



REPORT TO THE LEGISLATIVE ASSEMBLY

“Criminal Procedure Bill 2015”

Justice, Police and Prisons, Lands and Titles Committee

1. **RECOMMENDATION:**

The Justice, Police and Prisons, Lands and Titles Committee recommends that the Assembly take note of its Report.

2. **BILL CONSIDERED:**

(Referred 22/4/2015)

Criminal Procedure Bill 2015.

The Justice, Police and Prisons, Lands and Titles Committee¹ considered the Criminal Procedure Bill 2015, in accordance with instructions by the Legislative Assembly on the 22nd April 2015.

3. **PROCEEDINGS:**

The Committee called for submissions from the public through advertisement televised on the Samoa Quality Broadcasting (TV1) and radio broadcasting on 2AP. However, no oral or written submissions were put forth on the Bill.

The Committee sort assistance from the following during its deliberations.

ASSISTANCE (S.O.156)

Office of the Attorney General:

Tuatagaloa Aumua Ming C Leung Wai - Attorney General
Siovia Liu - State Solicitor

Ministry of Justice and Courts Administration:

Masinalupe Tusipa Masinalupe - Chief Executive Officer
Li'o Heinrich.W. Siemsen - Assistant Chief Executive Officer

¹Standing Order 173, TUISA Tasi Patea, AFOAFOUVALE John Moors, LAFATELE Patrick Leiatuaalesa, LENATAI Victor Faafoi Tamapua, PAPALII Li'o Taeu Faavaivaiomanu Masipau, LEFAU Harry Schuster, and TAPUAI Toese Ah Sam.

Samoa Lawyers Society:

Savalenoa Mareva Betham-Annandale	-	President
Rosella Viane Papalii	-	Deputy President
Leota Ray Schuster	-	Member of Society
Leota Tima Leavai	-	Member of Society
Edelma Niumata	-	Member of Society

4. FINDINGS:

During Committee deliberation, the Office of the Attorney General (“the Office”) were invited to assist the Committee on matters pertaining to the Bill. The Office stated that the purpose of the Bill is to repeal the Criminal Procedure Act 1972. The main objective of the bill is to update the criminal procedure to a modern stage as practiced in other jurisdictions. The Committee noted that the reform includes provisions relating to bail which the current Act is deficient of. The proposed bill also provides changes to the rules relating to trial with assessors, so that it applies only to offences punishable by life imprisonment, except where the defendant gives notice to be tried by Judges alone, for narcotic offences or on application of the prosecution.

Other major changes include the introduction of a new procedure for trials in the Supreme Court through filing of charging documents by the Attorney General. This also will preserve and strengthen the jurisdiction of the Supreme Court to hear only serious matters, unless it accepts jurisdiction in relation to a trial transferred from the District Court. The Committee also noted that this Bill will clarify and strengthen the jurisdiction of the District and Faamasino Fesoasoani Courts.

The Committee also noted from the clarifications given by the Office, that the current Act is outdated by 43 years and has been amended on several occasions.

However, this Bill is part of a reform for the Justice system as there are also other Bills such as the Evidence Bill 2015, the Sentencing Bill 2015 and the District Courts Bill 2015. These legislation are currently before Parliament which contains provisions that relates to other matters covered under the current Act. However, this Bill will focus primarily on the procedure that both the prosecution and defendants must follow before and during a criminal proceeding.

4.1. Submissions

During its deliberation, submissions were raised on various matters of the Bill, of which after much discussion and clarification from the Office, the Committee noted that the matters raised in submissions are identified and clarified in other Bills such as the Evidence Bill 2015 and the Sentencing Bill 2015. Noting that these Bill are still before Parliament and Committee deliberations are still being carried out for these Bills.

5. CONSIDERATION IN DETAIL OF THE BILL:

During deliberation, the Committee were satisfied with all clauses of the Bill except amendments to the following clauses:

A. Clause 5(2):

For “five (5) years” substitute “seven (7) years”, of which Clause 5(2) reads as:

Clause 5(2)

(2) If the defendant is convicted of the offence or offences on any proceedings transferred under this section, the trial Judge, as an exception to subsection (1)(b), may sentence the defendant to imprisonment for more than two (2) years but defendant may not be sentenced to more than seven (7) years imprisonment.

Reason:

To be consistent with increase in jurisdiction under the District Court Bill 2015.

B. Insert new clause 5A:

5A. Power to transfer proceedings to District Court for rehabilitative programme - (1) As an exception to section 4, a Judge of the Supreme Court having heard the prosecutor and the defendant may direct that the sentencing or other disposition that would otherwise be conducted in the Supreme Court be transferred to the District Court if:

- (a) the defendant —
 - (i) has entered a plea of guilty; and
 - (ii) is likely to be suitable for a rehabilitative programme in the District Court; and
- (b) the Judge of the Supreme Court is satisfied that, despite the maximum penalty for the offence, the sentence that would be imposed, taking into account credit for the satisfactory completion of the rehabilitative programme, would be a community-based sentence.

(2) If the defendant:

- (a) Successfully completes the rehabilitative programme, the District Court Judge may sentence the defendant pursuant to its sentencing power; or
- (b) Fails to complete the rehabilitative programme, the District Court Judge must transfer the matter back to the Supreme Court for sentencing.

(3) The Chief Justice may issue Directives to provide for criteria and procedures for rehabilitative programme.

(4) In this section, “rehabilitative programme” means the judicially monitored rehabilitative programme undertaken by the District Court for a defendant pursuant to this section.

Reason:

To give effect to the District Court Alcohol and Drug Programme (“DCAD”), allowing eligible defendants to undertake the DCAD, and who may be sentenced

by a District Court Judge to community work if they successfully complete the DCAD.

C. Clause 12(1)(a):

For “**five (5) years**” substitute “**seven (7) years**” of which Clause 12(1)(a) reads as:

Clause 12(1)(a)

(1) As an exception to the Young Offenders Act 2007, on the application of the prosecutor, a Youth Court may transfer the trial of a child to:

- (a) the Supreme Court if the offence charged is punishable by imprisonment of more than **seven (7) years**; or

Reason:

To be consistent with increase in jurisdiction under the District Court Bill 2015.

D. Clause 111(2)(b)(ii):

For “**five (5) years**” substitute “**seven (7) years**” of which Clause 111(2)(b)(ii) reads as:

Clause 111(2)(b)(ii)

(2)A Registrar may exercise the power conferred by subsection (1) to make an order if:

- (a) the informant does not object; and
- (b) the offence with which the defendant has been charged -
 - (i) is not punishable by imprisonment; or
 - (ii) is punishable by a term of imprisonment of not more than **seven (7) years**.

Reason:

To be consistent with increase in jurisdiction under the District Court Bill 2015.

6. RESOLUTION:

At the conclusion of its deliberation the Committee resolved to recommend to the Assembly:

That the Criminal Procedure Bill 2015 progress along with amendments.

COMMITTEE SIGNATURES:

Tofa TUISA Tasi Patea
CHAIRPERSON

Susuga PAPALII Lio F T Masipau
MEMBER

Afioga AFOAFOUVALE John Moors
DEPUTY CHAIRPERSON

Tofa TAPUAI Toese Ah Sam
MEMBER

Tofa LENATAI Victor Faafoi Tamapua
MEMBER

Tofa LEFAU Harry Schuster
MEMBER

Afioga LAFATELE Patrick Leiatuaalesa
MEMBER