

CONSOLIDATED ACTS OF SAMOA 2009

CRIMES ORDINANCE 1961

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THE CRIMES ORDINANCE 1961
1961 No.13

AN ORDINANCE to consolidate and amend Part V of the Samoa Act 1921 (NZ) and certain other enactments relating to crimes and other offences.

(16 December 1961)

(Commencement date 1 January 1962)

1. Short title and commencement - (1) This Ordinance may be cited as the Crimes Ordinance 1961.

(2) This Ordinance shall come into force on the 1st day of January 1962.

2. Interpretation - In this Ordinance, unless the context otherwise requires:

"Building" means any building, erection or structure of any kind, whether permanent or temporary, and includes any dwelling, fale, warehouse, shop, office, store, caravan or other premises of any kind.

"Constable" includes any member of the Police Service.

"Court" includes both the Supreme Court and the District Court of Samoa.

"Crime" means an offence for which anyone can be punished under this Ordinance.

"Day" or **"daytime"** means the interval between 6 o'clock in the morning of any day and 8 o'clock at night of the same day.

"Enactment" includes the Constitution of Samoa and any Act, Ordinance, Regulation or Order.

"Night" or **"night time"** means the interval between 8 o'clock at night and 6 o'clock in the following morning.

"Offence" means any act of omission for which anyone can be punished under this Ordinance or under any other enactment.

"Public place" means:

- (a) Any road;
- (b) Any place of public resort open to or used by the public (whether on payment of money or otherwise);
- (c) Any wharf or jetty;
- (d) Any passenger ship or boat or vessel plying for hire at a wharf or jetty or within one mile of the shore;
- (e) Any licensed public vehicle plying for hire;
- (f) Any church or other building where Divine Service is being publicly held;
- (g) Any hall or room in which any public entertainment is being held;
- (h) Any market place.

"Ship" means every description of vessel used in navigation, however propelled; and includes any schooner, cutter, launch, yacht, boat, barge, lighter, dinghy, paopao, raft or little vessel.

"Territorial waters" in relation to any country other than Samoa means such part of the sea adjacent to the coast of that country as is within the territorial sovereignty of that country.

"Valuable security" means any document which constitutes a title to or is evidence of title to any property or proprietary right of any kind whatever; and includes any negotiable instrument, bill of exchange, cheque or promissory note.

"Samoa" means the islands of Upolu, Savaii, Manono and Apolima in the South Pacific Ocean together with all other islands adjacent thereto and lying between the 13th and 15th degrees of south latitude and the 171st and 173rd degrees of

longitude west of Greenwich; Samoa includes all waters within the outer limits of the territorial sea of Samoa (as defined in the *Maritime Zones Act 1999*) and the exclusive economic zone of Samoa (as defined in the *Maritime Zones Act 1999*).

PART I **JURISDICTION**

3. Application - (1) This Ordinance applies to all offences for which the offender may be proceeded against and tried in Samoa.

(2) This Ordinance applies to any act or omission or event which occurs in Samoa or any other place.

(3) The Court of Appeal and the Supreme Court and the District Court shall have jurisdiction to hear and determine any matter for which this Ordinance or any other law provides such Court with jurisdiction irrespective of whether any act or omission or event occurs in Samoa or any other place.

4. *Repealed by the Crimes (Extra-Territorial Jurisdiction) Amendment Act 2003 No.16.*

5. *Repealed by the Crimes (Extra-Territorial Jurisdiction) Amendment Act 2003 No.16.*

6. Jurisdiction in respect of crimes on ships or aircraft - *Repealed by the Crimes (Extra-Territorial Jurisdiction) Amendment Act 2003 No.16.*

7. Offences not to be punishable except under the law of Samoa - No one shall be convicted of any offence at common law, or of any offence against any Act of the Parliament of England or the Parliament of Great Britain or the Parliament of the United Kingdom:

PROVIDED THAT nothing in this section shall limit or affect the power or authority of the Legislative Assembly or of any Court to punish for contempt.

8. Offence under more than one enactment - (1) Where an act or omission constitutes an offence under this Ordinance and under any other Ordinance, the offender may be prosecuted and punished either under this Ordinance or under that other Ordinance.

(2) Where an act or omission constitutes an offence under 2 or more Ordinances other than this Ordinance, the offender may be prosecuted and punished under any one of those Ordinances.

(3) Where an act or omission constitutes an offence under 2 or more provisions of this Ordinance or of any other Ordinance, the offender may be prosecuted under any one of those provisions.

(4) No one shall be liable to be punished twice in respect of the same offence.

8A & 8B. Inserted by section 2 of the Crimes Amendment Act 1963 and repealed by section 177 (1) of the Criminal Procedure Act 1972.

PART II **MATTERS OF JUSTIFICATION OR EXCUSE**

9. General rule as to justification - All rules and principles of the common law which render any circumstances a justification or excuse for any act or omission, or a defence to any charge, shall remain in force and apply in respect of a charge of any offence, whether under this Ordinance or under any other enactment, except so far as they are altered by or are inconsistent with this Ordinance or any other enactment.

10. Ignorance of law - The fact that an offender is ignorant of the law is not an excuse for any offence committed by that person.

11. *Repealed by section 25 of Young Offenders Act 2007.*

12. *Repealed by section 25 of Young Offenders Act 2007.*

13. Insanity - (1) Everyone shall be presumed to be sane at the time of doing or omitting any act until the contrary is proved.

(2) No person shall be convicted of an offence by reason of an act done or omitted by him or her when labouring under natural imbecility or disease of the mind to such an extent as to render the person incapable:

(a) Of understanding the nature and quality of the act or omission; or

(b) Of knowing that the act or omission was morally wrong, having regard to the commonly accepted standards of right and wrong.

(3) Insanity before or after the time when the person did or omitted the act, and insane delusions, though only partial, may be evidence that the offender was, at the time when the person did or omitted the act, in such a condition of mind as to render him or her irresponsible for the act or omission.

(4) The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence.

14. Compulsion - (1) Subject to the provisions of this section, a person who commits an offence under compulsion by threats of immediate death or grievous bodily harm from a person who is present when the offence is committed is protected from criminal responsibility if the person believes that the threats will be carried out and if he or she is not a party to any association or conspiracy whereby the person is subject to compulsion, except where the offence committed is treason, murder, attempted murder, aiding or abetting rape, abduction, robbery, causing grievous bodily harm and arson.

(2) Where a married woman commits an offence, the fact that her husband was present at the commission of it shall not of itself raise the

presumption of compulsion.

15. Self defence against unprovoked assault - (1) Everyone unlawfully assaulted, not having provoked the assault by any blows, words or gestures, is justified in repelling force, if the force he or she uses:

- (a) Is not meant to cause death or grievous bodily harm; and
- (b) Is no more than is necessary for the purpose of self defence.

(2) Everyone unlawfully assaulted, not having provoked the assault by any blows, words or gestures, is justified in repelling force by force although in so doing he or she causes death or grievous bodily harm, if:

- (a) He or she causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his or her purpose; and
- (b) He or she believes, on reasonable grounds, that he or she cannot otherwise preserve himself or herself from death or grievous bodily harm.

16. Self defence against provoked assault - Everyone who has assaulted another without justification, or has provoked an assault from that other by any blows, words or gestures, may nevertheless justify force used after the assault if:

- (a) He or she used the force under reasonable apprehension of death or grievous bodily harm from the violence of the party first assaulted or provoked and in the belief, on reasonable grounds that it was necessary for his or her own preservation from death or grievous bodily harm; and
- (b) He or she did not begin the assault with intent to kill or do grievous bodily harm and did not endeavour, at any time before the necessity for preserving himself or herself arose, to kill or do

grievous bodily harm; and

(c) Before the force was used, he or she declined further conflict and quitted or retreated from it as far as was practicable.

17. Defence of dwellinghouse - Everyone in peaceable possession of a dwellinghouse, and everyone lawfully assisting that person or acting by his or her authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of the dwellinghouse by any person if the person believes, on reasonable grounds, that there is no lawful justification for the breaking and entering.

18. Defence of land or building - (1) Everyone in peaceable possession of any land or building, and everyone lawfully assisting him or her or acting by his or her authority, is justified in using reasonable force to prevent any person from trespassing on the land or building or to remove him or her therefrom.

(2) If the last mentioned person resists the attempt to prevent his or her entry or to remove him or her, that person shall be deemed to commit an assault without justification.

19. Defence of person under protection - Everyone is justified in using force, in defence of the person or any one under that person's protection, against an assault, if he or she uses no more force than is necessary to prevent the assault or the repetition of it:

PROVIDED THAT this section shall not justify the wilfull infliction of any hurt or mischief disproportionate to the assault that it was intended to prevent.

20. Excess of force - Everyone authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act that constitutes the excess.

21. Consent to death - No one has a right to consent to the infliction of death upon himself or herself, and, if any person is killed, the fact that he

or she gave any such consent shall not affect the criminal responsibility of any person who is a party to the killing.

22. Other enactments not affected - Nothing in this Ordinance shall take away or diminish any authority given by any other enactment to arrest, detain, or put any restraint on any person.

PART III
PARTIES TO THE COMMISSION OF OFFENCES

23. Parties to offences - (1) Everyone is a party to and guilty of an offence who:

- (a) Actually commits the offence; or
- (b) Does or omits an act for the purpose of aiding any person to commit the offence; or
- (c) Abets any person in the commission of the offence; or
- (d) Incites, counsels, or procures any person to commit the offence.

(2) Where 2 or more persons form a common intention to prosecute any on lawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was or ought to have been known to be a probable consequence of the prosecution of the common purpose.

24. Husband and wife conspiring - Where any person is charged with any conspiracy or with being a party to any conspiracy, the fact that any 2 of the alleged conspirators or parties to the conspiracy are husband and wife shall not of itself be a defence to the charge.

25. Offence committed other than offence intended - (1) Everyone who incites, counsels, or procures another to be a party to an offence of

which that other is afterwards guilty is a party to that offence, although it may be committed in a way different from that which was incited, counselled, or procured.

(2) Everyone who incites, counsels, or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such inciting, counselling, or procuring, and which the first-mentioned person knows or ought to have known to be likely to be committed in consequence thereof.

26. Accessory after the fact - (1) An accessory after the fact to an offence is one who, knowing any person to have been a party to the offence, receives, comforts, or assists that person or tampers with or actively suppresses any evidence against the person, in order to enable him or her to escape after arrest or to avoid arrest or conviction.

(2) No married person whose spouse has been a party to an offence shall become an accessory after the fact to that offence by doing any act to which this section applies in order to enable the spouse, or the spouse and any other person who has been a party to the offence, to escape after arrest or to avoid arrest or conviction.

27. Attempts - (1) Everyone who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing the object, is guilty of an attempt to commit the offence intended, whether under the circumstances it was possible to commit the offence or not.

(2) The question whether an act done or omitted with intent to commit an offence is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law.

(3) An act done or omitted with intent to commit an offence may constitute an attempt if it is immediately or proximately connected with the intended offence, whether or not there was any act unequivocally showing the intent to commit an offence.

PART IV

CRIMES AGAINST PUBLIC ORDER

28. Treason - Every citizen of Samoa is guilty of treason, and shall upon conviction be imprisoned for life, who:

- (a) Kills, wounds, imprisons, or causes grievous bodily harm to the Head of State; or
- (b) Levies war or conspires to levy war against the State of Samoa; or
- (c) Uses force for the purpose of overthrowing the Government of Samoa; or
- (d) Assists by any means whatever any public enemy at war with the State of Samoa.

29. Seditious offences - (1) Everyone is liable to imprisonment for a term not exceeding 2 years who speaks any seditious words or publishes a seditious libel, or is a party to a seditious conspiracy.

(2) Seditious words are words expressive of a seditious intention.

(3) A seditious libel is a libel expressive of a seditious intention.

(4) A seditious conspiracy is an agreement between 2 or more persons to carry into execution a seditious intention.

(5) A seditious intention is an intention to excite disaffection against the Parliament or Government of Samoa, or to excite such hostility or ill will between different classes of the inhabitants of Samoa as may be injurious to the public welfare, or to incite, encourage, or procure lawlessness, violence, or disorder in Samoa, or to procure otherwise than by lawful means the alteration of any matter affecting the laws, government, or Constitution of Samoa.

30. Unlawful assembly - (1) Every member of an unlawful assembly is

liable to imprisonment for one year.

(2) An unlawful assembly is an assembly of 3 or more persons who, with intent to carry out any common purpose, assemble in such a manner, or so conduct themselves when assembled as to cause persons in the neighbourhood of such an assembly to fear, on reasonable grounds, that the persons so assembled will disturb the peace tumultuously, or will, by such assembly, needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously.

(3) Persons lawfully assembled may become an unlawful assembly if they, with a common purpose, conduct themselves in such a manner that their assembling would have been unlawful if they had assembled in that manner for that purpose.

(4) An assembly of 3 or more persons for the purpose of protecting the house of any one of their number against persons threatening to break and enter such house in order to commit any offence therein is not unlawful.

31. Riot - (1) Everyone who takes part in a riot is liable to imprisonment for a term not exceeding 2 years.

(2) A riot is an unlawful assembly that has begun to disturb the peace tumultuously.

32. Forcible entry - Everyone is liable to imprisonment for a term not exceeding 6 months who, by force or threats of force, enters on land then in the actual and peaceful possession of another for the purpose of taking possession thereof, whether the person who so enters is entitled to the possession thereof or not.

33. Affrays - (1) Everyone who, without lawful justification or excuse, takes part in an affray is liable to imprisonment for a term not exceeding one year.

(2) An affray is the act of fighting in a public highway or in any other

public place.

34. Unlawful intimidation - Every person commits an offence and is liable to imprisonment for a term not exceeding one year or to a fine of 2 penalty units who:

(a) Imposes or attempts to impose or authorises or directs the imposition or attempted imposition upon any other person (whether in respect of a particular person or generally) of any punishment, fine, or penalty or payment in money or goods for having disobeyed any prohibition imposed by any person or body of persons against the doing or abstaining from doing any act which such other person has a legal right to do or abstain from doing; or

(b) With a view to compel any other person to do or to abstain from doing any act which that person has a legal right to do or abstain from doing.

(i) Uses violence to or by words or acts intimidates such other person or damages or threatens to damage his or her property; or

(ii) Follows such other person about from place to place or in or along any public place; or

(iii) Watches or besets any house, shop, or other place or the approach thereto where such other person or any person whatsoever resides or works or carries on business or happens to be.

34A. Threatening, etc., words or behaviour to Member or officer -

(1) Everyone is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 2 penalty units who uses any threatening, abusive or insulting words or behaviour towards or in respect of any Member of Parliament.

(2) Everyone is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 1 penalty unit who uses any threatening, abusive or insulting words or behaviour towards or in respect of any officer of the Public Service while he or she is performing any official duty or exercising any official power.

PART V
**CRIMES AFFECTING ADMINISTRATION OF LAW AND
JUSTICE AND PUBLIC ADMINISTRATION**

35. Official corruption - Everyone commits the offence of official corruption and is liable to imprisonment for a term not exceeding 5 years who:

(a) Being the holder of any office, whether judicial or otherwise, in the service of the Independent State of Samoa, corruptly accepts or obtains, or agrees to accept or attempts to obtain, for himself, herself or any other person any bribe, that is to say, any money or valuable consideration whatever, on account of anything done or to be afterwards done by that person in an official capacity; or

(b) Corruptly gives or offers to any person holding any such office or to any other person any such bribe as aforesaid on account of any such act.

36. Perjury - (1) Perjury is an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of his or her evidence upon oath or affirmation, whether such evidence is given in open Court or by affidavit or otherwise, such assertion being known to the witness to be false.

(2) Every proceeding is judicial within the meaning of this section which is held before any Court, or before any judicial officer or other person having power to take evidence on oath or affirmation.

(3) No one shall be convicted of perjury on the evidence of one witness

only, unless the evidence of that witness is corroborated in some material particularly by evidence implicating the accused.

(4) Everyone who commits perjury is liable to imprisonment for a term not exceeding 5 years.

37. Fabricating evidence - Everyone is liable to imprisonment for a term not exceeding 3 years who, with intent to mislead any Court of Justice or any judicial officer in the exercise of his or her functions as such, fabricates evidence by any means other than perjury.

38. Conspiring to defeat justice - Everyone is liable to imprisonment for a term not exceeding 3 years who conspires or attempts to obstruct, prevent, pervert, or defeat the course of justice in any cause or matter, civil or criminal.

39. Breaking prison - Everyone is liable to imprisonment for a term not exceeding 5 years who by force or violence breaks any prison with intent to set at liberty himself, herself or any other person detained therein.

40. Escape - (1) Everyone is liable to imprisonment for a term not exceeding 2 years who, being in lawful custody, whether in a prison or elsewhere, escapes therefrom.

(2) For the purposes of this and the next succeeding section lawful custody means the detention of a person by due process of law, whether the person be under arrest, police or gaol escort, serving a term of imprisonment or otherwise; custody under an irregular warrant or other irregular process shall be deemed to be lawful.

41. Rescue - Everyone is liable to imprisonment for a term not exceeding 2 years who rescues any person from lawful custody, whether in a prison or elsewhere, or who assists any person to escape from such custody, or who aids, harbours, conceals, or shelters any person who has escaped from such custody, knowing that person to have so escaped.

PART VI

CRIMES AGAINST RELIGION, MORALITY AND PUBLIC WELFARE

Crimes Against Religion

42. Blasphemous libel - (1) Everyone is liable to imprisonment for a term not exceeding one year who publishes any blasphemous libel.

(2) Whether any particular published matter is or is not a blasphemous libel is a question of fact.

(3) It is not an offence against this section to express in good faith and in decent language, or to attempt to establish by arguments used in good faith and conveyed in decent language, any opinion whatever on any religious subject.

(4) No one shall be prosecuted for an offence against this section without the leave in writing of the Attorney-General, who before giving leave may make such enquiries as the Attorney-General thinks fit.

CRIMES AGAINST MORALITY AND DECENCY

43. Distribution or exhibition of indecent matter - (1) Everyone is liable to imprisonment for a term not exceeding 2 years who, without lawful justification or excuse:

(a) Sells, expose for sale, or otherwise distributes to the public any indecent model or object; or

(b) Exhibits or presents in or within view of any place to which the public have or are permitted to have access any indecent model or object or indecent show or performance; or

(c) Exhibits or presents in the presence of any person in consideration or expectation of any payment, or otherwise for gain, any indecent show or performance.

(2) It is a defence to a charge under this section to prove that the public good was served by the acts alleged to have been done.

(3) It is a question of law whether the sale, exposure for sale, distribution, exhibition or presentation might in the circumstances serve the public good, and whether there is evidence of excess beyond what the public good requires; but it is a question of fact whether or not the acts complained of did so serve the public good and whether or not there was such excess.

(4) It is no defence that the person charged did not know that the model, object, show or performance to which the charge relates was indecent, unless that person also satisfies the Court:

(a) That he or she had no reasonable opportunity of knowing it; and

(b) That in the circumstances his or her ignorance was excusable.

(5) No one shall be prosecuted for an offence against this section without the leave in writing of the Attorney-General, who before giving leave may make such inquiries as the Attorney-General thinks fit.

(6) Nothing in this section shall apply to any document or matter to which the Indecent Publications Ordinance 1960 relates, whether the document or matter is indecent within the meaning of that Ordinance or not.

44. Indecent act in public place - (1) Everyone is liable to imprisonment for a term not exceeding 2 years who wilfully does any indecent act in any public place, or within view of any such place.

(2) It is a defence to a charge under this section if the person charged proves that he or she had reasonable grounds for believing that he or she would not be observed.

45. Indecent act with intent to insult or offend - Everyone is liable to

imprisonment for a term not exceeding 2 years who, with intent to insult or offend any person, does any indecent act in any place.

SEXUAL CRIMES

46. Sexual intercourse defined - For the purposes of this Part, sexual intercourse is complete upon penetration; and there shall be no presumption of law that any person is by reason of his or her age incapable of such intercourse.

47. Rape - (1) Rape is the act of a male person having sexual intercourse with a woman or girl:

- (a) Without her consent freely and voluntarily given; or
- (b) With consent extorted by fear or bodily harm or by threats; or
- (c) With consent extorted by fear, on reasonable grounds, that the refusal of consent would result in the death of or grievous bodily injury to a third person; or
- (d) With consent obtained by personating her husband; or
- (e) With consent obtained by a false and fraudulent representation as to the nature and quality of the act.

(2) Everyone who commits rape is liable to imprisonment for life.

(3) Notwithstanding anything in subsection (1) of this section, no man shall be convicted of rape in respect of his intercourse with his wife, unless at the time of the intercourse there was in force in respect of the marriage a decree of judicial separation or a separation order.

48. Attempt to commit rape - Everyone who attempts to commit rape or assaults any person with intent to commit rape is liable to imprisonment for a term not exceeding 10 years.

49. Incest - (1) In this section the term "child" includes an illegitimate child; and "grandchild" has a corresponding meaning.

(2) Incest is sexual intercourse between:

(a) Parent and child; or

(b) Brother and sister, whether of the whole blood or of the half blood, and whether the relationship is traced through lawful wedlock or not; or

(c) Grandparent and grandchild,-

where the person charged knows of the relationship between the parties.

(3) Everyone of or over the age of 16 years who commits incest is liable to imprisonment for a term not exceeding 7 years.

50. Sexual intercourse by man with young girl living in his family -

(1) Everyone is liable to imprisonment for a term not exceeding 7 years who has or attempts to have sexual intercourse with any girl, not being his wife, who is under the age of 21 years and who, being his stepdaughter, foster daughter or ward, is at the time of the intercourse or attempted intercourse living with him as a member of his family.

(2) It is no defence to a charge under this section that the girl consented.

51. Sexual intercourse with girl under 12 - (1) Everyone who has sexual intercourse with any girl under the age of 12 years is liable to imprisonment for a term not exceeding 10 years.

(2) Everyone who attempts to have sexual intercourse with any girl under the age of 12 years is liable to imprisonment for a term not exceeding 7 years.

(3) It is no defence to a charge under this section that the girl consented, or that the person charged believed that she was of or over the age of 12

years.

(4) The girl shall not be charged as a party to an offence committed upon or with her against this section.

52. Indecency with girl under 12 - (1) Everyone is liable to imprisonment for a term not exceeding 7 years who:

(a) Indecently assaults any girl under the age of 12 years; or

(b) Being a male, does any indecent act with or upon any girl under the age of 12 years; or

(c) Being a male, induces or permits any girl under the age of 12 years to do any indecent act with or upon him.

(2) It is no defence to a charge under this section that the girl consented, or that the person charged believed that she was of or over the age of 12 years.

(3) The girl shall not be charged as a party to an offence committed upon or with her against this section.

53. Sexual intercourse or indecency with girl between 12 and 16 - (1) Everyone is liable to imprisonment for a term not exceeding 7 years who has or attempts to have sexual intercourse with any girl of or over the age of 12 years and under the age of 16 years, not being his wife.

(2) Everyone is liable to imprisonment for a term not exceeding 7 years who:

(a) Indecently assaults any such girl; or

(b) Being a male, does any indecent act with or upon any such girl; or

(c) Being a male, induces or permits any such girl to do any

indecent act with or upon him.

(3) It is a defence to a charge under this section if the person charged proves that the girl consented and that he is younger than the girl:

PROVIDED THAT proof of the said facts shall not be a defence if it is proved that such consent was obtained by a false and fraudulent representation as to the nature and quality of the act.

(4) It is a defence to a charge under this section if the person charged proves that the girl consented, that he was under the age of 21 years at the time of the commission of the act, and that he had reasonable cause to believe, and did believe, that the girl was of or over the age of 16 years:

PROVIDED THAT proof of the said facts shall not be a defence if it is proved that the consent was obtained by a false and fraudulent representation as to the nature and quality of the act.

(5) Except as provided in this section, it is no defence to a charge under this section that the girl consented, or that the person charged believed that the girl was of over the age of 16 years.

(6) The girl shall not be charged as a party to an offence committed upon or with her against this section.

(7) No one shall be prosecuted for any offence against this section, except under paragraph (a) of subsection (2) thereof, unless the prosecution is commenced within 12 months from the time when the offence was committed.

54. Indecent assault on woman or girl - Everyone is liable to imprisonment for a term not exceeding 5 years who:

(a) Indecently assaults any woman or girl of or over the age of 16 years; or

(b) Does anything to any woman or girl of or over the age of 16 years, with her consent, which but for such consent would have been an indecent assault such consent being obtained by a false and fraudulent representation as to the nature and quality of the act.

55. Conspiracy to induce sexual intercourse - Everyone is liable to imprisonment for a term not exceeding 5 years who conspires with any other person by a false representation or by other fraudulent means to induce any woman or girl to have sexual intercourse with any male who is not her husband.

56. Inducing sexual intercourse under pretence of marriage - Everyone is liable to imprisonment for a term not exceeding 7 years who induces any woman or girl to have sexual intercourse with him by a wilfully false representation that they are married.

57. Sexual intercourse with idiot or imbecile woman or girl - Everyone is liable to imprisonment for a term not exceeding 7 years who has or attempts to have sexual intercourse with any woman or girl who is an idiot or an imbecile, if he knows or has good reason to believe that she is an idiot or imbecile.

58. Adultery by married persons - Every married person who commits adultery shall be liable to a fine not exceeding 1 penalty unit.

58A. Adultery with married woman - Every man who commits adultery with a woman he knows to be married shall be liable to a fine not exceeding 1 penalty unit.

58B. Indecent act between woman and girl - (1) Every woman of or over the age of 21 years is liable to imprisonment for a term not exceeding 5 years who:

(a) Does any indecent act with or upon any girl under the age of 16 years; or

(b) Induces or permits any girl under the age of 16 years to do any indecent act with or upon her.

(2) The girl shall not be charged as a party of an offence committed with or upon her against this section.

(3) It is no defence to a charge under this section that the girl consented.

58C. Indecency between man and boy - (1) Everyone is liable to imprisonment for a term not exceeding 7 years who, being a male:

(a) Indecently assaults any boy under the age of 16 years; or

(b) Does any indecent act with or upon any boy under the age of 16 years; or

(c) Induces or permits any boy under the age of 16 years to do any indecent act with or upon him.

(2) No person under the age of 21 years shall be charged with committing or being a party to an offence against this section.

(3) It is no defence to a charge under this section that the boy consented.

58D. Indecency between males - (1) Everyone is liable to imprisonment for a term not exceeding 5 years who, being a male:

(a) Indecently assaults any other male; or

(b) Does any indecent act with or upon any other male; or

(c) Induces or permits any other male to do any indecent act with or upon him.

(2) No boy under the age of 16 years shall be charged with committing or being a party to an offence against paragraph (b) or paragraph (c) of subsection (1), unless the other male was under the age of 21 years.

(3) It is no defence to a charge under this section that the other party consented.

58E. Sodomy - (1) Everyone who commits sodomy is liable:

(a) Where the act of sodomy is committed on a female, to imprisonment for a term not exceeding 7 years.

(b) Where the act of sodomy is committed on a male, and at the time of the act that male is under the age of 16 years and the offender is of or over the age of 21 years, to imprisonment for a term not exceeding 7 years.

(c) In any other case, to imprisonment for a term not exceeding 5 years.

(2) This offence is complete upon penetration.

(3) Where sodomy is committed on any person under the age of 16 years he shall not be charged with being a party to that offence, but he may be charged with being a party to an offence against section 58D of this Act in any case to which that section is applicable.

(4) It is no defence to a charge under this section that the other party consented.

58F. Bestiality - (1) Everyone is liable to imprisonment for a term not exceeding 7 years who commits bestiality.

(2) This offence is complete upon penetration.

58G. Attempts to commit sodomy or bestiality - Everyone is liable to imprisonment for a term not exceeding 5 years who:

(a) Attempts to commit sodomy or bestiality; or

(b) Assaults any person with intent to commit sodomy.

58H. Indecency with animal - Everyone is liable to imprisonment for a term not exceeding 3 years who commits any act of indecency with an animal.

CRIMES AGAINST PUBLIC WELFARE

58I. Criminal nuisance - (1) Everyone commits criminal nuisance who does any unlawful act or omits to discharge any legal duty, such act or omission being one which he or she knew would endanger the lives, safety, or health of the public, or the life, safety or health of any individual.

(2) Everyone who commits criminal nuisance is liable to imprisonment for a term not exceeding one year.

58J. Keeping place of resort for homosexual acts - Everyone is liable to imprisonment for a term not exceeding 7 years who:

(a) Keeps or manages, or knowingly acts or assists in the management of, any premises used as a place of resort for the commission of indecent acts between males; or

(b) Being the tenant, lessee or occupier of any premises, knowingly permits the premises or any part thereof to be used as a place of resort for the commission of indecent acts between males; or

(c) Being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the premises or any part thereof with the knowledge that the premises are to be used as a place of resort for the commission of indecent acts between males, or that some part thereof is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a place of resort for the commission of such acts as aforesaid.

58K. Brothel keeping - (1) In this section, the term "brothel" means any house, room, set of rooms, or place of any kind whatever used for the purposes of prostitution, whether by one woman or more.

(2) Everyone is liable to imprisonment for a term not exceeding 5 years who:

(a) Keeps or manages, or knowingly acts or assists in the management of, any brothel; or

(b) Being the tenant, lessee or occupier of any premises, knowingly permits the premises or any part thereof to be used as a brothel; or

(c) Being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the premises or any part thereof with the knowledge that the premises are to be used as a brothel, or that some part thereof is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a brothel.

58L. Living on earnings of prostitution - Everyone is liable to imprisonment for a term not exceeding 3 years who knowingly:

(a) Lives wholly or in part on the earnings of the prostitution of another person; or

(b) Solicits for any prostitute, whether or not he receives any payment, reward or valuable consideration for so doing.

58M. Procuring sexual intercourse - Everyone is liable to imprisonment for a term not exceeding 3 years who, for gain or reward, procures or agrees or offers to procure any woman or girl to have sexual intercourse with any male who is not her husband.

58N. Personating a female - Every male person is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 2 penalty units who, in a public place and with intent to

deceive any other person as to his true sex, has on or about his person any article intended by him to represent that he is a female or in any other way is impersonating or representing himself to be a female.

58O. Misconduct in respect of human remains - Everyone is liable to imprisonment for a term not exceeding 2 years who:

(a) Neglects to perform any duty imposed on the person by law or undertaken by the person with reference to the burial or cremation of any dead human body or human remains; or

(b) Improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not.

58P. *Repealed by section 26 (3) of the Gaming Act 1978.*

PART VII **CRIMES AGAINST THE PERSON AND REPUTATION**

59. Homicide - Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever.

60. Killing of a child - (1) A child becomes a human being within the meaning of this Ordinance when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not.

(2) The killing of such child is homicide if it dies in consequence of injuries received before, during, or after birth.

61. Homicide, culpable and not culpable - (1) Homicide may be either culpable or not culpable.

(2) Homicide is culpable when it consists in the killing of any person either:

(a) By an unlawful act; or

(b) By an omission without lawful excuse to perform or observe any legal duty; or

(c) By both combined; or

(d) By causing that person by threats or fear of violence, or by deception, to do an act which causes that person's death; or

(e) By wilfully frightening a child under the age of 14 years or sick person.

(3) Culpable homicide is murder or manslaughter or infanticide.

(4) Homicide that is not culpable is not an offence.

62. Death must be within a year and a day - (1) No one is criminally responsible for the killing of another unless the death takes place within a year and a day after the cause of death.

(2) The period of a year and a day shall be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place.

(3) Where the cause of death is an omission to fulfil a legal duty, the period shall be reckoned inclusive of the day on which such omission ceased.

(4) Where the death is in part caused by an unlawful act and in part of an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever happened last.

63. Murder - Subject to the provisions of section 72 (relating to infanticide), culpable homicide is murder in each of the following cases:

- (a) If the offender means to cause the death of the person killed;
- (b) If the offender means to cause to the person killed any bodily injury that is known to the offender to be likely to cause death and is reckless whether death ensues or not;
- (c) If the offender means to cause death, or being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he or she does not mean to hurt the person killed;
- (d) If the offender for any unlawful object does an act that he or she knows or ought to have known to be likely to cause death, and thereby kills any person, though he or she may have desired that his or her object should be effected without hurting anyone.

64. Further definition of murder - (1) Culpable homicide is also murder in each of the following cases, whether the offender means or does not mean death to ensue, or knows or does not know that death is likely to ensue:

- (a) If he or she means to inflict grievous bodily injury for the purpose of facilitating the commission of any of the offences mentioned in subsection (2), or the flight of the offender upon the commission or attempted commission thereof, and death ensues from such injury;
- (b) If he or she administers any stupefying or overpowering thing for either of the purposes aforesaid, and death ensues from the effects thereof;
- (c) If he or she by any means wilfully stops the breath of any person for either of the purposes aforesaid, and death ensues from such stopping of the breath.

(2) The following are the offences referred to in the last preceding

subsection: treason, escape or rescue from prison or lawful custody, resisting lawful apprehension, murder, rape, forcible abduction, robbery, burglary, arson.

65. Manslaughter - Culpable homicide not amounting to murder is manslaughter, save in the case of infanticide.

66. Penalty for murder - Everyone who commits murder shall upon conviction be imprisoned for life.

67. Penalty for manslaughter - Everyone who commits manslaughter is liable to imprisonment for life.

68. Attempted murder - Everyone who attempts to commit murder is liable to imprisonment for life.

69. Conspiracy and inciting to murder - Everyone is liable to imprisonment for a term not exceeding 10 years who:

(a) Conspires with any person to murder any person; or

(b) Incites any person to commit murder.

70. Hastening death - Everyone who hastens the death of any person from any disease or disorder from which that person is already suffering shall be deemed to have caused the death of that person.

71. Indirect cause of death - Everyone whose act or omission results in the death of any person shall be deemed to have caused the death of that person, although the immediate cause of death is the act or omission of some other person or some other independent intervening event.

72. Infanticide - (1) Where a woman causes the death of any child of hers within 12 months from the date of its birth in a manner that amounts to culpable homicide, and where at the time of the offence the balance of her mind was disturbed by reason of her not having fully recovered from the effect of childbirth or by reason of lactation or of any disorder

consequent upon childbirth, to such an extent that she should not be held fully responsible, she is guilty of infanticide, and not of murder or manslaughter, and is liable to imprisonment for a term not exceeding 3 years.

(2) Upon the trial of a woman for the murder or manslaughter of any child of hers under the age of 12 months, if there is evidence to support a verdict of infanticide as above, it shall be open to the jury to return such a verdict, and the accused shall be liable accordingly.

73. Killing unborn child - (1) Everyone is liable to imprisonment for a term not exceeding 14 years who causes the death of any child that has not become a human being in such a manner that the person would have been guilty of murder if the child had become a human being.

(2) Everyone is liable to imprisonment for a term not exceeding 5 years who causes the death of any child that has not become a human being in such a manner that he would have been guilty of manslaughter if the child had become a human being.

(3) No one is guilty of any crime who before or during the birth of any child causes its death by means employed in good faith for the preservation of the life of the mother.

73A. Procuring abortion - (1) Everyone is liable to imprisonment for a term not exceeding 7 years who, with intent to procure the miscarriage of any woman or girl, whether she is with child or not:

(a) Unlawfully administers to or causes to be taken by her any poison or any drug or any noxious thing; or

(b) Unlawfully uses on her any instrument; or

(c) Unlawfully uses on her any other means whatsoever.

(2) The woman or girl shall not be charged as a party to an offence against this section.

73B. Female procuring her own miscarriage - Every woman or girl is liable to imprisonment for a term not exceeding 7 years who with intent to procure miscarriage, whether she is with child or not:

(a) Unlawfully administers to herself, or permits to be administered to her, any poison or any drug or any noxious thing; or

(b) Unlawfully uses on herself, or permits to be used on her, any instrument; or

(c) Unlawfully uses on herself, or permits to be used on her, any other means whatsoever.

73C. Supplying means of procuring abortion - Everyone is liable to imprisonment for a term not exceeding 7 years who unlawfully supplies or procures any poison or any drug or any noxious thing, or any instrument or other thing, whether of a like nature or not, believing that it is intended to be unlawfully used to procure miscarriage.

73D. Effectiveness of means used immaterial - The provisions of sections 73A to 73C of this Act shall apply whether or not the poison, drug, thing, instrument or means administered, taken, used supplied or procured was in fact capable of procuring miscarriage.

74. Concealing dead body of child - Everyone is liable to imprisonment for a term not exceeding 2 years who disposes of the dead body of any child in any manner with intent to conceal the fact of its birth, whether the child died before, during, or after birth.

74A. Bigamy defined - (1) Bigamy is:

(a) The act of a person who, being married goes through a form of marriage in Samoa with a third person; or

(b) The act of a person who goes through a form of marriage in

Samoa with any other person whom he or she knows to be married; or

(c) The act of a Samoa citizen, or a person ordinarily resident in Samoa, who, being married, goes through a form of marriage with a third person anywhere outside Samoa; or

(d) The act of a Samoa citizen, or a person ordinarily resident in Samoa, who goes through a form of marriage anywhere outside Samoa with any other person whom he or she knows to be married.

(2) For the purposes of this section:

(a) A form of marriage is any form of marriage recognised by the law of Samoa, or by the law of the place where it is solemnised, as a valid form of marriage;

(b) No form of marriage shall be held to be an invalid form of marriage by reason of any act or omission of the person charged with bigamy, if it is otherwise a valid form.

(3) It shall not be a defence to a charge of bigamy to prove that if the parties were unmarried they would have been incompetent to contract marriage.

(4) No person commits bigamy by going through a form of marriage if that person:

(a) Has been continuously absent from his or her spouse for 7 years then last past; and

(b) Is not proved to have known that his or her spouse was alive at any time during those 7 years.

74B. Punishment of bigamy - Everyone who commits bigamy is liable to imprisonment for a term not exceeding 5 years:

PROVIDED THAT if the Judge is satisfied that the person with whom the offender went through the form of marriage knew, at the time when the offence was committed, that the marriage would be void, the offender is liable to imprisonment for a term not exceeding 2 years.

74C. Feigned marriage - Everyone is liable to imprisonment for a term not exceeding 5 years who goes through a form of marriage with any other person, knowing that the marriage will be void for any reason other than that one of the parties is already married:

PROVIDED THAT if the Judge is satisfied that that other person knew, at the time when the offence was committed, that the marriage would be void, the offender is liable to imprisonment for a term not exceeding 2 years.

75. Counselling suicide - Everyone is liable to imprisonment for life who counsels or procures any person to commit suicide, if that person actually commits suicide in consequence thereof, or who aids or abets any person in the commission of suicide.

76. Duty to provide the necessaries of life - (1) Everyone who has charge of any other person unable, by reason of age, sickness, insanity, or any other cause, to withdraw himself or herself from that charge, and unable to provide himself or herself with the necessaries of life, is (whether such charge is undertaken by him or her under any contract or is imposed upon him or her by law or in accordance with Samoa custom or by reason of his or her unlawful act or otherwise howsoever) under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting without lawful excuse to perform such duty if the death of that person is caused, or if the person's life is endangered or his or her health impaired by such omission.

(2) Everyone is liable to imprisonment for a term not exceeding 7 years who, without lawful excuse, neglects the duty specified in this section so that the life of the person under his or her charge is endangered or his or her health impaired by such neglect.

(3) For the purposes of this and the next succeeding section the term "necessaries of life" shall include the provision of proper and adequate care and attention, food, drink, clothing, shelter and medical treatment.

77. Duty of parent or guardian to provide necessaries - (1) Everyone who, as a parent or person placed in the position of a parent in accordance with Samoan custom, is under a legal duty to provide the necessaries of life for any child under the age of 16 years, is criminally responsible for omitting without lawful excuse to do so, whether the child is helpless or not, if the death of the child is caused, or if the child's life is endangered or his or her health impaired by such omission.

(2) Everyone is liable to imprisonment for a term not exceeding 7 years who, without lawful excuse, neglects the duty specified in this section so that the life of the child is endangered or his or her health impaired by such neglect.

78. Common assault - (1) Everyone is liable to imprisonment for a term not exceeding one year who assaults any other person.

(2) "Assault" means the act of intentionally applying or attempting to apply force to the person of another, directly or indirectly, or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has, or causes the other to believe on reasonable grounds that he or she has, present ability to effect his or her purpose; and "to assault" has a corresponding meaning.

79. Grievous bodily harm - Everyone who wilfully and without lawful justification causes grievous bodily harm to any person is liable to imprisonment for a term not exceeding 7 years.

80. Actual bodily harm - Everyone who wilfully and without lawful justification causes actual bodily harm to any person is liable to imprisonment for a term not exceeding 2 years.

81. Acts or omissions causing bodily harm - Everyone is liable to

imprisonment for a term not exceeding 2 years who by any act or omission causes bodily harm to any person in such circumstances that, if death had been caused, he would have been guilty of manslaughter.

82. Threats to kill or do bodily harm - Everyone is liable to imprisonment for a term not exceeding 3 years who sends or causes to be received, knowing the contents thereof, any letter or writing containing threats to kill or do bodily harm to any person, or who verbally makes a threat to kill or do bodily harm to any person.

83. Abduction of woman or girl - Everyone is liable to imprisonment for a term not exceeding 7 years who takes away or detains any woman or girl, whether she is married or not, without her consent, or with her consent obtained by fraud or duress, with intent:

(a) To marry her or to have sexual intercourse with her; or

(b) To cause her to be married or to have sexual intercourse with any other person.

83A. Kidnapping - (1) Everyone is liable to imprisonment for a term not exceeding 10 years who unlawfully carries off or detains any person without the person's consent, or with the person's consent obtained by fraud or duress, with intent:

(a) To cause the person to be confined, or imprisoned; or

(b) To cause the person to be sent or taken out of Samoa; or

(c) To hold the person for ransom or to service.

(2) A child under the age of 16 years shall be deemed to be incapable of consenting to being carried off or detained.

(3) No one shall be convicted of an offence against this section who gets possession of any child, claiming in good faith a right to the possession of the child.

83B. Abduction of child under 16 - (1) Everyone is liable to imprisonment for a term not exceeding 7 years who, with intent to deprive any parent or guardian or other person having the lawful care or charge of any child under the age of 16 years of the possession of the child, or with intent to have sexual intercourse with any child being a girl under the age, unlawfully:

(a) Takes or entices away or detains the child; or

(b) Receives the child, knowing that the child has been so taken or enticed away or detained.

(2) It is immaterial whether or not the child consents, or is taken or goes at the child's own suggestion, or whether or not the offender believed the child to be of or over the age of 16.

(3) No one shall be convicted of an offence against this section who gets possession of any child, claiming in good faith a right to the possession of the child.

84. Defamatory libel - (1) Everyone who publishes a defamatory libel is liable to imprisonment for a term not exceeding 6 months.

(2) To publish a defamatory libel means to do any act which confers upon the person defamed a right of action for damages for libel.

(3) In a prosecution under this section the burden of proof shall be determined by the same rules as in an action for damages for libel.

(4) In a prosecution under this section it shall be no defence that the libel is true unless the publication thereof was for the public benefit.

PART VIII

CRIMES AGAINST RIGHTS OF PROPERTY

85. Theft defined - (1) Theft or stealing is the act of fraudulently or

dishonestly taking, or converting to the use of any person, anything capable of being stolen, with intent:

(a) To deprive the owner or any person having any property or interest therein permanently of such thing or of such property or interest; or

(b) To deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking or converting.

(2) Every animate or inanimate thing whatever that is the property of any person, and is movable, is capable of being stolen.

(3) Every thing whatever that is the property of any person and is capable of being made movable is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

(4) Theft is committed when the offender moves the thing, or causes it to be moved with intent to steal it.

(5) Everyone who kills any living creature capable of being stolen, with intent to steal its carcass, skin, or plumage, or any part of it, commits theft and steals the creature.

86. Punishment of theft - (1) Everyone who commits theft is liable to imprisonment for a term not exceeding:

(a) 3 months if the value of the property stolen does not exceed \$4;

(b) 1 year if the value of the property stolen exceeds \$4 but does not exceed \$100;

(c) 3 years if the value of the property stolen exceeds \$100 but does not exceed \$400;

- (d) 5 years if the value of the property stolen exceeds \$400;
- (e) 7 years if the property stolen is a testamentary instrument;
- (f) 10 years if the property stolen is a ship or aircraft;
- (g) 7 years if the property stolen is anything stolen by a clerk or servant which belongs to or is the possession of his employer;
- (h) 7 years if the property stolen is anything in the possession of the offender as a clerk or servant, or as an officer of the Government of Samoa or of any local authority or public body, or as a constable;
- (i) 7 years if the theft is one within the extended definition contained in section 88 of this Ordinance.

(2) Repealed by section 2(2) of the Crimes Amendment Act 1971.

(3) For the purposes of this section a valuable security shall be deemed to be of the same value as the property or proprietary right to which it relates, and postage stamps or revenue stamps shall be deemed to be of a value equal to the denomination thereof.

87. Ineffectual defences to charge of theft - Without in any way limiting the generality of the foregoing definition of theft, a person shall be deemed guilty of theft notwithstanding the fact:

- (a) That at the time of the theft he or she was in lawful possession of the property stolen; or
- (b) That he or she had himself or herself a lawful interest in the property stolen, whether as a partner, co-owner, bailee, bailor, mortgagee, mortgagor, or otherwise howsoever; or
- (c) That he or she was a trustee of the property stolen; or

(d) That the property stolen was vested in him as an executor or administrator.

88. Extended definition of theft - Without in any way limiting the generality of the foregoing definition of theft, every person shall be deemed guilty of theft who holds, receives, or obtains any money, valuable security, or other thing whatsoever capable of being stolen, subject to any obligation (whether arising from an express or implied trust, or from an express or implied contract, or from any other source whatsoever) to deal with such money, valuable security, or thing in any manner, and who fraudulently or dishonestly deals with it in any other manner, or fails to deal with it in accordance with such obligation.

89. Obtaining by false pretence - (1) Everyone is liable to imprisonment for a term not exceeding 3 years who:

(a) With intent to defraud by any false pretence, either directly or through the medium of any contract obtained by such false pretence, obtains anything capable of being stolen, or procures anything capable of being stolen to be delivered to any person other than himself or herself; or

(b) With intent to defraud or injure any person by any false pretence, causes or induces any person to execute, make, accept, endorse or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal on any paper in order that it may afterwards be made or converted into or used or dealt with as a valuable security.

(2) A false pretence is a representation either by words or otherwise of a matter of fact either present or past, which representation is known to the person making it to be false and is made with the fraudulent intent to induce the person to whom it is made to act upon it.

90. Receiving stolen property - (1) Everyone who receives any stolen property knowing it to have been stolen is liable to imprisonment for a term not exceeding:

(a) 3 months if the value of the property so received does not exceed \$4;

(b) 1 year if the value of the property so received exceeds \$4 but does not exceed \$100;

(c) 3 years if the value of the property so received exceeds \$100 but does not exceed \$400;

(d) 5 years if the value of the property so received exceeds \$400.

(2) The act of receiving stolen property is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of or control over the stolen property, or aids in concealing or disposing of it.

91. Conversion of vehicles or vessels, etc. - Every person who, unlawfully and without colour of right, but not so as to be guilty of theft thereof, takes or converts to his or her use or to the use of any other person, any vehicle, vessel or aircraft, of any description, or any part thereof, or any horse, shall be liable to the same penalty as if he or she had committed theft of the article concerned.

92. Robbery - (1) Robbery is theft accompanied by violence or threats of violence to any person or property, used to extort the property stolen or to prevent or overcome resistance to its being stolen.

(2) Everyone who commits robbery is liable to imprisonment for a term not exceeding 10 years.

(3) Everyone who assaults any person with intent to rob that person is liable to imprisonment for a term not exceeding 5 years.

93. Breach of trust - (1) Every trustee who with intent to defraud, and in violation of his or her trust, converts anything of which he or she is trustee to any use not authorised by the trust is guilty of criminal breach

of trust, and is liable to imprisonment for a term not exceeding 5 years.

(2) For the purpose of this section an executor or administrator shall be deemed to be a trustee of the property subject to his or her administration.

(3) Nothing in this section shall be so construed as in any manner to limit the foregoing definition of the offence of theft, and if any act of a trustee is both theft and a criminal breach of trust may be convicted of either of those offences.

94. Menaces - Everyone is liable to imprisonment for a term not exceeding 2 years who with menaces demands from any person, either for himself or herself, or for any other person, anything capable of being stolen, with intent to steal it.

95. Witchcraft - Everyone is liable to imprisonment for a term not exceeding 6 months who pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or undertakes to tell fortunes.

96. Obtaining credit by fraud - Everyone is liable to imprisonment for a term not exceeding 6 months who in incurring any debt or liability obtains credit by means of any fraud.

97. Conspiracy to defraud - Everyone is liable to imprisonment for a term not exceeding 3 years who conspires with any other person by deceit or falsehood or other fraudulent means to defraud the public or any person ascertained or unascertained.

98. Falsifying accounts relating to public funds - Everyone is liable to imprisonment for a term not exceeding 5 years who, with intent to defraud:

(a) Makes any false entry or any alteration in any accounts kept by any Government Department or public body, or by any bank, being accounts of any public money within the meaning of the

Public Finance Management Act 2001, or of any other public fund;

(b) In any manner wilfully falsifies any such accounts as aforesaid; or

(c) Makes any transfer of any interest in any stock, debentures, or debt, in the name of any person other than the owner of that interest.

99. False accounting by employee - Everyone is liable to imprisonment for a term not exceeding 5 years who, being or acting in the capacity of an officer or a clerk or servant, with intent to defraud:

(a) Destroys, mutilates, alters, or falsifies any book, account, valuable security, or document belonging to or in the possession of his or her employer, or received by him or her for or on behalf of his or her employer, or concurs in so doing; or

(b) Makes or concurs in making any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from or in any such book, account, valuable security, or document.

100. False statement by public officer - Everyone is liable to imprisonment for a term not exceeding 2 years who, being an officer, collector, or receiver entrusted with the receipt, custody, or management of any public money within the meaning of the Public Finance Management Act 2001, or part of the revenues of any local authority or public body, knowingly furnishes any false statement or return of any sum of money collected by that person, or entrusted to that person's care, or of any balance of money in the person's hands or under his or her control.

101. Accusation of criminal offences - Everyone is liable to imprisonment for a term not exceeding 5 years who:

(a) With intent to extort or gain anything from any person, accuses or threatens to accuse either that person or any other person of any criminal offence, whether the person accused or threatened with accusation is guilty of that offence or not; or

(b) With such intent as aforesaid, threatens that any person shall be so accused by any person; or

(c) With such intent as aforesaid, causes any person to receive a document containing such accusation or threat, knowing the contents thereof.

102. Burglary - (1) Everyone is guilty of burglary and is liable to imprisonment for a term not exceeding 5 years who, by day or night, breaks and enters a building with intent to commit a criminal offence therein.

(2) "To break" means to break any part, internal or external, of a building, or to open by any means whatever any door, window, or other thing intended to cover any opening to the building or any passage from one part of it to another.

103. Unlawful entry of building by night - Everyone is liable to imprisonment for a term not exceeding 5 years who unlawfully enters or is in any building by night with intent to commit a criminal offence therein, or who is found by night in any building without lawful justification for his or her presence there.

104. Intimidation by breaking house or discharge of firearms - Everyone is liable to imprisonment for a term not exceeding 5 years who, by night, or to imprisonment for a term not exceeding 2 years who, by day, with intent to intimidate or annoy any person:

(a) Breaks or damages or threatens to break or damage any building; or

(b) By the discharge of firearms or otherwise alarms or attempts

to alarm any person in any building.

105. Being armed with intent to commit a crime - Everyone is liable to imprisonment for a term not exceeding 3 years who is found:

(a) Armed with any dangerous or offensive weapon or instrument whatever by day, with intent to break or enter into any building and to commit any crime therein; or

(b) Armed as aforesaid by night, with intent to break into any building whatsoever and to commit any crime therein.

106. Having in possession instruments of housebreaking, or being disguised with intent to commit a crime - Everyone is liable to imprisonment for a term not exceeding 3 years who:

(a) Has in his or her possession by night, without lawful excuse, any instrument being an instrument capable of being used for housebreaking in circumstances that prima facie show an intention to use it for housebreaking; or

(b) Has in his or her possession by day any such instrument as aforesaid with intent to commit any crime; or

(c) Has his or her face masked or blackened or is otherwise disguised by night, without lawful excuse (the proof whereof shall lie on him or her); or

(d) Has his or her face masked or blackened or is otherwise disguised by day, with intent to commit any crime.

107. Forgery - (1) Forgery is making a false document, knowing it to be false, with the intent that it shall in any way be used or acted upon as genuine, whether within Samoa or not, or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything, whether within Samoa or not.

(2) For the purposes of this section, the expression "making a false document" includes making any material alteration to a genuine document, making any material addition to it, or other alteration whether by addition, insertion, obliteration, erasure, removal, or otherwise.

(3) Forgery is complete as soon as the document is made with such knowledge and intent as aforesaid, although the offender may not have intended that any particular person should use or act upon it as genuine, or should be induced by the belief that it is genuine to do or refrain from doing anything.

(4) Forgery is complete although the false document may be incomplete or may not purport to be such a document as would be binding or sufficient in law, if it is so made and is such as to indicate that it was intended to be acted on as genuine.

(5) Everyone who commits forgery is liable to imprisonment for a term not exceeding 5 years.

108. Uttering forged documents - Everyone is liable to imprisonment for a term not exceeding 5 years who, knowing a document to be forged:

- (a) Uses, deals with, or acts upon it as if it were genuine; or
- (b) Causes any person to use, deal with, or act upon it as if it were genuine.

109. Making counterfeit coin - Everyone is liable to imprisonment for a term not exceeding 7 years who makes or begins to make counterfeit coin resembling any current coin, or who has in his or her possession any dies or other instruments or material intended to be used in the making of such counterfeit coin.

110. Impairing coin - Everyone is liable to imprisonment for a term not exceeding 2 years who impairs, diminishes or lightens any current coin, with intent that when so dealt with it shall pass for current coin.

111. Uttering counterfeit coin - Everyone who fraudulently utters any counterfeit coin is liable to imprisonment for a term not exceeding 6 months.

112. Arson - Everyone commits arson and is liable to imprisonment for a term not exceeding 5 years who wilfully sets fire to, or damages by means of any explosive:

(a) Any building, erection, or structure, or any ship or aircraft, or any well of any combustible substance, or any mine, or any bush, forest, or plantation; or

(b) Any property, whether he or she has an interest in it or not, if he or she knows or ought to know that danger to life is likely to ensue.

113. Wilful damage - (1) Everyone is liable to imprisonment for a term not exceeding 14 years who wilfully destroys or damages:

(a) Any property, whether he or she has an interest in it or not, if he or she knows or ought to know that danger to life is likely to ensue; or

(b) Any road, railway, bridge, tunnel or similar means of communication, or any aerodrome, wharf, quay or jetty, if he knows or ought to know that it is thereby likely to be rendered dangerous, impassable or unusable; or

(c) Any power station, or any building, erection or structure, or any equipment, line, cable or pipe, used for or in connection with the production, transmission or distribution of electricity, if he or she knows or ought to know that the supply of electricity is thereby likely to be affected.

(2) Everyone is liable to imprisonment for a term not exceeding 7 years who wilfully destroys or damages:

(a) Any stopbank, wall, dam or sluice gate, or any spillway, canal, drain or other waterway, or any pumping station or pumping equipment, or any other works, if the destruction or damage causes danger of flooding; or

(b) Any container, building, erection, structure or pipe line used for the storage or transmission of bulk supplies of gas or liquid fuel; or

(c) Any rare or irreplaceable book manuscript, original painting, etching, engraving, print or other work of art, or any rare or irreplaceable article kept for purposes of art or science.

(3) Everyone is liable to imprisonment for a term not exceeding 3 years who wilfully destroys or damages any property in any case not provided for elsewhere in this Ordinance.

114. Attempt to commit or procure commission of offence - (1)

Everyone who attempts to commit any offence in respect of which no punishment for the attempt is expressly prescribed by this Ordinance or by some other enactment is liable to imprisonment for a term not exceeding 10 years if the maximum punishment for that offence is imprisonment for life, and in any other case is liable to not more than half the maximum punishment to which he would have been liable if he had committed that offence.

(2) Everyone who incites, counsels, or attempts to procure any person to commit any offence, when that offence is not in fact committed, is liable to the same punishment as if he or she had attempted to commit that offence.

115. Accessory after the fact to crime - Everyone who is accessory after the fact to any crime punishable by imprisonment, being a crime in respect of which no express provision is made by this Ordinance or by some other enactment for the punishment of an accessory after the fact, is liable to imprisonment for a term not exceeding half the longest term to which a person committing the crime may be sentenced on a first

conviction.

PART IX
LEGISLATION SUPERSEDED AND SAVINGS

116. Repeals and savings - (1) This Ordinance is declared to be enacted in substitution for Part V of the Samoa Act 1921 (NZ), as amended by subsequent enactments of the New Zealand Legislature, and it is hereby declared that the said Part V shall, from the date this Ordinance comes into force, no longer form part of the law of Samoa.

(2) It is hereby declared that the enactment of this Ordinance shall not affect any document made, proceedings commenced, or anything whatsoever done under Part V of the Samoa Act 1921 (NZ), or under any corresponding former provisions, and every such document, proceeding, or thing, so far as it is subsisting or in force at the date this enactment comes into force and could have been made, commenced, or done under this Ordinance, shall continue and have effect as if it had been made, commenced or done under the corresponding provision of this Ordinance, and as if that provision had been in force when the document was made or the proceedings were commenced or the thing was done.

PART X
PENALTIES AND ENFORCEMENT

117-124 *This Part was added by section 2 of the Crimes Amendment Act 1965 and repealed by section 177 of the Criminal Procedure Act 1972.*

PART XI
ARRESTS

125-127. *This Part was added by section 10 of the Crimes Amendment Act 1969 and repealed by section 177 (1) of the Criminal Procedure Act 1972.*

SCHEDULES

The first and second schedules were added by section 4 of the Crimes Amendment Act 1963 and repealed by section 177 (1) of the Criminal Procedure Act 1972.

REVISION NOTES 1997

The Crimes Ordinance 1961 appearing in this reprint comprised that Ordinance as it appears in the 1977 reprint but with the repeal of section 58P as contained in the Gaming Act 1978.

REVISION NOTES 2008

This law has been generally edited as provided for by section 5 of the *Revision and Publication of Laws Act 2008*. The following general revisions have been made –

- (a) References to Samoa have been amended to Samoa in accordance with an amendment to the Constitution of Samoa in 1997.
- (b) The fines have been amended and are stated as penalty units as provided for by the *Fines (Review and Amendment) Act 1998*.
- (c) All references to the male gender have been made gender neutral.
- (d) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (e) Amendments have been made to up-date references to offices, officers and statutes.
- (f) Other minor editing has been done in accordance with the lawful powers of the Attorney General.

The following amendments have been made to specific sections of the

Act to incorporate amendments made by Act of Parliament passed since the publication of the *Samoa Statutes Reprint 1978-1996* –

Section 3(2) Repealed and replaced by subsections (2) and (3) in accordance with the *Crimes (Extra-Territorial Jurisdiction) Amendment Act 2003*.

Sections 4, 5 and 6 Repealed by the *Crimes (Extra-Territorial Jurisdiction) Amendment Act 2003*.

Section 28 Deleted the words "is liable upon conviction thereof to suffer death" and replaced them with "shall upon conviction be imprisoned for life" in accordance with the *Crimes (Abolition of Death Penalty) Amendment Act 2004*.

Section 66 Deleted the words "thereof be sentenced to death" and replaced them with " be imprisoned for life" in accordance with the *Crimes (Abolition of Death Penalty) Amendment Act 2004*.

This law has been consolidated and revised by the Attorney General under the authority of the *Revision and Publication of Laws Act 2008* and is an official version of this Act as at 31 December 2007. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.

Aumua Ming Leung Wai
Attorney General of Samoa

Revised and consolidated by Graham Bruce Powell
Under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo
(Parliamentary Counsel)

REVISION NOTES 2008 No. 2

Section 4 (general powers of the Attorney General) of the *Revision and Publication of Laws Act 2008* is used to insert the commencement date.

Sections 11& 12 Repealed by section 25 of the *Young Offenders Act 2007*

This law has been consolidated and revised by the Attorney General under the authority of the *Revision and Publication of Laws Act 2008* and is an official version of this Act as at 31 December 2008. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.

Aumua Ming Leung Wai
Attorney General of Samoa

Revised and consolidated by the Legislative Drafting Division under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel).

REVISION NOTES 2009

There were no amendments made to this law since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

This law has been consolidated and revised by the Attorney General under the authority of the Revision and Publication of Laws Act 2008 and is an official version of this Act as at 31 December 2009. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.

Aumua Ming Leung Wai
Attorney General of Samoa

Revised and consolidated by the Legislative Drafting Division under the supervision of Papalii Malietau Malietoa (Parliamentary Counsel).

**The Crimes Ordinance 1961 is administered in the Ministry of
Justice and Courts Administration.**