

## SAMOA

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**2007, No. 25**

**AN ACT to provide a criminal justice system for Young Persons, their treatment by the courts, and related purposes.**  
*[29<sup>th</sup> October 2007]*

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

**PART 1**  
**PRELIMINARY**

**1. Short title and commencement-**(1) This Act may be cited as the Young Offenders Act 2007.

(2) This Act shall come into force on the date of assent of the Head of State.

**2. Interpretation** – In this Act, unless the context states otherwise:

“adult” means a person of or over the age of 17 years;

“fa’aleleiga” means any customary reconciliation process whereby the parties to a dispute have come to a successful resolution of the matter in dispute;

“charge” means any information, indictment, warrant or other form of criminal offence brought against a person;

“Court” means the Youth Court established under section 4;

“Ministry” means the Ministry of Justice and Courts Administration;

“probation officer” means a probation officer appointed to the Probation Service;

“Young Person” means any person of or over the age of 10 years and under the age of 17 years;

“Youth Court” means the Court established under section 4.

**3. No charge for any offence for persons under 10 years** – Despite any other law to the contrary, no person under the age of 10 years shall be charged with any criminal offence.

## **PART II** **YOUTH COURT**

**4. Establishment of Youth Court-**(1) There will be a division of the District Court to be called the “Youth Court” which will be presided over by District Court Judges.

(2) Proceedings in the Youth Court, where determined appropriate by the Court, may be conducted in a manner consistent with Samoan custom and tradition.

(3) Subject to subsection (4), proceedings in the Youth Court will be conducted in the Samoan language unless the Young Person’s first language is other than Samoan, in which case, the language to be used will be English.

(4) Where Samoan or English is not spoken by the Young Person an interpreter in the language spoken by the offender will, where practicable, be provided.

**5. Jurisdiction of Youth Court-**(1) Subject to subsection (3), any criminal charge brought against a Young Person shall be laid in the Youth Court and the hearing of each charge will be subject to the provisions of this Act.

(2) Any Young Person who is charged with a criminal offence must be dealt with in accordance with the provisions of this Act.

(3) A charge of murder against a Young Person shall be laid in the Supreme Court and dealt with by the Supreme Court.

**6. Procedure of Youth Court-**(1) The Youth Court must apply the criminal standard of proof in the conduct of the business before it, but may otherwise determine its own procedure, provided however, in defended hearings the Court shall adopt the rules of criminal procedure.

(2) Where a Young Person pleads not guilty to any charge, the Court shall conduct a defended hearing as soon as practicable.

(3) The Court may dismiss any charge if the Judge is satisfied that the time that has elapsed between the date of the commission of the offence and the hearing has been unreasonably delayed.

(4) Where a Young Person admits any charge, the Court must direct the Probation Service to arrange a pre-sentence meeting in accordance with Part IV of this Act, unless the Court is advised that prior to a charge being laid, there has already been a meeting at which a fa'aleleiga has occurred which, in the Court's opinion is reasonable and just or where the Court considers such a course is not appropriate in the circumstances and in such cases the Court may proceed to sentence the Young Person in accordance with section 15.

(5) The Court may transfer a Young Person to the Supreme Court, if in the opinion of the presiding Judge, the offence is of such seriousness and the circumstances of the Young Person are such that such Young Person should be treated as an adult.

(6) The Court may transfer a Young Person to the Supreme Court for sentence, if in the opinion of the presiding Judge, the offence is of such seriousness and the circumstances of the Young Person are such that such Young Person should be sentenced as an adult.

(7) The Court, where a Young Person has been jointly charged with an adult and enters a plea of not guilty, may, if it is in the interest of justice to do so, transfer the Young Person for hearing to the same Court as where the co-offender is being tried.

**7. Youth Court May Require Parents Attendance-(1)**

The Court may issue a summons requiring the parents, parent or guardian of a Young Person to appear before the Court and may ask any questions of the parent or parents or guardian and may require such questions to be answered under oath.

(2) If a parent or guardian fails to appear before the Youth Court when summoned to do so, the Court may issue a warrant of arrest to bring the parent or guardian before the Court, such warrant to be executed by a Police Officer.

**8. Matters relating to Youth Court closed to the Public and Media-(1)** Unless the Court determines otherwise, any proceedings conducted in the Youth Court will be closed to the general public and to the Media.

(2) Unless the Court is of the opinion that the public interest requires it, the name and identifying details of a Young Person may not be published by the Media or any other person.

(3) The name and identifying details of any victim involved in an offence for which a Young Person is charged must not be published by the Media or any other person.

(4) Any person, media person, media organization, media office or media authority, who publishes or causes to publish any information or publication prohibited by this section commits an offence and shall be liable upon conviction to a fine not exceeding 100 penalty units.

**9. Rights of a Young Person** - A Young Person is entitled to:

- (a) receive independent legal advice; and
- (b) the attendance of his or her parent and/or caregiver or any member of his or her family at the hearing of proceedings where it is practical to do so; and
- (c) apply for legal aid.

**PART III**  
**PROBATION SERVICE**

**10. Role of Probation Service** - At the hearing of any proceedings in the Youth Court, the Probation Service will be responsible for :

- (a) convening and reporting on any pre-sentence meeting that takes place for the purposes of any proceedings which come before the Court; and
- (b) monitoring the performance of any agreement by parties to a pre-sentence meeting where an agreement results from the meeting; and
- (c) providing a report to the Court with a recommendation on the type and detail of any contemplated sentence where the Probation Service is required to do so by the Court; and
- (d) for monitoring any agreement reached at a pre-sentence meeting, supervision, community work sentence or diversion that may be imposed on a Young Person; and
- (e) ensuring that any sentence or requirement of a Young Person is implemented effectively.

**PART IV**  
**PRE-SENTENCE MEETINGS**

**11. Pre-sentence meetings to take place where Court directs-**(1) Where a Young Person acknowledges committing an offence or where a Court has found that an offence has been proved against a Young Person, the Court may direct the Probation Service to arrange for a pre-sentence meeting, which must be held not later than 31 days after the date of the Court's direction to the Probation Service.

(2) Any pre-sentence meeting directed to be convened by the Court will be conducted in accordance with Samoan custom and tradition as considered appropriate by a probation officer or as directed by the Court.

(3) Any person may attend any pre-sentence meeting convened if approved by a probation officer. Those in attendance may include any victim and members of the victim's family, the police, the probation service, village or church representatives, and members of the Young Person's family.

(4) Any person approved by the Young Person and the Young Person's family at a pre-sentence meeting may represent the Young Person in the meeting.

**12. Purpose of pre-sentence meetings-**(1) Any pre-sentence meeting must:

- (a) discuss the circumstances of the offending; and
- (b) seek the views of those in attendance; and
- (c) consider whether a reconciliation or other outcome may be arrived at by the parties affected.

(2) In this section, an outcome may include payment to any victims for reparation, property loss, medical expenses incurred or any other reasonable loss suffered by the victim as a result of the Young Person's actions.

**13. Principles to consider at pre-sentence meetings –** Any outcome determined at a pre-sentence meeting shall have regard to the following principles:

- (a) the accountability by the Young Person for the wrong that has been done; and
- (b) the rehabilitation of the Young Person including an assessment of the suitability of his or her current living arrangements; and
- (c) the involvement of the Young Person's family, church, chief, and village; and
- (d) the protection of the community; and
- (e) an acknowledgement of the views of the victim and to restoring the position of the victim in accordance with Samoan custom and tradition;
- (f) the putting in place of a plan for rehabilitation of the Young Person that fosters responsibility by the Young Person and which promotes the Young Person's self-esteem, cultural awareness and understanding.

**14. Probation Service to record pre-sentence meeting-**(1) At every pre-sentence meeting, the Probation Service will ensure that a probation officer is present at all times to record in writing the outcome of the meeting.

(2) Any record of a pre-sentence meeting under subsection (1) must be provided to the Youth Court immediately prior to the next sitting of the Youth Court concerning the Young Person to which the written record applies.

(3) Any course of action or punishment recommended at a pre-sentence meeting as to how a Young Person might best be treated must be able to be completed within 6 months of the Young Person being sentenced by the Court.

#### **PART V** **SENTENCING OF YOUNG PERSONS**

**15. Sentencing options of the Court-**(1) Subject to subsection (2) and subsection (3), where the Court finds a charge to be proved against a Young Person it may where appropriate, without entering a conviction, order the Young Person within 6 months to:

- (a) carry out his or her obligations under any agreement reached at a pre-sentence meeting; or
- (b) undertake a term of community work of not more than 100 hours, to be completed within 6 months; or
- (c) undertake a needs assessment and/or rehabilitative programme of not more than 6 months duration.

(2) Where the Court is of the opinion that the Young Person has failed to carry out the Young Person's obligations under subsection (1) within 6 months it may convict and sentence the Young Person in accordance with section 16.

(3) Where the Court is of the opinion that a conviction and sentence is required in the interests of justice after having given due consideration to all the circumstances of the offence it may convict and sentence the Young Person in accordance with section 16.

**16. Sentences-**(1) Where a Court has determined to convict and sentence a Young Person under section 15(2) or (3) the Court may:

- (a) convict and discharge the Young Person; or
  - (b) order the Young Person to come up for sentence if called upon within 12 months; or
  - (c) impose a fine on the Young Person; or
  - (d) order that the Young Person undertake a sentence of community work; or
  - (e) order the Young Person to undertake a sentence of supervision; or
  - (f) impose a term of imprisonment, to be served in a youth residential facility or if such facility is not available a prison, provided however, the Court must only impose a custodial sentence as a last resort and in circumstances where there is no reasonable alternative.
- (2) Where the Court imposes a sentence under subsection (1)(f) and the sentence is to be served in a prison, the Young Person must be kept separate from adult prisoners.

## PART VI

### **WARNINGS AND FORMAL POLICE WARNINGS**

**17. Consideration of warning as alternative to prosecution-**(1) Where a Police Officer is considering whether to charge a Young Person for an offence the Police Officer shall consider whether it would be sufficient to warn the Young Person, unless a warning is inappropriate having regard to the seriousness of the offence, the nature and number of previous offences committed by the Young Person and the views of the victim.

(2) Where the Police Officer decides that it would be sufficient to warn the Young Person, that Police Officer may warn the Young Person, or arrange for any other Police Officer to warn the Young Person.

**18. Formal police warning-**(1) Where, in respect of any offence alleged or admitted against a Young Person, the Commissioner of Police recommends that a formal police warning be given to the Young Person, a Police Officer may so warn the Young Person.

(2) The following provisions shall apply in respect of a formal police warning given to a Young Person:

- (a) where practicable, the warning shall be given at a Police station; and
- (b) the warning shall be given by a Police Officer who is of or above the rank of sergeant, or if no such Police Officer is available, by the highest ranking Police Officer available; and
- (c) the warning must be given in the presence of:
  - (i) a parent or guardian or other person having the care of the Young Person; or
  - (ii) if the Young Person's parent or guardian is not reasonably available an adult person nominated by the Young Person.

**19. Notice of warning or formal police warning-**(1) Every Police Officer who issues a warning under section 17 or a formal police warning under section 18 must, as soon as practicable after giving that warning give written notice specifying the offence in respect of which the warning or formal police warning is given, and recording the fact that a warning or formal police warning has been given in respect of that offence, to the Young Person and a parent or guardian or other person having the care of the Young Person.

(2) Where practicable, every such notice shall be given in a language that can be understood by the Young Person and the parent or guardian or other person having the care of the Young Person and the Police Officer serving such notice must explain the effect of the notice to the Young Person and to the Young Person's parent or guardian.

**20. Commissioner may cancel warning and charge Young Person** – The Commissioner of Police may within 12 months of the giving of a warning under section 17 or a formal

police warning under section 18, by written notice signed by him or her, and served on the Young Person, cancel the warning or formal police warning, whereupon the Young Person may be charged with the offence for which the warning or formal police warning was given.

**21. Evidence of warnings and formal police warnings and of offences to which they relate not admissible in criminal proceedings** - Where, in respect of any alleged offence for which a warning or formal police warning is given to a Young Person under section 17 or section 18:

- (a) no information relating to that warning or that formal police warning shall be disclosed in any criminal proceedings against that Young Person; and
- (b) no evidence of that offence shall be admissible, on behalf of the prosecution, in any criminal proceedings against that Young Person for any other offence.

## **PART VII** **MISCELLANEOUS**

**22. Bail and custody-**(1) A Court may remand a Young Person on bail or in custody.

(2) Where a Young Person is remanded in custody, the Young Person must be remanded to a residential youth facility, or if none exists, to a prison or place of residence as may be directed by the Court where it is practical to do so.

(3) Where a Young Person remanded in custody is held in a prison under subsection (2), the Young Person must be kept separate from adult prisoners.

(4) A Young Person may be remanded on bail on one or more of the following conditions:

- (a) that the Young Person must live with specified persons or class of persons; and
- (b) that the Young Person must not associate with specified persons or class of persons; and

- (c) that the Young Person must abide by a curfew; and
- (d) that the Young Person must attend school or any other specified place; and
- (e) that the Young Person must not be present at a specified location or be within defined areas of such location; and
- (f) that the Young Person is required to report to the Probation Service; and
- (g) that the Young Person must surrender all travel documents; and
- (h) that the Young Person must not take alcohol, drugs or drive a motor vehicle.

(5) Where a Young Person is in breach of his or her conditions of bail imposed under this section, action may be taken under the Criminal Procedure Act 1972 in relation to that breach of bail.

**23. Regulations-**(1) The Head of State, acting on the advice of Cabinet, may from time to time, make such regulations as are necessary or convenient for the purpose of carrying out or giving full effect to the provisions of this Act.

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

- (a) prescribing procedures for proceedings in the Youth Court consistent with Samoan custom and tradition; and
- (b) prescribing procedures required for the purpose of carrying out pre-sentence meetings under Part IV; and
- (c) prescribing forms for certificates, notices, approval or any other matter under this Act; and
- (d) prescribing rules relating to the operations of any residential youth facility; and
- (e) prescribing the fees payable in respect of any matter under this Act; and
- (f) creating offences and penalties for breaches of those offences up to a maximum of 100 penalty units.

**24. Appeals-**(1) Any Young Person convicted or sentenced in the District Court may appeal to the Supreme Court against his or her conviction and/or sentence.

(2) Any Young Person convicted or sentenced at the Supreme Court may appeal to the Court of Appeal against his or her conviction and/or sentence.

**25. Repeals -** Sections 11 and 12 of the Crimes Ordinance 1961 are repealed.

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**The Young Offenders Act 2007 is administered by the  
Ministry of Justice and Courts Administration**