

## **SENTENCING BILL 2015**

### **SAMOA**

#### Explanatory Memorandum

#### **Introduction**

The purposes of the Bill are:

- (a) to provide ways in which defendants may be sentenced or otherwise dealt with by the courts;
- (b) to aid in the public's understanding of sentencing practices, by providing principles and guidelines to be applied by the courts in sentencing or otherwise dealing with defendants;
- (c) to provide a sufficient range of sentences and other means of dealing with defendants; and
- (d) to provide for the interests of victims of crime.

## **TULAFONO TAU FAAOFI O FAASALAGA 2015**

### **SAMOA**

#### Faamatalaga e Faamalamalama ai

#### **Faatomuaga**

O faamoemoega o le Tulafono Tau Faaofi:

- (a) o le aiaia lea o auala e mafai ai ona faasalaina po o le tagofiaina i se isi faiga e ese ai e le faamasinoga mataupu a tagata ua molia;
- (b) o le fesoasoani lea i le faamalamalamaina i tagata o le atunuu o faiga o lo o faia ai faasalaga, e ala i le tuuina atu o taiala faavae ma tulafono o lo o faaaogāina e faamasinoga i le faia o faasalaga po o le tagofiaina i isi faiga e ese ai faasalaga o i latou ua molia;
- (c) ua aiaia ai se tulaga lautele atoatoa o faasalaga ma isi auala e faafoe ai mataupu a tagata ua molia; ma
- (d) ia aiaia ai mo aia a tagata ua aafia i solitulafono.

**Clauses:****Part 1 - PRELIMINARY**

- Clause 1:** - states that when enacted, the Bill will be called the Sentencing Act 2015, and it will commence on a date nominated by the Minister.
- Clause 2:** - provides for the definitions of terms used within the Bill.
- Clause 3:** - provides that it is binding on the State and applies to a defendant sentenced by a court before or after the commencement.
- Clause 4:** - confers the right to a lesser penalty if the penalty for the offence has been varied since the commission of the offence.

**PART 2 - PURPOSES AND PRINCIPLES OF SENTENCING AND GENERAL PROVISIONS***Division 1 - Sentencing purposes and principles*

- Clause 5:** - sets out the purposes of sentencing or dealing with defendants by the courts.
- Clause 6:** - sets out the principles of sentencing or dealing with the defendant, such as the gravity and seriousness of the offence.

**Fuaiupu:****VAEGA 1 - FAATOMUAGA**

- Fuaiupu 1:** - ua taua ai e faapea afai e pasia le tulafono, o le a taua loa le Tulafono Tau Faaofi o le Tulafono o Faasalaga 2015, ma e amata faamamaluina i se aso e filifilia e le Minisita.
- Fuaiupu 2:** - ua aiaia ai mo le faamatalaga manino o fuaitau o lo o faaaogāina i totonu o le Tulafono Tau Faaofi.
- Fuaiupu 3:** - ua aiaia ai e faapea, e noatia le Malo ma e faaaogāina i se tagata ua molia ma faasalaina i se faamasinoga i luma mai po o le tuana'i ai ona amata faamamaluina le tulafono.
- Fuaiupu 4:** - ua faaee ai le aia tatau e faia ai se isi faasalaga e maualalo ifo pe afai ua fetuunai le faasalaga talu ona maea le faia ai o le soligatulafono.

**VAEGA 2 - FAAMOEMOEGA MA TAIALA FAABAE O FAASALAGA MA AIAIGA LAUTELE***Vaevaega 1 - Faamoemoega ma taiala faavae o faasalaga*

- Fuaiupu 5:** - ua faatulaga atu ai faamoemoega o faasalaga po o le tagofia o faasalaga o tagata ua molia e faamasinoga.
- Fuaiupu 6:** - ua faatulaga atu ai taiala faavae o le faasalaga po o le tagofiaina o faasalaga o tagata ua molia, e tusa ma le mamafa ma le matuia o le soligatulafono.

**Clause 7:** - provides for the duty of the court to take into account aggravating factors when sentencing or dealing with a defendant.

*Division 2 - Additional aggravating factors in cases involving violence against, or neglect of, child under 18 years*

**Clause 8:** - provides for additional aggravating factors to be taken into account by a court when dealing with violence or neglect of a person under 18 years.

*Division 3 - Taking into account offer or agreement to make amends*

**Clause 9:** - empowers a court to take into account any agreement, etc., when sentencing or dealing with the defendant.

*Division 4 - Hierarchy of sentences and orders*

**Clause 10:** - sets out the hierarchy of sentences and orders from the least (discharge, etc.) to the most restrictive (prison sentence).

**Fuaiupu 7:** - ua aiaia ai tiute tauave o le faamasinoga e amanaia ai itu ua atili faateleina ai le leaga pe a faasalaina, po o le tagofiaina o le faasalaga o se tagata ua molia.

*Vaevaega 2 - O itu ogaoga faaopoopo i mataupu e aafia ai sauaga e faasaga i, po o le tuulafoaia o, tagata e i lalo ifo o le 18 tausaga le matutua*

**Fuaiupu 8:** - ua aiaia ai itu faaopoopo ua atili faateleina ai le leaga o soligatulafono, ina ia amanaia e se faamasinoga pe a tagofiaina sauaga po o le tuulafoaia o se tagata e i lalo ifo o le 18 tausaga le matua.

*Vaevaega 3 - O le amanaia ai o ofo po o maliega e faia ai ni faaleleiga*

**Fuaiupu 9:** - ua tuuina atu ai le malosiaga i se faamasinoga ina ia amanaia so o se maliega, ma isi, pe a faia faasalaga po o le tagofiaina o mataupu a le tagata ua molia.

*Vaevaega 4 - Faatulagaga o faasalaga ma poloaiga*

**Fuaiupu 10:** - ua faataatia atu ai le faatulagaga o faasalaga ma poloaiga mai le faasalaga aupito mauualalo (ua lē faamaonia le moliaga, ma isi,) i le faasalaga aupito sili ona puipuia (nofosala i le falepuipui).

*Division 5 - General provisions about discharge without conviction, etc., and imposition of reparation, fines, community-based sentences, and imprisonment*

- Clause 11:** - provides matters to be taken into account by a court, before it convicts or sentences the defendant, if the defendant is found or pleads guilty.
- Clause 12:** - empowers a court not to impose a fine if it is satisfied that the defendant does not have the means of paying the fine or impose a sentence or order of reparation if it will result in undue hardship to the defendant or dependants of the defendant.
- Clause 13:** - empowers a court to impose a community-based sentence if it considers that a fine is not an appropriate sentence or clause 12 applies.

*Division 6 - Permitted combinations of sentences and provisions of general application restricting cumulative sentences*

- Clause 14:** - empowers a court to impose a combination of different types of sentences, such as reparation, supervision, community detention, fine, etc.
- Clause 15:** - provides for matters to guide a court when imposing combination of sentences in clause 14.

*Vaevaega 5 - Aiaiga lautele e uiga i le faasaolotoina e aunoa ma le faamaonia faaletulafono o moliaga, ma isi tulaga faapena, ma le faaeeina atu o faasalaga o tau'i e totoi, sala tupe, faasalaga e faatino i nuu ma afioaga, ma le nofosala i le falepuipui*

- Fu'aiupu 11:** - ua aiaia ai mataupu e ao ona amanaia e se faamasinoga a o lumanai ai le faamaoniga faaletulafono o se tagata po o le faasalaina o lē ua molia, pe afai ua faamaonia le nofosala po o ua tautino e moni moliaga.
- Fu'aiupu 12:** - ua tuuina atu ai malosiaga i se faamasinoga e lē faaeeina atu se sala tupe pe afai ua faamalieina o ia e faapea, e le o i ai se alatupe e totoi ai le sala tupe, po o le faaee atu o se faasalaga po o se poloaiga o le totoiina o tau'i tau tupe, pe afai o le a mafua ai se tulaga toatuga lē talafeagai i lē o molia po o tagata o lo o faalagolago le tausiga i lē o lo o molia.
- Fu'aiupu 13:** - ua tuuina atu ai le malosiaga i se faamasinoga e faaee atu ai se faasalaga e faatino i nuu ma afioaga pe afai ua ia manatu e faapea o se sala tupe e le o se faasalaga talafeagai, po o le faaogāina o le fuaiupu 12.

*Vaevaega 6 - Tuufaatasiga faatagaina o faasalaga ma aiaiga o le faaogāina faalauaitete o faasalaga e faatapulaaina ai le tuli eseese o taimi*

- Fu'aiupu 14:** - ua tuuina atu ai le malosiaga i se faamasinoga e faaee atu ai se tuufaatasiga o ituaiga faasalaga eseese, e pei o tau'i tau tupe, tulaga vaavaaia, faasalaga e tuli i nuu ma afioaga, sala tupe ma isi.
- Fu'aiupu 15:** - ua aiaia ai mo mataupu e taitaiina ai se faamasinoga pe a faaee atu se tuufaatasiga o faasalaga o lo o taua i le fuaiupu 14.

**Clause 16:** - provides that no other kind of sentence can be imposed cumulatively on an indeterminate sentence of imprisonment (life imprisonment).

*Division 7 - Proof of facts and sentencing procedure*

**Clause 17:** - provides for proof of facts when a court is determining a sentence or other disposition of the case.

**Clause 18:** - empowers a court to adjourn proceedings after the defendant is found or pleads guilty before the defendant is sentenced by it and to consider the matters set out in paragraphs (a) to (e).

**Clause 19:** - empowers a court to direct a probation officer to provide pre-sentencing reports to be prepared for the court after the defendant is found or pleads guilty for an offence punishable by imprisonment.

**Clause 20:** - provides for matters to be covered in a pre-sentence report if the court has indicated that it is considering a sentence of community detention or the probation officer intends to recommend the sentence of community detention.

**Fuaiupu 16:** - ua aiaia ai e faapea, e leai se isi ituaiga faasalaga e mafai ona faaee atu i se tulaga e faaopoopo atu i luga o se faasalaga e le i faamautinoaina le vaitaimi e nofosala ai i le falepuipui (solo atoa i le falepuipui).

*Vaevaega 7 - Faamaoniga o mea moni ma taualumaga o faasalaga*

**Fuaiupu 17:** - ua aiaia ai mo le faamaoniga o mea moni pe afai o lo o faia e se faamasinoga se faaiuga o se faasalaga po o isi auala e tagofia ai le mataupu.

**Fuaiupu 18:** - ua tuuina atu ai le malosiaga i se faamasinoga e tolopo ai taualumaga i le maea ai ona faamaonia le nofosala po o ua tautino lē ua molia e moni moliaga a o lumanai ai le faasalaina o ia, ma ia iloilo ina mataupu ua faatulaga atu i parakarafa (a) e oo atu i le (e).

**Fuaiupu 19:** - ua tuuina atu ai le malosiaga i se faamasinoga e faatonuina ai se tagata ofisa e vaavaaia ina ia tuuina atu lipoti a o le i faia le faasalaga ina ia saunia mo le faamasinoga i le maea ai ona faamaonia le nofosala po o le tautino e moni ona moliaga mo se soligatulafono e faasalaina ai i le nofosala i le falepuipui.

**Fuaiupu 20:** - ua aiaia ai mo mataupu e ao ona aofia ai i se lipoti a o lumanai ai le faasalaga, pe afai ua faailoa mai e le faamasinoga o lo o ia iloilo ina se faasalaga e faatino i nuu ma afioaga, po o o lo o faamoemoe le tagata ofisa e vaavaaia e fautuaina le faasalaga e faatino i nuu ma afioaga.

**Clause 21:** - provides for the right of the defendant to request the court to hear any person relating to the personal, family, community, etc., background of the defendant.

**Clause 22:** - provides that a pre-sentencing report is to be given to the defendant unless the court orders that the report not to be given to the defendant.

**Clause 23:** - sets out persons entitled to have access to a pre-sentencing report.

### **PART 3 - SENTENCES, ORDERS, AND RELATED MATTERS**

#### *Division 1 - Monetary penalties*

##### *Subdivision A - Reparation*

**Clause 24:** - empowers a court to impose a sentence of reparation if a defendant has caused loss to property or physical harm arising out of the offence.

**Clause 25:** - empowers a court to order a probation officer to prepare a reparation report if the court considers that a sentence of reparation is appropriate.

**Clause 26:** - obligates the probation officer preparing the reparation report to try and get the defendant and the person who suffers loss to agree on the amount to be paid by way of reparation.

**Fuaiupu 21:** - ua aiaia ai mo le aia tatau a le tagata ua molia e talosagaina ai le faamasinoga ina ia fofogaina so o se tagata e uiga i le talaaga patino, faaleaiga, nuu ma le afioga, ma isi talaaga o le tagata ua molia.

**Fuaiupu 22:** - ua aiaia ai e faapea, e ao ona tuuina atu se lipoti muamua i lē ua molia a o le i faia le faasalaga, ae vagana ai ua poloaia e le faamasinoga e faapea, e lē tatau ona tuuina atu lea lipoti.

**Fuaiupu 23:** - ua faatulaga atu ai tagata e agavaa e mauaina se lipoti e faia muamua a o le i faia se faasalaga.

### **VAEGA 3 - FAASALAGA, POLOAIGA MA MATAUPU E FESOOTAI I AI**

#### *Vaevaega 1 - Faasalaga tau tupe*

##### *Vaevaega Laitiiti A - Tau e totogi*

**Fuaiupu 24:** - ua tuuina atu ai malosiaga i se faamasinoga e faaee atu ai se faasalaga o tau tau tupe pe afai o le tagata ua molia ua mafua ai le maumau o meatotino po o ua faatulai mai i le soligatulafono se tulaga e faamanualia ai le tino.

**Fuaiupu 25:** - ua tuuina atu ai le malosiaga i se faamasinoga e poloaia ai se tagata ofisa e vaavaaia, e saunia se lipoti o tau tau tupe pe afai ua manatu le faamasinoga e faapea, e talafeagai se faasalaga o le totogi o tau tupe.

**Fuaiupu 26:** - ua noatia ai le tagata ofisa e vaavaaia e saunia se lipoti o tau tau tupe, ina ia faia se maliega a lē ua molia ma le tagata, o ia lea o lo o mafatia i ni tupe ua gau, i se aofaiga e totogi e ala i le totogi o tau.

- Clause 27:** - provides for matters to be taken into account by a court when considering reparation if the defendant does not have sufficient means to pay for the total loss.
- Clause 28:** - provides for conditions for consideration by a court when making a sentence of reparation.
- Clause 29:** - provides that the person who suffered loss must be given a copy of the conditions of a sentence of reparation.
- Clause 30:** - provides for reparation payment to be made to the person who suffered loss or, with the person's consent, to his or her insurer.

*Subdivision B - Declaration as to financial capacity*

- Clause 31:** - sets out the contents of a declaration of financial capacity.
- Clause 32:** - creates the offence of providing false or misleading information in a financial capacity declaration.

*Division 2 - Community-based sentences*

*Subdivision A - General*

- Clause 33:** - sets out the types of community-based sentences that a court may impose.
- Clause 34:** - provides for the cases in which a court may impose a sentence of community detention.

**Fuaiupu 27:** - ua aiaia ai mo mataupu e ao ona amanaia e se faamasinoga pe a iloiloina tau pe afai e lē lava alatupe e totoi atoa ai tupe ua maimau.

**Fuaiupu 28:** - ua aiaia ai mo tuutuuga o iloiloa a se faamasinoga pe a faia se faasalaga o tau tau tupe.

**Fuaiupu 29:** - ua aiaia ai e faapea e ao ona tuuina atu i le tagata, o ia lea ua afaina i mea ua maimau, se ata o tuutuuga o se faasalaga o tau tau tupe.

**Fuaiupu 30:** - ua aiaia ai mo tau tau tupe e ao ona totoi i le tagata, o ia lea ua afaina i mea ua maimau po o, i le i ai faatasi ma le maliega a le tagata, ia totoi i lana kamupani inisiua.

*Vaevaega Laitiiti B - Tautinoga e tusa ai o le tulaga mafai gafatia tau tupe*

- Fuaiupu 31:** - ua faatulaga atu ai mea o aofia ai i se tautinoga o le mafai gafatia o le tulaga tau tupe.
- Fuaiupu 32:** - ua faia ai le soligatulafono o le tuuina atu o faamatalaga sese pe tau faasese i se tautinoga o le mafai gafatia o le tulaga tau tupe.

*Vaevaega 2 - Faasalaga e faatinoina i nuu ma afioaga*

*Vaevaega Laitiiti A - Tulaga Lautele*

- Fuaiupu 33:** - ua faatulaga atu ai ituaiga faasalaga eseese e tuliina i tua i nuu ma afioaga ia e mafai ona faaee atu e se faamasinoga.
- Fuaiupu 34:** - ua aiaia ai mo mataupu ia e mafai e le faamasinoga ona faaee atu ai se faasalaga e faatino i nuu ma afioaga.

- Clause 35:** - sets out matters to be taken into account by a court when imposing a sentence of community detention.
- Clause 36:** - provides that if a court imposes a new sentence of community detention on a defendant who is already subject to a sentence of community detention, the sentence is to be served concurrently unless the court directs that it be served cumulatively.
- Clause 37:** - provides for the conditions of a sentence of community detention.
- Clause 38:** - creates an offence relating to breach of a sentence of community detention.
- Clause 39:** - creates an offence for refusing a probation officer to enter a curfew address of a defendant subject to a sentence of community detention.
- Clause 40:** - provides for variation or cancellation of a sentence of community detention.
- Clause 41:** - authorises a probation officer to approve an alternative curfew address of a defendant subject to a sentence of community detention.
- Clause 42:** - provides for the last day of the sentence of community detention if the last day falls on a non-release day (Saturday, Sunday or a public holiday).

*Subdivision B - Offences related to community-based sentences*

- Clause 43:** - creates an offence of breaching any condition of a sentence of supervision.

- Fuaiupu 35:** - ua faatulaga atu ai mataupu e ao ona amanaia e se faamasinoga pe a faaee atu se faasalaga e faatino i nuu ma afioaga.
- Fuaiupu 36:** - ua aiaia ai e faapea afai e faaee atu e se faamasinoga se faasalaga fou e faatino i nuu ma afioaga i se tagata ua molia, o ia lea o lo o noatia i se faasalaga e faatino i nuu i tua, e tatau ona tuli faatasi le faasalaga vagana ai ua faatonuina e le faamasinoga e faapea, o le a tuli eseese ia faasalaga.
- Fuaiupu 37:** - ua aiaia ai mo tuutuuga o se faasalaga e faatino i nuu ma afioaga.
- Fuaiupu 38:** - ua faia ai se soligatulafono e fesootai ma le solia ai o faasalaga e faatino i nuu ma afioaga.
- Fuaiupu 39:** - ua faia ai se soligatulafono mo le teena ai ona ulufale atu se tagata ofisa e vaavaaia, i se nofoaga ua vaoia ai se tagata ua molia o lo o noatia i se faasalaga e faatino i nuu ma afioaga.
- Fuaiupu 40:** - ua aiaia ai mo le suiga po o le faalēaogāina o se faasalaga e faatino i nuu ma afioaga.
- Fuaiupu 41:** - ua faatagaina ai se tagata ofisa e vaavaaia e faamaonia se isi nofoaga o vaoia ai se tagata ua molia, o lo o noatia i se faasalaga e faatino i nuu ma afioaga.
- Fuaiupu 42:** - ua aiaia ai le aso e maea ai le faasalaga e faatino i nuu ma afioaga, pe afai o le aso e maea ai, e pau i se aso e lē tatalaina ai se pagota (Aso Toonai, Aso Sa po o se aso malolo mo tagata uma).

*Vaevaega Laititi B - Soligatulafono e faasino i faasalaga e faatino i nuu ma afioaga*

- Fuaiupu 43:** - ua faia ai se soligatulafono o le solia o so o se tuutuuga o se faasalaga o le nofo vaavaaia.



**Clause 44:** - creates an offence of breaching any condition of a sentence of community work.

*Subdivision C - Review of community-based sentences*

**Clause 45:** - provides for the jurisdictions of the Supreme Court and the District Court in relation to variation or cancellation of a sentence of community detention, supervision or community work.

*Subdivision D - Miscellaneous provisions*

**Clause 46:** - provides that a community-based sentence imposed by a court must be drawn up in the form of an order.

**Clause 47:** - provides for the commencement of a community-based sentence, which is the day it is imposed.

**Clause 48:** - provides for the commencement of cumulative sentence of community work.

**Clause 49:** - provides for the commencement of a cumulative sentence of community detention.

**Clause 50:** - provides for the effect of a subsequent sentence of imprisonment imposed on a defendant who is already subject to a community-based sentence.

**Clause 51:** - provides that a suspension period of a sentence of supervision is not counted towards the period of the sentence of supervision.

**Fuaiupu 44:** - ua faia ai se soligatulafono o le solia o so o se tuutuuga o se faasalaga o galuega e faatino i nuu ma afioaga.

*Vaevaega Laitiiti C - Iloiloga o faasalaga e faatino i nuu ma afioaga*

**Fuaiupu 45:** - ua aiaia ai mo puleaga faa-faamasinoga a le Faamasinoga Sili ma le Faamasinoga Faaitumalo, e faasino i le suiga po o le faalēaogāina o se faasalaga e faatino i nuu ma afioaga, tulaga vaavaaia po o galuega e faatino i nuu ma afioaga.

*Vaevaega Laitiiti D - Aiaiga eseese*

**Fuaiupu 46:** - ua aiaia ai e faapea e ao i se faasalaga e faatino i nuu ma afioaga na faaee atu e le faamasinoga, ona faatulaga i le faiga o se poloaiga.

**Fuaiupu 47:** - ua aiaia ai mo le amata faamamaluina o se faasalaga e faatino i nuu ma afioaga, i le aso lea na faaee atu ai le faasalaga.

**Fuaiupu 48:** - ua aiaia ai mo le amata faamamaluina o faasalaga e tuli eseese taimi o galuega i nuu ma afioaga.

**Fuaiupu 49:** - ua aiaia ai mo le amata faamamaluina o se faasalaga e tuli faatasi taimi i galuega e faatino i nuu ma afioaga.

**Fuaiupu 50:** - ua aiaia ai mo le aafiaga o se faasalaga o le nofosala i le falepui e faaee mulimuli atu i se tagata ua molia, o ia lea o lo o noatia i se faasalaga e faatino i nuu ma afioaga.

**Fuaiupu 51:** - ua aiaia ai e faapea, e lē faitauina i le faasalaga, se vaitaimi na taofia lē tumau ai i se faasalaga nofo vaavaaia.

**Clause 52:** - provides for the resumption of a suspended community-based sentence if the sentence of imprisonment is quashed.

*Division 3 - Imprisonment*

*Subdivision A - General*

**Clause 53:** - empowers a court to impose the maximum term of imprisonment or a lesser term unless a minimum term is specified in an enactment.

**Clause 54:** - provides the court's power to impose any sentence of imprisonment cumulatively or concurrently.

**Clause 55:** - provides guidance on use of cumulative or concurrent sentences of imprisonment.

**Clause 56:** - provides that a court must consider the seriousness of each offence when sentencing a defendant who is subject to two (2) or more offences.

*Subdivision B - Warrant of commitment  
for sentence of imprisonment*

**Clause 57:** - provides a warrant to be issued if a court imposes a sentence of imprisonment.

**Fuaiupu 52:** - ua aiaia ai le toe amataina o se faasalaga e faatino i nuu ma afioaga lea na faaee atu pe afai ua faalēaogāina le faasalaga o le nofosala i le falepuipui.

*Vaevaega 3 - Nofosala i le falepuipui*

*Vaevaega Laitiiti A - Tulaga Lautele*

**Fuaiupu 53:** - ua tuuina atu ai le malosiaga i se faamasinoga e faaee atu ai le faasalaga i se vaitaimi aupito maualuga e nofosala ai i le falepuipui po o se vaitaimi e maualalo ifo seia vagana ai o faamaoti mai i se tulafono se vaitaimi aupito maualalo.

**Fuaiupu 54:** - ua aiaia ai le malosiaga o le faamasinoga e faaee atu ai so o se faasalaga o le nofosala i le falepuipui e tuli eseese po o le tuli faatasi o taimi.

**Fuaiupu 55:** - ua aiaia ai taiala e uiga i le faaaogāina o faasalaga e nofosala ai i le falepuipui e tuli eseese po o le tuli faatasi o taimi.

**Fuaiupu 56:** - ua aiaia ai e faapea, e ao i le faamasinoga ona iloilo le matuia o soligatulafono taitasi pe a faasalaina se tagata ua molia o ia lea o lo o noatia i ni soligatulafono se lua (2) po o le sili atu.

*Vaevaega Laitiiti B - Tusi faapoloaiga o le tuuina atu  
mo faasalaga e nofosala ai i le falepuipui*

**Fuaiupu 57:** - ua aiaia ai le tuuina atu o se tusi poloaiga pe afai ua faaee atu e se faamasinoga se faasalaga e nofosala ai i le falepuipui.

*Subdivision C - Interpretation provision relating to references to defendant being sentenced to imprisonment for particular period*

- Clause 58:** - provides for references to period of imprisonment for the purpose of clause 59 in relation to release of defendants sentenced to a short term (less than 24 months).

*Subdivision D - Conditions on release of defendant sentenced to imprisonment for short term*

- Clause 59:** - empowers a court to impose conditions of release of defendants who are subject to imprisonment for a short term.
- Clause 60:** - provides for the right to vary any conditions imposed under clause 59.
- Clause 61:** - provides for the right to review conditions if the conditions are incompatible with conditions under other orders made against the defendant.
- Clause 62:** - creates an offence against the defendant for breaching a condition imposed under clause 59 or 60.

*Subdivision E - Provisions about start date of sentence of imprisonment*

- Clause 63:** - empowers a court to defer the commencement of a sentence of imprisonment for up to three (3) months on humanitarian grounds.

*Vaevaega Laitiiti C - Aiaiga tau le faamatalaga e uiga i faasinomaga i tagata ua molia ia ua faasalaina e nofosala i le falepuipui mo se vaitaimi faapitoo*

- Fuaiupu 58:** - ua aiaia ai mo faasinomaga i le vaitaimi e nofosala ai i le falepuipui mo le faamoemoe o le fuaiupu 59, e uiga i le tuusaoloto o tagata ua molia ua faasalaina i se vaitaimi puupuu (e i lalo ifo o le 24 masina).

*Vaevaega Laitiiti D - Tuutuuga o le tatalaina i tua o le tagata ua molia na faasalaina e nofosala i le falepuipui mo se vaitaimi puupuu*

- Fuaiupu 59:** - ua tuuina atu ai le malosiaga i se faamasinoga e faaee atu ai tuutuuga o le tuusaoloto mai o tagata ua molia, o i latou ia o lo o noatia e nofosala i le falepuipui mo se vaitaimi puupuu.
- Fuaiupu 60:** - ua aiaia ai le aia tatau e suia ai so o se tuutuuga ua faaee atu i lalo o le fuaiupu 59.
- Fuaiupu 61:** - ua aiaia ai le aia tatau e iloiloaina ai tuutuuga pe afai e feteenai ma tuutuuga o lo o i lalo o isi poloaiga ua faia faasaga i le tagata ua molia.
- Fuaiupu 62:** - ua faia ai se soligatulafono faasaga i le tagata ua molia mo le solia ai o se tuutuuga ua faaee atu i lalo o le fuaiupu 59 po o le 60.

*Vaevaega Laitiiti E - Aiaiga e uiga i le aso e amataina ai le faasalaga e nofosala ai i le falepuipui*

- Fuaiupu 63:** - ua tuuina atu ai le malosiaga i se faamasinoga e faapafala ai le aso e amatalia ai se faasalaga o le nofosala i le falepuipui mo le mauauga e oo atu i le tolu (3) masina ona o mafuaaga tau le soifua maloloina.

**Clause 64:** - provides for the start date of a sentence of imprisonment, which is the date it is imposed.

*Division 4 - Sentencing for murder  
and other imprisonment*

**Clause 65:** - empowers a court to order a minimum period of imprisonment of at least 10 years to be served if a defendant is sentenced to life imprisonment.

**Clause 66:** - provides that in clause 65 a court must impose a minimum of 17 years for certain circumstances relating to murder.

**Clause 67:** - provides that an order under clause 65 is subject to appeal.

**Clause 68:** - empowers a court to impose a minimum period to be served if it sentences a defendant to imprisonment for a term of two (2) years or more.

*Division 5 - Discharge, orders and miscellaneous*

*Subdivision A - Discharge*

**Clause 69:** - empowers a court to discharge a defendant without conviction if the defendant is found or pleads guilty.

**Fuaiupu 64:** - ua aiaia ai e faapea, o le aso e amata ai se faasalaga o le nofosala i le falepuipui, o le aso lea e faaee atu ai.

*Vaevaega 4 - Faasalaga mo le fasioti tagata ma le loto  
i ai ma isi faasalaga e nofosala ai i le falepuipui*

**Fuaiupu 65:** - ua tuuina atu ai le malosiaga i se faamasinoga e poloaia ai se vaitaimi aupito maualalo e nofosala ai i le falepuipui, a itiiti mai e 10 tausaga e faatino ai pe afai ua faasalaina le tagata ua molia e nofosala i le solo atoa i le falepuipui.

**Fuaiupu 66:** - ua aiaia ai e faapea o lo o taua i le fuaiupu 65 e faapea, e mafai e se faamasinoga ona faaee atu le tapulaa aupito maualalo o le 17 tausaga mo nisi tulaga aliae mai, e fesootai ma le fasioti tagata ma le loto i ai.

**Fuaiupu 67:** - ua aiaia ai e faapea e noatia i se talosaga tetee se poloaiga i lalo o le fuaiupu 65.

**Fuaiupu 68:** - ua tuuina atu ai le malosiaga i se faamsinoga e faaee atu ai se vaitaimi aupito maualalo e ao ona faatino ai, pe afai ua ia faasalaina se tagata ua molia e nofosala i le falepuipui, mo se vaitaimi e lua (2) tausaga pe sili atu.

*Vaevaega 5 - Tatalaina i tua, poloaiga ma aiaiga eseese*

*Vaevaega Laitiiti A - Tatalaina i tua*

**Fuaiupu 69:** - ua tuuina atu ai le malosiaga i se faamasinoga e tatala ai i tua se tagata ua molia e aunoa ma le faamaonia faaletulafono o moliaga pe afai ua maua lē ua molia e faamaonia le nofosala po o le tautino ua faamaonia lona nofosala.

**Clause 70:** - provides guidance to a court when considering discharging a defendant without conviction.

**Clause 71:** - empowers a court to convict and discharge a defendant except if the enactment provides a minimum sentence.

**Clause 72:** - provides that a court can only convict and discharge a defendant if the conviction is a sufficient penalty in itself.

*Subdivision B - Order to come  
up for sentence if called on*

**Clause 73:** - provides that if a court convicts a defendant, it can order that the defendant to appear for sentencing within a period not exceeding 12 months.

**Clause 74:** - provides for the procedure for calling a defendant for sentencing under clause 73.

*Subdivision C - Miscellaneous provisions*

**Clause 75:** - provides that a sentence is valid even if, at the time the offence was committed, the defendant was under the age at which the defendant was liable for the sentence imposed.

**Clause 76:** - provides for enforcement of payment of any amount under a sentence of reparation, reparation order, etc.

**Fuaiupu 70:** - ua aiaia ai taiala i se faamasinoga pe a iloiloina le tatala ai i tua o se tagata ua molia e aunoa ma se faamaoniga faaletulafono o ni moliaga.

**Fuaiupu 71:** - ua tuuina atu ai le malosiaga i se faamasinoga e molia ai ma tatala i tua se tagata ua molia ae vagana ai ua aiaia i le tulafono se faasalaga aupito maualalo.

**Fuaiupu 72:** - ua aiaia ai e faapea, e faatoa mafai lava e se faamasinoga ona molia ma tatala i tua se tagata ua molia pe afai o le moliaga ua faamaonia faaletulafono, ua o se faasalaga atoatoa lea mo lea tulaga.

*Vaevaega Laitiiti B - Poloaiga e tulai ai mo le  
tuuina atu o le faasalaga pe a valaauina*

**Fuaiupu 73:** - ua aiaia ai e faapea, afai e faamaonia e se faamasinoga le nofosala o se tagata ua molia, e mafai ona ia poloaia lē ua molia ina ia tulai mo le tolaulauina o le faasalaga i totonu o se vaitaimi e lē silia le 12 masina.

**Fuaiupu 74:** - ua aiaia ai mo le tualumaga e tapaina ai se tagata ua molia mo le faasalaga i lalo o le fuaiupu 73.

*Vaevaega Laitiiti C - Aiaiga eseese*

**Fuaiupu 75:** - ua aiaia ai e faapea e aloaia se faasalaga e tusa lava pe faapea na faia le soligatulafono a o i ai lona matua i lalo ifo o tausaga lea sa noatia ai lē ua molia i le faasalaga na faaee atu i ai.

**Fuaiupu 76:** - ua aiaia ai mo le faamalosiaga o le togiina o so o se aofaiga i lalo o se faasalaga o tau tau tupe, poloaiga o tau tau tupe, ma isi.

- Clause 77:** - provides for procedures dealing with payments of reparation to two (2) or more persons in relation to the same offence.
- Clause 78:** - provides for procedures dealing with payments of reparation in relation to different offences.
- Clause 79:** - protects the State from being liable for any error, omission or delay in payment of reparation amount.
- Clause 80:** - defines certain terms for clauses 77, 78 and 79.
- Clause 81:** - provides that any sentence, condition or order does not affect any law relating to consent to any medical or psychiatric treatment.

#### **PART 4 - MISCELLANEOUS**

##### *Division 1 - General*

- Clause 82:** - empowers a court to order restitution of property to the person who appears to the court to be entitled to it.
- Clause 83:** - empowers the Head of State to make regulations acting on the advice of Cabinet.

##### *Division 2 - Transitional and consequential amendments*

- Clause 84:** - provides for dealing with sentencing defendants for offences committed before the commencement date.

- Fuaiupu 77:** - ua aiaia ai mo tualumaga e tagofia ai tupe totogi o tau tau tupe i ni tagata se toalua po o le sili atu o tagata e tusa ai ma le soligatulafono lava lea.
- Fuaiupu 78:** - ua aiaia ai mo tualumaga e tagofia ai tupe totogi o tau tau tupe e faasino i soligatulafono eseese.
- Fuaiupu 79:** - ua puipuia ai le Malo mai le noatia ai mo so o se mea sese, gaoioiga e le i faia po o le tuai ona totogi le aofai o tau tau tupe.
- Fuaiupu 80:** - ua faamatala manino ai nisi fuaitau mo fuaiupu 77, 78 ma le 79.
- Fuaiupu 81:** - ua aiaia ai e faapea o so o se faasalaga, tuutuuga po o poloaiga e lē aafia ai so o se tulafono e faasino i le maliega mo so o se togafitiga faafomai po o togafitiga tau le mafaufau.

#### **VAEGA 4 - AIAIGA ESEESE**

##### *Vaevaega 1 - Aiaiga Lautele*

- Fuaiupu 82:** - ua tuuina atu ai malosiaga i se faamasinoga e poloaia ai le totogiina o tupe o tau o meatotino i le tagata o ia lea ua tulai i le faamasinoga e agavaa i ai.
- Fuaiupu 83:** - ua tuuina atu ai le malosiaga i Le Ao o le Malo e faia ai tulafono faatonutonu e faia i luga o le fautuaga a le Kapeneta.

##### *Vaevaega 2 - Teuteuga tau soloaiga ma teuteuga faatupulaia*

- Fuaiupu 84:** - ua aiaia ai mo le tagofiaina o le faasalaga o tagata ua molia mo soligatulafono na faia a o lumanai ai le aso na amata faamamaluina ai.

- Clause 85:** - provides that imposing minimum period to be served for sentence of imprisonment under clause 68 does not apply to offences committed before the commencement date.
- Clause 86:** - provides that a defendant is to be sentenced under the proposed Act for the crime of murder committed before the commencement date.
- Clause 87:** - provides for continuation of any suspended sentence imposed before the commencement date.
- Clause 88:** - provides that defendants liable to be called up for sentencing under any other enactment at the commencement date may be called up for sentencing under the proposed Act.
- Clause 89:** - provides for procedures for dealing with persons under the age of 18 years who are imprisoned.
- Clause 90:** - consequentially amends the Prisons Parole Board Act 1977.
- Clause 91:** - consequentially amends the Community Justice Act 2008.

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- Fuaiupu 85:** - ua aiaia ai e faapea o le faaeeina atu o faasalaga i vaitaimi e aupito maualalo e nofosala ai i le falepuipui i lalo o le fuaiupu 68 o le a lē faaaogāina i soligatulafono na faia a o lumanai ai le aso e amata faamamaluina ai.
- Fuaiupu 86:** - ua aiaia ai e faapea e faasalaina se tagata ua molia i lalo o le Tulafono ua fuafuaina mo le solitulafono o le fasioti tagata ma le loto i ai na faia a o lumanai ai le aso e amata faamamaluina ai.
- Fuaiupu 87:** - ua aiaia ai mo le faaauau pea o so o se faasalaga ua faataatia ese na faaee atu a o lumanai ai le aso e amata faamamaluina ai.
- Fuaiupu 88:** - ua aiaia ai e faapea, o ē ua molia ma ua noatia e valaauina mo le fofogaina o le faasalaga, i lalo o so o se isi lava tulafono, i le aso e amata faamamaluina ai, e mafai ona valaauina mo le fofogaina o le faasalaga i lalo o le tulafono ua fuafuaina.
- Fuaiupu 89:** - ua aiaia ai taulumaga mo le tagofiaina o mataupu e aafia ai tagata e i lalo ifo o le 18 tausaga le matutua, o i latou ia o lo o nofosala i le falepuipui.
- Fuaiupu 90:** - ua teuteuina mulimuli ane ai le Tulafono o Komiti Faatino o le Parola Tau Falepuipui 1977.
- Fuaiupu 91:** - ua teuteuina mulimuli ane ai le Tulafono o le Faafoga o Iuga-a-Faamasinoga i Nu'u ma Afioaga 2008.

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 (Hon FIAME Naomi Mataafa)  
**MINISITA O FAAMASINOGA MA  
 PULEGA TAU FAAMASINOGA**