant would be advanced by the remission, suspension, or variation of special conditions, or the imposition of new special conditions; or
 - (ii) the continuation of the sentence is no longer necessary in the interests of the community or the defendant.
- (2)** A probation officer may apply under section 45 of the Sentencing Act 2016 for an order under subsection (3) of this section if a defendant who is subject to a sentence of supervision is convicted of an offence punishable by imprisonment.
- (3)** On an application under subsection (1) or (2), the court may, if it is satisfied that the grounds on which the application is based have been established:
- (a) remit, suspend, or vary any special conditions imposed by the court, or impose new special conditions;
 - (b) cancel the sentence;
 - (c) cancel the sentence and substitute any other sentence (including another sentence of supervision) that could have been imposed on the defendant at the time when the defendant was convicted of the offence for which the sentence was imposed.
- (4)** The variation of any existing condition or imposition of any new condition of a kind referred to in section 20(2)(b) requires the consent of the defendant.
- (5)** When determining a substitute sentence under subsection (3)(c), the court must take into account the portion of the original sentence that remains un-served at the time of the order.

(6) If the court cancels a sentence under this section, the sentence expires on the date that the order is made, or on any other date that the court may specify.

(7) If an application is made under this section for the remission, suspension, or variation of any condition imposed by the court, a probation officer may suspend the condition until the application has been heard and disposed of.

Division 3 - Community work

23. Sentence of community work – (1) A court may sentence a defendant to community work:

- (a) if the defendant is convicted of an offence punishable by imprisonment; or
 - (b) if the defendant is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.
- (2) The sentence may be for the number of hours, being not less than 40 or more than 400, that the court thinks fit.
- (3) This section is subject to sections 24 and 25.

24. Guidance on use of sentence of community work – (1) In considering whether to impose a sentence of community work, the court must give particular consideration to:

- (a) whether the nature and circumstances of the offending make it appropriate for the defendant to be held accountable to the community by making compensation to it in the form of work, in addition to, or instead of, making reparation to any person in respect of the offending; and
 - (b) whether the sentence is appropriate having regard to the defendant's character and personal history, and to any other relevant circumstances.
- (2) A sentence of community work is inappropriate if the court is satisfied that:
- (a) the defendant has alcohol, drug, psychiatric, or intellectual problems that indicate that it is unlikely that the defendant would complete a sentence of community work; or
 - (b) for any other reason it is unlikely that the defendant would complete a sentence of community work.

(3) The court may assume that suitable work is available for the defendant to perform under the sentence unless the court is advised otherwise by a probation officer.

25. Concurrent and cumulative sentences of community work – (1) If a court imposes a sentence of community work on a defendant who is already subject to a sentence of community work, the sentences must be served concurrently unless the court directs that they are to be served cumulatively.

(2) If a court imposes a sentence of community work in respect of each of 2 or more offences, the sentences must be served concurrently unless the court directs that they are to be served cumulatively.

(3) If a court directs that sentences of community work be served cumulatively (whether or not the sentences are imposed at the same time), the total term of the sentences must not be more than 400 hours.

(4) A sentence of community work must be served concurrently with any sentence of supervision, community detention, whether or not the sentences are imposed at the same time.

26. Length of sentence of community work – (1) If the court imposes a sentence of community work of 100 hours or less, that sentence must be served within 6 months of the date that it commences under section 47 or 48 of the Sentencing Act 2016.

(2) If the court imposes a sentence of community work of more than 100 hours, the defendant must serve at least 100 hours in every 6-month period from the date on which the sentence commences until the number of hours imposed under the sentence has been served.

(3) A work done by a defendant under a sentence of community work is treated as having been done under that sentence and under any and each other concurrent sentence of community work that the defendant was subject to at the time that the work was done.

27. Defendant must report to probation office – A defendant who is subject to a sentence of community work must report in person to a probation officer in the probation area in which the defendant resides:

- (a) as soon as practicable, and not later than 72 hours, after the sentence is imposed; and
- (b) as directed at any other time during the sentence for the purpose of monitoring the sentence.

28. Defendant must notify probation officer if defendant changes residential address – If a defendant who is subject to a sentence of community work moves to a new residential address, the defendant must, within 72 hours, notify a probation officer of the defendant's new residential address.

29. Probation officer must determine placement of defendant for community work – As soon as practicable after a sentence of community work is imposed, and at any other time during the sentence if the probation officer thinks fit, a probation officer must determine in accordance with sections 30 and 30A whether the community work will be done:

- (a) on placement at a prescribed community work centre;
or
- (b) on placement with another agency; or
- (c) on placement at a prescribed community work centre for a certain number of the hours of work and on placement with another agency for a certain number of the hours of work, as specified by the probation officer.

30. Guidance to probation officer in determining placement of defendant for community work – For the purposes of section 29, the probation officer must take into account:

- (a) the circumstances of the offending; and
- (b) how the defendant could benefit from learning work habits or skills through the sentence; and
- (c) the defendant's character and personal history; and
- (d) the defendant's physical and mental capabilities; and
- (e) the outcome of any prescribed restorative justice processes that have occurred in the case; and
- (f) whether there is a prescribed community work centre within a reasonable distance of the defendant's place of residence; and

- (g) whether there is any agency within a reasonable distance of the defendant's place of residence that has sufficient suitable work available for the defendant; and
- (h) any other relevant circumstances.

30A. Authorised work for person sentenced to community work – (1) The type of work that a defendant may be required to perform for the purposes of a sentence of community work is work:

- (a) at or for any hospital or church or at or for any charitable, educational, cultural, or recreational institution or organisation (including a village); or
- (b) at or for any other institution or organisation for old, infirm, or disabled persons, or at the home of any old, infirm, or disabled person; or
- (c) on any land of which the State or any public body is the owner or lessee or occupier, or any land that is administered by the State or any public body; or
- (d) at or for any village or district.

(2) No defendant may be directed for the purposes of a sentence of community work to do any work if, in doing so, the defendant would take the place of any person who would otherwise be employed in doing that work in the ordinary course of that person's paid employment.

30B. When community work must be done – (1) If community work is to be done on placement with an agency other than a prescribed community work centre, the days on which and the times at which the defendant does the work must be fixed by agreement between a probation officer and the agency and notified in writing to the defendant.

(2) If the community work is to be done on placement at a prescribed community work centre, the days on which and the times at which the defendant performs the work must be determined by a probation officer and notified in writing to the defendant.

(3) It is not necessary for all the periods of work to be of the same duration, but no period may be longer than 10 hours and no

defendant may be required to do more than 40 hours of community work per week.

(4) The times at which the defendant is required to report, and the periods during which he or she is required to do community work, must be such as to avoid interference, so far as practicable, with the defendant's attendance at any place of education or employment, or with his or her religious observances.

31. Supervision of defendant while doing community work – (1) A defendant who is directed to do community work on placement at a prescribed community work centre is subject to the control, direction, and supervision of a probation officer:

- (a) while the defendant is at a prescribed community work centre; and
- (b) while the defendant is at any other place at the direction, or with the permission, of a probation officer; and
- (c) while the defendant is travelling between a prescribed community work centre and any other place referred to in paragraph (b), or between any 2 such places.

(2) A defendant who is directed to do community work on placement with an agency other than a prescribed community work centre is subject to the control, direction, and supervision of a probation officer at all times while the defendant is doing work or is required to be doing work under the sentence.

31A. Defendant excused from reporting in certain circumstances – (1) A defendant who is subject to a sentence of community work may be excused from reporting during any period when the prescribed community work centre or other agency at which the defendant is required to report is closed.

(2) In special circumstances, a probation officer may excuse a defendant from reporting on any day or during any period.

(3) Without limiting subsection (2), if a defendant is unable to report on any day or during any period because of illness or injury, a probation officer must, on being satisfied (whether before or after the failure to report) with the circumstances of the case, excuse the defendant from the requirement to report on that day or during that period.

(4) For the purpose of determining whether or not to excuse a defendant under subsection (3), the probation officer may require that the defendant obtain a certificate from a registered medical practitioner as to whether the defendant is, will be, or was unfit to report on the day or during the period.

(5) A certificate obtained under subsection (4) is not conclusive as to whether the defendant is, will be, or was unfit to report.

(6) If a defendant is excused under this section from reporting, that does not have the effect of remitting any of the hours of community work required to be done under the sentence.

31B. Court may authorise hours of work to be converted into training – (1) This section applies to sentences of community work of at least 80 hours.

(2) A court may, when imposing a sentence of community work, or at any time on application by a probation officer, authorise a probation officer to direct that some of the hours of work ordered to be undertaken be instead spent in training in basic work and living skills.

(3) In determining whether to give an authorisation under this section, the court must take account of both:

- (a) the benefits of skill development to the defendant for reducing the likelihood of his or her reoffending; and
- (b) the need to hold the defendant accountable to the community by making compensation to it.

32. Some hours of work may be converted to training – (1) If authorised by a court under section 31B, a probation officer may, but is not obliged to, direct that a specified number of hours of work, not exceeding 20% of the total number of hours under the sentence, be instead spent in training in basic work and living skills.

(2) A probation officer may not give a direction under subsection (1) unless:

- (a) it is reasonably practicable for the defendant to undertake training in basic work and living skills (having regard to the availability of that training in the place where the defendant lives); and
- (b) the defendant consents to undertake that training.

(3) Any hours spent by the defendant training in basic work and living skills under a direction given under subsection (1) must, for all legal purposes, be treated as hours of authorised community work undertaken by the defendant under his or her sentence.

(4) Subsection (3) is subject to section 32A.

32A. Consequences of failing without excuse to complete training – If a defendant fails, without reasonable excuse, to complete the number of hours training in basic work and living skills directed under section 32:

- (a) any hours spent by the defendant undertaking that training are not to be treated as hours of authorised community work undertaken by the defendant under his or her sentence; and
- (b) the defendant must, in addition to the period spent in training, but subject to section 33, undertake community work for the total number of hours ordered under the sentence.

32B. When hours of community work not counted – (1) If a defendant fails to carry out any work under a sentence of community work to the satisfaction of the probation officer, the probation officer may, subject to subsection (2), refuse to treat that work as work undertaken under the sentence.

(2) The number of hours that the probation officer may refuse to treat as work undertaken under the sentence must not exceed 10% of the total number of hours under the sentence.

33. Remission of sentence of community work - If a probation officer is satisfied that the defendant has a good record of compliance with a sentence of community work, the probation officer may remit up to 10% from the number of hours of community work imposed by the court.

33A. Variation or cancellation of sentence of community work – (1) A defendant who is subject to a sentence of community work, or a probation officer, may apply under section 45 of the Sentencing Act 2016 for an order under subsection (3) of this section on the grounds that:

- (a) there has been a change of circumstances since the sentence was imposed that would justify the variation or cancellation of the sentence; or
 - (b) having regard to any change in circumstances since the sentence was imposed and to the manner in which the defendant has responded to the sentence, the continuation of the sentence is no longer necessary in the interests of the community or the defendant.
- (2) A probation officer may apply under section 45 of the Sentencing Act 2016 for an order under subsection (3) of this section:
- (a) if a defendant who is subject to a sentence of community work is convicted of an offence punishable by imprisonment; or
 - (b) on the grounds that the defendant has behaved in a manner described in section 44(1)(a) to (j) of the Sentencing Act 2016.
- (3) On an application under subsection (1) or (2), the court may, if it is satisfied that the grounds on which the application is based have been established:
- (a) vary the sentence by reducing the number of hours of work to be done; or
 - (b) cancel the sentence; or
 - (c) cancel the sentence and substitute any other sentence (including another sentence of community work) that could have been imposed on the defendant at the time when the defendant was convicted of the offence for which the sentence was imposed.
- (4) When determining a substitute sentence under subsection (3)(c), the court must take into account the portion of the original sentence that remains un-served at the time of the order.
- (5) If the court cancels the sentence, the sentence expires on the date that the order is made or on any other date that the court may specify.

33B. Extension of period within which community work must be done – (1) A defendant who is subject to a sentence of community work, or a probation officer, may apply under section 45 of the Sentencing Act 2016 for an extension of the period within which the work must be done on the grounds that:

- (a) because of incapacity or any humanitarian or other reasons, it will be impossible for the defendant to do the work during a certain period; or
 - (b) it would be unreasonable to require the defendant to do the work during that period.
- (2) On an application under subsection (1), the court may, if it is satisfied that any of the grounds in subsection (1) has been established, extend the period within which the work must be done by the amount that the court thinks fit.

PART 4

ADMINISTRATIVE RESPONSIBILITY

34. Power and functions of Chief Executive Officer – The powers and functions of the Chief Executive Officer in relation to the community based justice system include:

- (a) ensuring that the community based justice system operates in accordance with the purpose and objects set out in sections 2 and 3; and
- (b) proposing policies on the management of the probation and parole service and ensuring that proposed policies are implemented; and
- (c) developing national programmes for the training of probation and parole officers to ensure the highest degree of professionalism amongst staff; and
- (d) commissioning or undertaking research on the good administration of parole and rehabilitation and reintegration models; and
- (e) commissioning or undertaking research on the good administration, programmes, and development of probation services; and
- (f) establishing and implementing such programmes of rehabilitation, education and vocational training for offenders as are necessary for their reintegration into society, subject to the availability of funding for that purpose; and
- (g) ensuring the welfare of offenders subject to community based sentences or conditions imposed by the Prisons Parole Board during the periods when they are in the presence of any staff member of the Ministry; and

- (h) ensuring that offenders carry out their sentences; and
- (i) visiting and inspecting any probation office or community work activity and at his or her discretion interviewing any person undergoing a community based sentence; and
- (j) inquiring into the treatment and conduct of persons undergoing a community based sentence; and
- (k) inquiring into all abuses or alleged abuses in a probation office or community work activity or in connection with it; and
- (l) exercising all or any of the powers and functions of a probation officer or parole officer or community justice supervisor; and
- (m) issuing instructions, guidelines or policies in relation to any or all of the activities undertaken by the Ministry and its staff; and
- (n) complying with the requirements of this Act or any other Act and regulations; and
- (o) ensuring compliance of all or any of the obligations imposed on the Ministry and staff members under this Act or any other Act; and
- (p) complying with a general direction given by the Minister.

35. Delegation of Powers of Chief Executive Officer – (1)

The Chief Executive Officer may in writing either generally or specifically, delegate (unless the contrary intention applies) to any staff member as he or she thinks fit all or any of the powers exercisable by the Chief Executive Officer under this Act and may withdraw the delegation in writing.

(2) By delegating a function or power, the Chief Executive Officer does not remove his or her own personal responsibility for such function or power which, in addition to the delegated person, remains with the Chief Executive.

(3) The Chief Executive Officer may exercise a power or function despite that he or she has delegated its exercise under this section.

PART 5
PROBATION AND PAROLE SERVICE

36. Responsibility for probation and parole services – The Chief Executive Officer is responsible for providing probation and parole services in accordance with the provisions of this Act or any other Act.

37. Principal Probation Officer – There is appointed to the Probation and Parole Service a Principal Probation Officer who shall manage the day to day activities of the Probation and Parole Service.

38. Powers and functions of Principal Probation Officer – The powers and functions of the Principal Probation Officer include:

- (a) overseeing the administration of all community based sentences; and
- (b) managing and giving directions, training and overseeing the activities of probation and parole officers, and community justice supervisors; and
- (c) delegating in writing to a probation or parole officer all or any of his or her powers and functions without affecting his or her own responsibility which remains; and
- (d) exercising all the functions and powers of a probation officer, parole officer or a community justice supervisor as required.

39. Probation officers and parole officers – There must be appointed as many probation and parole officers as are necessary for the effective and efficient administration of the Probation and Parole Service in Samoa.

40. Functions and powers of probation and parole officers – The functions of a probation or parole officer include:

- (a) supervision of persons placed under his or her supervision; and
- (b) ensuring that any condition placed on a person under a sentence of supervision or on parole is complied with; and
- (c) administering sentences of supervision and community work referred to the probation officer

- and to ensure that such sentences are carried out;
and
- (d) arranging and supervising the activities of community justice supervisors; and
 - (e) co-ordinating and arranging community involvement in the administration of any community based sentence or any particular release by the Prisons Parole Board as required and in accordance with any instructions issued by the Principal Probation Officer; and
 - (f) arranging, providing and monitoring rehabilitative and re-integrative programmes or related services for offenders as required or when directed to do so by the Principal Probation Officer; and
 - (g) providing reports and information that a Court, the Prisons Parole Board or the Chief Executive Officer is entitled to receive; and
 - (h) complying with the direction of the Principal Probation Officer and performing any other function or duty conferred under this Act or any other Act.

41. Delegation to community justice supervisors – (1) A probation or parole officer may delegate to a community justice supervisor, on the written approval of the Principal Probation Officer, his or her powers to control, direct or supervise offenders subject to a sentence of supervision or community work or conditional release on parole.

(2) The delegation in subsection (1) must be in writing and must not convey to the community justice supervisor the power to arrest or any enforcement or penal power or authority conferred on a probation or parole officer under section 40 or under any other provision of this Act or any other Act.

42. Community justice supervisors – (1) Community justice supervisors are to be appointed by the Principal Probation Officer pursuant to a written instrument appointing a person as a community justice supervisor.

(2) Community justice supervisors must be persons of good standing in the community.

(3) A community justice supervisor must supervise the activities of persons on supervision, community work or parole in accordance with the direction of a probation or parole officer.

(4) A community justice supervisor must be allocated to an offender pursuant to a written agreement between a probation officer or parole officer and the community justice supervisor.

(5) The agreement lasts for only such time as the offender is subject to the supervision or community work or parole order or until the agreement with the community justice supervisor is withdrawn by the Principal Probation Officer.

(6) Community justice supervisors may supervise more than 1 offender at any one time.

(7) A community justice supervisor must not, by reason of holding office as a community justice supervisor, be a member of the public service.

(8) Community justice supervisors must comply with the direction of the Principal Probation Officer, a probation officer or parole officer in the performance of any function or duty conferred under this Act or any other Act.

PART 6 MISCELLANEOUS

43. Protection from liability – The Chief Executive Officer, a staff member or any other authorised person under this Act, shall not in the exercise of a power or the discharge of a duty under this Act be personally liable for any civil or criminal proceedings for an act or omission done honestly and without negligence for this Act.

44. Regulations – (1) The Head of State, acting on the advice of Cabinet may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), regulations may be made for the purposes of:

- (a) ensuring the good management of probation services and the community based justice system generally; and

- (b) prescribing the powers and functions of the Chief Executive Officer, probation officers, parole officers and community justice supervisors; and
- (c) providing for the management, care, treatment, wellbeing and integration of persons undergoing a community based sentence, including that of supervision and community work; and
- (d) providing for any other matters contemplated by the Act.

45. Transition – A person appointed as a Principal Probation Officer (however called), probation officer or parole officer employed in the Ministry immediately before the commencement of this Act continues, after the commencement of this Act, in employment by the Ministry as if appointed under and subject to the provisions of this Act.

46. Repeal and savings – (1) The Offenders Probation Act 1971 is repealed.

(2) All prosecutions pending or sentences imposed and in force on the coming into force of this Act shall be completed or enforced under this Act in like manner as they would have been completed or enforced under the Offenders Probation Act 1971 as if this Act had not been passed.

REVISION NOTES 2008 – 2023

This is the official version of this Act as at 31 December 2023.

This Act has been revised by the Legislative Drafting Division from 2008 – 2023 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa (reference to “CEO” replaced with “Chief Executive Officer”)
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.

- (i) “Every” and “any” changed to “a” or “each” where appropriate
- (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
- (iii) “shall have” changed to “has”
- (iv) “shall be guilty” changed to “commits”
- (v) “notwithstanding” changed to “despite”
- (vi) “pursuant to” changed to “under”
- (vii) Numbers in words changed to figures
- (viii) “hereby” and “from time to time” (or “at any time”) removed
- (ix) “the generality of” removed
- (x) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate
- (xi) “will” has been changed to “must” or “shall” where appropriate;
- (xii) Sections 10(1) and 11(4) paragraphed
- (xiii) Roman numerals changed to decimal numbers.

The following amendments were made since its enactment:

By the Sentencing Act 2016 (No. 9), commenced on 1st November 2016:

Section 10 - Section 10 deleted and new section 10 was inserted.

Part 3 - Part 3 deleted and new Part 3 was inserted.



Su'a Hellene Wallwork
Attorney General of Samoa

*This Act is administered by
the Ministry of Justice and Courts Administration.*