



SAMOA

PRISONS PAROLE BOARD ACT 1977

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PRISONS PAROLE BOARD ACT 1977**1977****No. 7**

AN ACT to establish a Prisons Parole Board and to make provision for the parole of offenders.

[Assent and commencement date: 25 August 1977]

**PART 1
PRELIMINARY**

1. Short title – This Act may be cited as the Prisons Parole Board Act 1977.

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

“Chief Executive Officer” means the Chief Executive Officer of the Ministry of Justice and Courts Administration;

“Court” means any Court exercising any jurisdiction in criminal cases;

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

“offender” means any person undergoing a sentence of imprisonment;

“parole officer” means a parole officer appointed under Part 4;

“paroled offender” means any person for the time being under the supervision of a parole officer under or by virtue of this Act;

“Prisons Parole Board” or “Board” means the Prisons Parole Board established by section 4.

3. Administration – This Act is administered by the Justice Department under the control of the Minister.

**PART 2
PRISONS PAROLE BOARD**

4. Establishment of Prisons Parole Board – (1) There shall be a Prisons Parole Board consisting of the following 6 members:

- (a) the Chief Justice or a Judge of the Supreme Court designated by the Chief Justice, as Chairperson;
- (aa) the Attorney General;
- (ab) the Commissioner of Police;
- (b) the Chief Executive Officer;
- (c) the Commissioner of Prisons;
- (d) three other persons, of whom 1 shall be a registered medical practitioner or a psychologist and 1 shall be a woman.

(2) A Board member appointed under subsection (1)(a) or (d) shall be appointed by the Head of State, acting on the advice of Cabinet, for a term of 3 years, but may be re-appointed.

(3) An appointed member may resign from office by writing addressed to the Minister, and may be removed by the Head of State, acting on the advice of Cabinet, for disability, neglect of duty, or misconduct.

(4) When any appointed member of the Board is incapacitated by illness, absence from Samoa or other sufficient cause, the Minister may appoint in the member's place to act temporarily as a member of the Board:

- (a) a Judge of the Supreme Court or the District Court, in the case of a member of the Board appointed under subsection (1)(a);
- (b) any person, in the case of a member of the Board appointed under subsection (1)(d).

(5) No appointment of a temporary member and no acts done by him or her as such, and no acts done by the Board while a temporary member is acting as such, shall in a proceeding be questioned on the ground that the occasion for such an appointment had not arisen or had ceased, or on the ground that a member of the Board acted as such while a temporary member appointed in his or her place remained in office.

(6) A Board member referred to in subsection (1)(b) or (c) may authorise in writing a senior officer of his or her Department to attend any meeting in the member's place and while any such officer is attending any meeting he or she shall for all purposes be deemed to be a member of the Board.

5. Jurisdiction of Board – The Board has jurisdiction in respect of persons undergoing sentences of imprisonment, and of persons released on parole under Part 3 after serving any such sentence.

6. Meetings and procedure of Board – (1) Meetings of the Board are to be held at such times and places as the Board or the Chairperson appoints.

(2) At any meeting of the Board, 3 members form a quorum.

(3) Subject to this Act and of any regulations thereunder, the Board may regulate its procedure in such manner as it thinks fit.

7. Functions and powers of Board – (1) The functions of the Board are:

- (a) to decide as to the release on parole of an offender eligible for parole under section 10;
- (b) to decide as to the remission, suspension, or variation of a condition of parole of an offender, or as to the imposition on any such offender of an additional condition of parole.

(2) In considering any case under this section, the Board may have regard to any information or representation which in the Board's opinion may be of assistance in reaching a decision, including any information or representation concerning:

- (a) the safety of the public, and of any person or any class or classes of persons who may be affected by the release of the offender;
- (b) the welfare of the offender and his reformation and training in the prison in which he or she is detained;
- (c) the sentence imposed by the Court and any comments by the Court when such sentence was imposed;
- (d) any recommendation made by the officer-in-charge of the prison;
- (e) a representation made by the offender or any person acting in his behalf;
- (f) the probable circumstances of the offender if released;
- (g) the likely response of the offender to supervision by the parole officer.

(3) Not later than 31 March in a year, the Board shall send to the Minister a report of its proceedings during the year ended on 31 December before the making of the report.

8. Saving of Board members from liability – No member of the Board is liable to an action or suit whatsoever in respect of an act, error or omission in the exercise of any power or duty conferred or imposed on the Board or any member by this Act or any other Act.

9. Remuneration of appointed members – (1) An appointed member of the Board who is not a full time salaried employee of the Government of Samoa is to be paid such remuneration, travelling expenses and other allowances fixed by Cabinet.

(2) All payments made under this section are to be paid out of money appropriated by the Legislative Assembly for the purpose.

PART 3 RELEASE ON PAROLE OR AT SENTENCE EXPIRY DATE

10. Discretionary release on parole-(1) Subject to subsection (2), a defendant who is subject to an indeterminate sentence of imprisonment (as defined under the Sentencing Act 2016) is eligible to be released on parole after the expiry of 10 years of that sentence.

(2) A defendant to whom subsection (1) applies who is subject to a minimum period of imprisonment imposed under section 65 or 68 of the Sentencing Act 2016 is eligible to be released on parole after the expiry of the minimum period specified in the order.

(3) A defendant who is subject to a determinate sentence of imprisonment for a term of more than 12 months is eligible to be released on parole after the expiry of one-half of that sentence if the court does not order that the defendant serve a minimum period of imprisonment for that sentence.

(4) A defendant who is subject to a sentence of imprisonment for a term of 16 years or more is eligible to be released on parole after the expiry of 7 years of that sentence.

(5) A defendant who has been recalled under this Part or a defendant in respect of whom a direction for return has been made under this Act, whether before or after that defendant's final release date under section 10A(1), may be released again on parole at any time before the final release date specified in section 11(4).

(6) As an exception to this section, a defendant is not eligible to be released on parole under this section:

(a) if an application for an order under this section in respect of the defendant has been made to, but not determined by, the Parole Board; or

(b) while the defendant is detained by the Police.

10A. Final release-(1) Subject to subsection (2), a defendant is to be released:

(a) if the defendant is subject to a sentence of imprisonment for a term of 12 months or less, after the expiry of one-half of the sentence; or

(b) where the defendant is subject to a sentence of imprisonment for a term of more than 12 months after the expiry of two-thirds of that sentence.

(2) If a defendant has been recalled or a direction for the return of a defendant has been made under this Act, the defendant is to be released not later than 3 months before the sentence expiry date.

(3) For the purposes of this section, a person on whom a term of imprisonment is imposed (whether by way of committal, sentence, or order) for non-payment of a sum of money or for disobedience of a court order or for contempt of court is treated as a defendant who is subject to a sentence of imprisonment for that term.

10B. Commissioner to determine defendant's final release dates - For each defendant who is detainable in a prison (other than a police jail) for the purpose of any sentence or term of imprisonment, the Commissioner of Police, Prisons and Corrections Services may determine, under sections 10A and 11 and any regulations made under this Act, the defendant's final release date.

11. Calculation of parole, final release, and sentence expiry dates-(1) If a defendant is subject to cumulative or concurrent sentences on imprisonment, or both, the parole, final release and sentence expiry dates of those sentences are to be calculated under this section.

(2) For the purposes of this Part, terms of imprisonment under cumulative sentences are to be treated as one term as provided in this section.

(3) The date on which a defendant who is subject to cumulative sentences of imprisonment is eligible for parole under section 10 is to be determined by:

(a) calculating, for each sentence within each link in the cumulative chain, the period beginning with the commencement of the sentence and ending with the close of the date on which the defendant becomes eligible for parole under section 10, or, in respect of any sentence where there is no such parole eligibility date, the final release date for that sentence; and

(b) taking the longest period within each link; and

(c) adding that period to the longest periods from the other links in the cumulative chain.

(4) The date on which a defendant who is subject to cumulative sentences of imprisonment is to be finally released under section 10A is to be determined by:

(a) calculating, for each sentence within each link in the cumulative chain, the period beginning with the commencement of the sentence and ending with the close of the final release date specified in section 48 of the Sentencing Act 2016; and

(b) taking the longest period within each link; and

(c) adding that period to the longest periods from the other links in the cumulative chain.

(5) The sentence expiry date for a defendant who is subject to cumulative sentences of imprisonment is to be determined by:

(a) determining the term imposed by the court for each sentence within each link in the cumulative chain; and

(b) taking the longest term within each link; and

(c) adding that term to the longest term from the other links in the cumulative chain.

(6) For the purposes of subsections (3), (4), and (5), each sentence or group of sentences that is cumulative on another sentence or group of sentences or on which another such sentence or group of sentences is cumulative constitutes a link in the cumulative chain.

(7) A defendant who is subject to 2 or more concurrent sentences of imprisonment is not eligible to be released on parole under this Part until the defendant is so eligible under section 10 in respect of each of those sentences.

(8) If, in a case to which subsection (7) relates, the defendant is subject to one or more sentences of imprisonment that do not carry eligibility for parole under section 10, the final release date of each such sentence is to be treated for the purposes of this section as if the defendant were eligible to be released on parole under that sentence at that date.

(9) For the purposes of this Part, references to a defendant's final release date mean, in relation to a defendant who is subject to 2 or more concurrent sentences, the later or latest date by which the defendant is to be released in respect of each of those sentences.

(10) For the purposes of this section, a term of imprisonment imposed (whether by way of committal, sentence, or order) for non-payment of a sum of money or for disobedience or a court order or for contempt of court is to be treated as a sentence of imprisonment.

11A. Release for purpose of deportation-(1) If:

(a) a defendant who is subject to a sentence of imprisonment has been ordered to be deported under the Immigration Act 2020; and

(b) a copy of the order, or a notice of the making of the order, has been served on the defendant; and

(c) the defendant -

(i) has no right of appeal under that Act against the making of that order; or

(ii) the time for bringing the appeal has expired and the defendant has not brought an appeal; or

(iii) the appeal has been determined and the order has not been quashed, the Minister for Immigration may, by notice in writing to the officer-in-charge of the prison in which the defendant is detained, order the release of the defendant into the custody of a police officer for the purpose of deportation.

(2) A notice issued under subsection (1) is sufficient authority for the officer-in-charge of the prison to release the defendant accordingly on request by the police officer.

(3) When a ship or aircraft becomes available to take the defendant from Samoa, and it is practicable in all the circumstances for the defendant to leave on that ship or aircraft, a police officer must require the officer-in-charge of the prison, pursuant to subsection (1), to deliver the defendant into the custody of the police officer who must escort the defendant or arrange for the defendant to be escorted to the seaport or airport and ensure that the defendant is placed upon the ship or aircraft and detained there until the ship or aircraft leaves Samoa.

(4) If, for any reason, that ship or aircraft is delayed in Samoa for more than 24 hours, the defendant is to be returned to the custody of the officer-in-charge of the prison; and for that purpose the warrant by which the defendant was originally committed to the institution is still treated to be in force.

(5) Thereafter, the officer-in-charge of the prison must, on request by a police officer, release the defendant into the custody of that police officer for deportation, and the provisions of this section apply to the request until the defendant is finally deported.

(6) As an exception to subsection (1), in respect of a defendant to whom subsection (1) applies, the Commissioner of Police, Prisons and Corrections Services may, at any time within 28 days preceding the defendant's final release date, by notice in writing to the officer-in-charge of the prison in which the defendant is detained, order the release of the defendant into the custody of a police officer in possession of the notice; and that notice is sufficient authority for the officer-in-charge of the prison to release the defendant accordingly.

(7) Thereafter, subsections (3) to (5) apply as if the release were ordered by the Minister responsible for Immigration.

(8) If a defendant is released and deported pursuant to this section, the defendant's sentence continues to run, and, if the

defendant subsequently returns to Samoa before the sentence expiry date the defendant is, subject to section 10 and 10A, liable to resume serving it.

11B. Jurisdiction of Parole Board to release defendants on parole-(1) Subject to subsections (3), (4), and (7), the Parole Board must consider the case of a defendant to whom this section applies, as soon as practicable after the defendant becomes eligible to be released on parole under section 10, and at least once in every 12 months after the defendant becomes so eligible.

(2) Subject to subsections (3), (4), and (7), a defendant to whom this section applies and whose case has been considered by the Parole Board, may thereafter apply to the Board to have the case considered again; and the Board must consider the case again unless the application is made within 6 months after a previous application by the defendant under this subsection, when it may refuse to consider the case.

(3) A defendant who has been recalled to a prison to continue serving his or her sentence pursuant to section 15, or in respect of whom a direction for return has been made under this Act must have his or her case for further release considered by the Board not later than 12 months after the date of recall or return, as the case may be, and at least once in every 12 months thereafter.

(4) A defendant referred to in subsection (3) who has been recalled or returned to a prison may:

(a) at any time after his or her recall or return, apply to the Parole Board to have his or her case considered for parole; and

(b) from time to time thereafter, apply to the Board to have his or her case considered again,

and the Board must consider the case as soon as practicable after an application is made under paragraph (a), and must consider the case again as soon as practicable after each subsequent application under paragraph (b) unless the application is made within 6 months after a previous application by the defendant under this subsection, when it may refuse to consider the case.

(5) As an exception to section 10 or any order made under section 68 of the Sentencing Act 2016, a member of the Parole Board may, at any time, refer to the Board the case of a defendant to whom this section applies, and the Board must consider the case as soon as practicable.

(6) As an exception to section 10, but subject to subsection (7), the Parole Board must consider the case of each defendant belonging to any class of defendants, being defendants to whom this section applies, that the Minister designates as a class to be so considered.

(7) The Parole Board must not consider under subsection (2), (3), or (6) the case of a defendant in respect of whom an order was made under section 65 or 68 of the Sentencing Act 2016 or until the expiry of the period specified in the order.

(8) If, after considering any case to which any of subsections (1) to (6) applies, the Parole Board is of the opinion that the defendant should be released on parole, it may direct that the defendant be released on parole accordingly, despite anything to the contrary in section 10.

(9) A direction given by the Parole Board for the release of any defendant on parole may be revoked by the Parole Board at any time before the defendant is released.

12. Matters to be considered when determining release on parole - In determining, pursuant to section 11B, whether to release a defendant on parole, the Parole Board must consider the need to protect the public or any person or class of persons who may be affected by the release of the defendant, and must also consider the following matters:

- (a) generally, the likelihood of the defendant committing further offences upon his or her release;
- (b) the welfare of the defendant and any change in his or her attitude during the sentence;
- (c) the nature of the offence;
- (d) for a defendant who is subject to an order for recall or a defendant in respect of whom a direction for return has been made under this Act, the reasons for the order or discretion, as the case may be.

12A. Conditions of release-(1) Subject to subsection (6), if a defendant who is subject to an indeterminate sentence is directed by the Parole Board to be released on parole (including a release following recall), the defendant is subject to:

- (a) the standard conditions under section 12B for the life of the defendant; and

- (b) any special conditions as the Parole Board may impose, under section 13, for any period as the Parole Board may determine.
- (2) Subject to subsection (6), if a defendant who is subject to a sentence of imprisonment for a term of more than 12 months is released pursuant to section 10 or 10A (including a release following recall), the defendant is to be subject to:
- (a) the standard conditions under section 12B for any period, being not less than 6 months from the date of release or if the period from that date to the sentence expiry date is less than 6 months, that period, determined by the Parole Board; and
 - (b) any special conditions imposed under section 13 for any period from the date of release determined by the Parole Board.
- (3) Subject to subsection (5), in determining the duration of any conditions imposed under this section, the Board must fix a period that is not longer than is reasonably necessary in the circumstances of the particular case to reduce the risk of re-offending.
- (4) In no case must any conditions imposed under this section apply for any period after the sentence expiry date nor must any special conditions imposed under section 13 apply for a period when the defendant is not also subject to standard conditions under section 12B.
- (5) Residential conditions apply for a period not exceeding 12 months as the Parole Board may determine, and may before the expiry of the period be extended for one further period not exceeding 12 months, if the defendant consents.
- (6) If the Parole Board imposes residential conditions on a defendant to whom subsection (2) applies, it may, at the same time, direct that standard conditions under section 12B and any special conditions imposed under section 13 apply to that defendant from the date that the residential conditions terminate.

12B. Standard conditions - If standard conditions are imposed on a defendant under this Part, the following conditions apply:

- (a) as soon as practicable and in any event not later than 72 hours after release, the defendant must report in person to a designated probation officer;

- (b) the defendant must report to the probation officer under whose supervision he or she is, as and when required to do so by the probation officer, and must notify the officer of his or her residential address and the nature and place of his or her employment on request;
- (c) the defendant must obtain the consent of the probation officer before moving from his or her residential address, and if the defendant moves to any place within the district of another probation officer, the defendant must, within 72 hours after arriving in that district, notify that other probation officer of his or her address, and the nature and place of his or her employment;
- (d) the defendant must not reside at an address at which the probation officer has directed the defendant not to reside unless that place has been approved by the Parole Board;
- (e) the defendant must not engage, or continue to engage, in any employment or occupation in which the probation officer has directed the defendant not to engage or continue to engage;
- (f) the defendant must not associate with any specified person, or with persons of any specified class, with whom the probation officer, or the Parole Board has, in writing, directed the defendant not to associate.

13. Special conditions-(1) Subject to section 12A and to subsection (3), the Parole Board may impose on a defendant any special conditions as it thinks necessary to protect the public or any person or class of persons who may be affected by the release of the defendant, or for:

- (a) the rehabilitation of the defendant; or
- (b) the welfare of the defendant.

(2) Without limiting subsection (1), the Parole Board may impose under that subsection a condition that the defendant must undergo a programme, on terms as are specified by the Board.

(3) Nothing in this section authorises the imposition on a defendant of any special conditions unless the conditions are designed to reduce the risk of his or her re-offending.

13A. Variation and discharge of conditions-(1) If a defendant is released on conditions, a probation officer, or the defendant, may apply at any time for the variation, discharge, or suspension of any or all of the conditions of the defendant's release.

(2) If a defendant is released on conditions, a probation officer may apply at any time for:

(a) the imposition of any new condition or conditions of the defendant's release;

(b) the extension of the period during which the defendant is to be subject to any or all conditions.

(3) On an application under this section, any probation officer may suspend any conditions to which the application relates until the application is determined.

(4) An application under this section must be made to the Parole Board.

(5) Subject to subsection (6), the Chairperson of the Board may:

(a) determine an application under this section and give directions; or

(b) refer the application to the Board for determination.

(6) If the defendant wishes to appear (in person or by a lawyer) before the Board to state his or her case, the Board must determine the application.

(7) Section 12A applies, with any necessary modifications, to an application and determination made under this section.

(8) If a defendant is discharged under this section from all conditions to which the defendant was subject, those conditions ceases to apply on the date specified in the direction.

(9) Nothing in this section allows any condition to be imposed in respect of any period after the sentence expiry date.

13B. Breach of conditions-(1) A defendant commits an offence who fails, without reasonable excuse, to comply with any conditions of his or her release under this Part, and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 3 months.

(2) If a probation officer or police officer believes on reasonable and probable grounds that a defendant who has been released under this Part has committed a breach of a condition of

his or her release, that officer may arrest the defendant without warrant.

(3) The conviction and sentencing of a defendant under this section does not limit the power to recall under this Part.

14. Application for recall-(1) Subject to subsections (2) and (6), the chief parole officer may apply to the Parole Board for an order that any defendant who is subject to an indeterminate sentence and has been released under this Part be recalled to a prison to continue serving his or her sentence.

(2) Subject to subsection (3), if a defendant subject to a determinate sentence is released under this Part, a probation officer may, at any time not later than 3 months before the sentence expiry date, apply to the Parole Board for an order that the defendant be recalled to a prison to continue serving his or her sentence.

(3) An application may be made under this section if the applicant believes on reasonable grounds that:

- (a) the defendant has breached the conditions of his or her release; or
- (b) the defendant has committed an offence; or
- (c) because of the defendant's conduct, or a change in his or circumstances since release, further offending is likely.

(4) An application made under this section must specify the grounds in subsection (3) on which the applicant relies and the reasons for believing that the grounds apply.

(5) If an application is made under this section, the sentence to which the application relates ceases to run except for any period between the date of lodgement of the application and the date it is determined under section 15 or 15A, during which the defendant is held in custody.

(6) If an order recalling a defendant is made under section 15 or 15A and the sentence to which the order relates had ceased to run by virtue of subsection (5), that sentence begins to run again only when the defendant is taken into custody.

14A. Interim order for recall-(1) If an application is made under section 14, the Chairperson of the Parole Board must, on behalf of the Board, make an interim order for the recall of the defendant if:

- (a) the defendant is subject to a sentence for a serious violent offence; or
 - (b) the defendant is subject to a sentence of life imprisonment for murder or manslaughter; or
 - (c) the Chairperson believes on reasonable grounds that-
 - (i) the defendant poses an immediate risk to the safety of the public or of any person or any class of persons; or
 - (ii) the defendant is likely to abscond before the determination of the application for recall.
- (2) In determining an application for an interim order in respect of subsection (1)(b), the Chairperson must disregard the fact that the defendant is or is not for the time being in custody.
- (3) If the Chairperson makes an interim order under this section, the Chairperson must issue a warrant in the prescribed form for the defendant to be detained in prison and if, on the giving of the order, the defendant is still at large, a police officer may arrest the defendant without warrant for the purpose of returning him or her to prison.
- (4) If an order is made under this section and a warrant is issued, the defendant must on, or as soon as practicable after, being taken into custody be given:
- (a) a copy of the application made under section 14; and
 - (b) a notice -
 - (i) specifying the date on which the application is to be determined, being a date not earlier than 14 days, nor later than 1 month, after the date on which the defendant is taken into custody pursuant to this section; and
 - (ii) advising the defendant that he or she is entitled to be heard and to state his or her case in person or by a lawyer; and
 - (iii) requiring the defendant to notify the Board, not later than 7 days before the date on which the application is to be determined, whether he or she wishes to make written submissions or to appear in person or be represented by a lawyer.

(5) If an order is made under this section, any conditions of release in existence are to be suspended and the defendant must be detained in the prison specified in the warrant where he or she is to continue to serve his or her sentence pending the determination of the application for recall.

14B. Other section 14 applications - If an application is made under section 14 and no order is made under section 14A, the Chairperson of the Parole Board, must cause to be served on the defendant:

- (a) a copy of the application made under section 14; and
- (b) a notice -
 - (i) specifying the date on which the application is to be determined, being a date not earlier than 14 days, not later than 2 months, after the date on which a copy of the application is served on the defendant; and
 - (ii) advising the defendant that he or she is entitled to be heard and to state his or her case in person or by a lawyer; and
 - (iii) requiring the defendant to notify the Board, not later than 7 days before the date on which the application is to be determined, whether he or she wishes to make written submissions or to appear in person or be represented by a lawyer.

15. Order for recall-(1) Subject to subsection (9), the Parole Board must determine the application made under section 14:

- (a) if an interim order is made under section 14A, not earlier than 14 days, nor later than 1 month, after the date on which the defendant is taken into custody pursuant to this section; or
- (b) in any case, not earlier than 14 days, nor later than 2 months, after the date on which a copy of the application is served on the defendant.

(2) The Board may order the recall of a defendant if it is satisfied, on the balance of probabilities, that 1 or more of the grounds in section 14(3) have been established.

(3) Without limiting the matters that the Board may consider in determining the application, the Board must consider the need to protect the public or any person or class of persons from the defendant.

(4) An order for the recall of a defendant may be made under this section whether or not the defendant is in custody relating to a charge, and whether or not the defendant is alleged to have:

- (a) breached any of the conditions of his or her release; or
- (b) committed any offence.

(5) On an application under this section, the Board may receive any evidence that it thinks fit, whether or not the evidence would otherwise be admissible in court.

(6) Section 15B applies to an application made under section 14 as if the application were related to the defendant's release on parole under section 10, as far as applicable and with any necessary modifications.

(7) If the Board orders the recall of a defendant, the Chairperson of the Board must issue a warrant in the prescribed form for the defendant to be detained in prison and if, on the giving of the order, the defendant is still at large, a police officer may arrest the defendant without warrant for the purpose of returning him or her to prison.

(8) If the Board orders the recall of a defendant under this section, any suspended or existing release conditions must be cancelled and the defendant must, on being returned to custody, subject to sections 10 and 10A, continue to serve his or her sentence.

(9) If the Board refuses to grant an interim order for recall under section 14A:

- (a) the Board must direct the defendant's release if he or she is in custody under this section or section 14A unless the defendant is liable to be detained under any other provision of this Act or any other enactment;
- (b) the Board may, at the same time, exercise any of its powers under section 13A to vary or discharge the conditions of release as it thinks fit without the necessity for an application under that section;
- (c) subject to paragraph (b), the Board may adjourn, the hearing of an application made under section 14, and, if the defendant is in custody pursuant to an

order made and a warrant issued under section 14A, that warrant may be extended accordingly, but in such a case the period of the adjournment must not exceed 8 days unless both parties consent.

15A. Appeal from order for recall-(1) If the Parole Board has ordered the recall of a defendant under section 15, the defendant may, within 28 days of the date of the order, or any longer time as the court may on application allow, appeal to the Supreme Court against the making of the order.

(2) Subject to this section, and with any necessary modifications, Parts VII and VIIA of the Criminal Procedure Act 1972 apply to an appeal under this section as if the determination of the Board appealed against were an order.

(3) The defendant is to be detained in custody pending the determination of any appeal under this section and the defendant's sentence continues to run during that period.

(4) On hearing an appeal pursuant to this section, the Supreme Court may:

- (a) confirm the order for recall;
- (b) refer the matter back to the Board with a direction to reconsider the application for an order for recall;
- (c) quash the order for recall and, unless the defendant is liable to be detained under any other provision of this Act or any other enactment -
 - (i) direct the release of the defendant from custody; or
 - (ii) direct the release of the defendant from custody and refer the defendant to the Board to consider the imposition of release conditions under this Part;
- (d) make such further or other orders as the case may require.

(5) In the exercise of its powers under this section, the Court may receive as evidence any statement, document, information, or matter that the Board would have been entitled to receive at first instance.

(6) The Supreme Court is not bound to allow the appeal on the ground merely of the improper admission or rejection of

evidence unless in the opinion of the Court a substantial wrong or miscarriage of justice has been occasioned.

(7) Without limiting the matters that the Supreme Court may consider in determining the appeal, the Court must consider the need to protect the public or any person or class of persons from the defendant.

(8) In referring a matter back to the Board under subsection (4)(b), the Supreme Court must:

- (a) advise the Board of its reasons for so doing; and
- (b) give the Board any direction as it thinks just as to any rehearing or to the reconsideration or determination of the whole or any part of the matter.

15B. Rights of defendant whose case is to be considered by Parole Board-(1) A defendant (including a defendant who has been recalled to serve a sentence) who is subject to one (1) or more indeterminate sentences or to 1 or more sentences of imprisonment for a term of 7 years or more, and who is eligible under section 10 to be released on parole must be given an opportunity of appearing before the Parole Board and stating his or her case in person or, with leave of the Chairperson of the Board, by a lawyer:

- (a) when it is considered under section 11B; and
- (b) at least once in every 12 months thereafter.

(2) A defendant who is to be released at his or her final release date and whose case is to be considered under section 16 must be given an opportunity of appearing before the Parole Board and stating his or her case in person or, with leave of the Chairperson of the Board, by a lawyer.

(3) Except as provided in this section, a defendant whose case is to be considered under section 11B or 16 is not entitled to appear before the Parole Board to state his or her case in person; but the Board may invite the defendant to do so if it considers fit on any particular occasion.

(4) Subject to subsection (3), when a case is to be considered under any of section 11B or 16, a copy of any report to be submitted to the Parole Board under section 16A must be given to the defendant in sufficient time to enable the defendant to submit any comments he or she may wish to make on the report or reports for consideration by the Board.

(5) The Parole Board may, if it is of the opinion that the disclosure under subsection (4) to the defendant of any part of any report, other than a report by the officer-in-charge of the prison in which the defendant is detained, would be likely to prejudice the defendant's physical or mental health or endanger the safety of any person, order that any part of the report not be disclosed to the defendant; but if the defendant is represented, the whole of the report must be shown to the defendant's lawyer.

(6) When the Parole Board has completed its consideration of any case under section 11B or 16, it must notify the defendant of its decision, and, if it declines to direct the release of the defendant on parole, the reasons for that decision.

16. Jurisdiction of the Parole Board where defendant to be released at final release date-(1) This section applies to defendants who are subject to 1 or more sentences of imprisonment for a term of 12 months or more and who are to be released at their final release date pursuant to section 10A(1).

(2) The Parole Board must:

(a) consider the case of a defendant to whom this section applies before the defendant's final release date; and

(b) determine pursuant to section 12A, the nature and duration of the conditions to which the defendant is to be subject on release.

(3) The jurisdiction of the Board under subsection (2) may be exercised where, following the final review of a defendant who is eligible to be released under section 10, the Board declines to release that person on parole.

(4) The Parole Board may, at any time before the defendant is released, amend or revoke any direction under this section.

16A. Reports and submissions to the Board-(1) In determining any application or considering any matter under this Act, the Board must have regard to the following:

(a) any submissions, written or oral, made by the defendant or any person on the defendant's behalf;

(b) any report made by the officer-in-charge of the prison in which the defendant is detained;

- (c) any submissions, written or, with the leave of the Board, oral, from or on behalf of any victim of the offence in respect of which the defendant is serving the sentence or sentences in respect of which release on parole is being sought.
- (2) If submissions are made in writing under subsection (1)(c) the defendant must be shown a copy of that submission before the hearing to which it relates, but he or she may not retain the copy.

PART 4 PAROLE OFFICERS

17. Parole officers – (1) The Public Service Commission may appoint a chief parole officer and such other parole officers as are required for the purposes of this Act.

(2) Despite subsection (1), the Minister on the recommendation of the Chief Executive Officer may appoint a person, or the holder for the time being of any office or appointment, as a parole officer in a part time capacity for the purposes of this Act.

(2A) No person appointed under subsection (2) shall by virtue of that appointment become an officer or employee of the Public Service and nothing in the law governing the Public Service shall apply with respect to that appointment.

(2B) A parole officer appointed under subsection (2) may be paid out of money appropriated by the Legislative Assembly for the purpose such remuneration by way of fees, and such allowances, as may be determined by the Minister with the concurrence of the Cabinet.

(3) An appointment under this section may be held in conjunction with an appointment made under Community Justice Act 2008 or in conjunction with any office or appointment which in the opinion of the Chief Executive Officer is not inconsistent with the powers and duties of a parole officer.

(4) A person appointed under this section is responsible to the Chief Executive Officer.

18. Powers and duties of parole officers – (1) A parole officer may, and shall when so required by the Board, report to the Board on the character and personal history of any person

released on parole or undergoing a sentence of imprisonment with a view to assisting the Board in determining the most suitable method of dealing with his or her case; and may in such report advise the Board whether the offender would be likely to respond satisfactorily to parole and whether any special condition of parole should be imposed.

(2) A parole officer shall:

- (a) supervise all persons placed under his or her supervision, with a view to assisting their social rehabilitation and preventing the commission of further offences; and
- (b) perform such other duties as may be prescribed by this Act or any other Act or regulations.

(3) In the exercise of his or her powers and duties, a parole officer has the powers, protection, and privileges of a constable, and shall, in the manner set out in section 7 of the Police Service Act 2009, take and subscribe the oath set out therein, or to like effect, with substitution of a reference to “the Justice Department” for the reference to “the Police Service”.

PART 5 MISCELLANEOUS

19. Regulations – The Head of State, acting on the advice of Cabinet, may make regulations necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

REVISION NOTES 2008 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2008 – 2020/3 March 2021 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;
- (b) Amendments have been made to up-date references to offices, officers and statutes. (e.g. reference made to “section 14(1) of the Police Service Act 1977” was removed and replaced with the “section 7 of the Police Service Act 2009”);
- (c) Insertion of the commencement date;
- (d) References to the male gender have been made gender neutral;
- (e) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” and “any” changed to “a/an”;
 - (ii) Present tense drafting style:
 - “shall be” changed to “is/are” or “is/are to be”;
 - “shall be deemed” changed to “is/are taken”;
 - “shall have” changed to “has”;
 - “it shall be the duty” changed to “shall”;
 - “from time to time”, “at any time” removed;
 - (iii) Removal/replacement of obsolete and archaic terms with plain language:
 - “notwithstanding” changed to “despite”;
 - “pursuant to” changed to “under”;
 - “in the case of” changed to “for”;
 - “where” changed to “if”;
 - (iv) Numbers in words changed to figures;
 - (v) Removal of superfluous terms: “the provisions of”;
 - (vi) Section 17(2) further divided into 2 subsections;
 - (vii) Part numbering changed to decimal and re-titled Part 5 as ‘MISCELLANEOUS’.

The following amendments were made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

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

Section 4 - in subsection (1), paragraph (a) was deleted and substituted with a new paragraph (a) and new paragraphs (aa) and (ab) was inserted

Part 3 - Part 3 deleted and substituted with new Part 3.

By the Prisons and Corrections Amendment Act 2020, No.12, commenced on 7th April 2020:

Section 10B reference to “Commissioner of Prisons and Corrections Service” substituted with “Commissioner of Police, Prisons and Corrections Services”

Section 11A amended as follows:

- (a) For subsection (1), paragraph (a), the words “section 32 of” have been omitted and reference to “2004” substituted with “2020” as the “Immigration Act 2020” which commences on 1 March 2020 will repeal “Immigration Act 2004”; and
- (b) reference to “Commissioner for Prisons and Corrections Service” substituted with “Commissioner of Police, Prisons and Corrections Services”



Savalenoa Mareva Betham - Annandale
Attorney General of Samoa

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