

SAMOA

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2013, No. 8**AN ACT to provide for greater protection of families and the handling of domestic violence and related matters.***[5th April 2013]*

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

**PART I
PRELIMINARY**

1. Short title and commencement-(1) This Act may be cited as the Family Safety Act 2013.

(2) This Act commences in whole or in part on a date or dates nominated by the Minister.

2. Interpretation - In this Act unless the contrary intention appears:

“authorised counselling agency” means any organisation, association, incorporated body, person or group of persons or agency with qualified counsellors providing counselling to victims and perpetrators of domestic violence approved by the Minister of Justice and Courts Administration;

“arms” means a gun, pistol, rifle or any firearm, whether lawful or unlawful as are regulated under the Arms Ordinance 1960;

“child” means any person under the age of 18 years;

“Child Welfare Officer” means any person appointed as a child welfare officer under section 15 of the Infants Ordinance 1961;

“Commissioner” means the Commissioner of the Samoa Police Service;

“complainant” means any person without distinction of any kind such as race, sex, language, religion, political or other opinion, national or social origin, property, birth,

disability or other status who is or has been in a domestic relationship with a respondent and who is or has been subjected or allegedly subjected to an act of domestic violence, and includes any child in the care of the complainant;

“Court” means the District Court of Samoa;

“dependants” includes children and other members of the complainant’s family dependant on the complainant in any way;

“domestic relationship” means a relationship between a complainant and a respondent in any of the following ways:

- (a) they are or were married to each other, whether in accordance to law, custom or religion;
- (b) they live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other;
- (c) they are the parents of a child or are persons who have or had parental responsibility for that child;
- (d) they are family members related by blood or marriage;
- (e) they are family members related by legal or customary adoption;
- (f) they are or were in an engagement, courtship or customary relationship, including an actual or perceived intimate or sexual relationship of any duration; or
- (g) they share or recently shared the same residence.

“domestic violence” means,:

- (a) physical abuse;
- (b) sexual abuse;
- (c) emotional, verbal and psychological abuse;
- (d) intimidation;
- (e) harassment;
- (f) stalking;
- (g) any other controlling or abusive behaviour towards a complainant where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

- “earliest opportunity” means, at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible, but not later than 12 hours after the reporting of the incident to any Police Officer;
- “emergency monetary relief” means compensation for monetary losses suffered by a complainant at the time of the issue of a protection order as a result of the domestic violence, including:
- (a) loss of earnings;
 - (b) medical and dental expenses;
 - (c) relocation and accommodation expenses;
 - (d) household necessities; or
 - (e) transportation costs.
- “emotional, verbal and psychological abuse” means a pattern of degrading or humiliating conduct towards a complainant, including:
- (a) repeated insults, ridicule or name calling;
 - (b) repeated threats to cause emotional pain; or
 - (c) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant’s privacy, liberty, integrity or security.
- “harassment” means engaging in a pattern of conduct that induces the fear of harm to a complainant including:
- (a) repeatedly watching or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be;
 - (b) repeatedly making calls or texts by telephone, mobile phone, internet (skype) or by any other technological means, or inducing another person to make calls or texts by telephone or mobile phone to the complainant, whether or not conversation ensues;
 - (c) repeatedly sending, delivering or causing the delivery of radio messages, letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant.

- “intimidation” means uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear;
- “interim protection order” means an Order of the Court issued under section 5;
- “media” means any person or body of persons responsible for the operation of a newspaper, magazine, public website or broadcasting station, and includes any radio or television station;
- “Minister” means the Minister of Justice and Courts Administration;
- “Ministry” means the Ministry of Justice and Courts Administration;
- “physical abuse” means any act or threatened act of physical violence, injury, torture, or inhumane punishment towards a complainant;
- “Police Officer” means any sworn member of the Samoa Police Service;
- “protection order” means an order issued under sections 6 or 7;
- “qualified counsellor” means any person:
- (a) providing counselling services and has undertaken specific and recognized training in counselling approved by the Minister; or
 - (b) who has obtained a recognized qualification in providing counselling services from any institution or training service provider approved by the Minister.
- “Registrar” means a Registrar and/or Deputy Registrar of the District Court or the Supreme Court;
- “respondent” means any person who is or has been in a domestic relationship with a complainant and who has committed or allegedly committed an act of domestic violence against the complainant;
- “relevant Police station” means the Domestic Violence Unit of the Samoa Police Service or such station, unit or division of the Samoa Police Service as may be nominated by the Minister of Police in writing from time to time;

“sexual abuse” means any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity and privacy of the complainant without his or her free will or consent;

“social worker” means any person holding a minimum qualification of a bachelor’s degree in Social Work or its equivalent and has undertaken relevant social work for a term of not less than two (2) years;

“stalking” means repeatedly following, pursuing, or accosting the complainant;

“Village Representative” means any Sui o le Nu’u, Sui Tamaitai o le Nu’u, or a Minister of Religion living within the relevant village.

3. Act to bind the Government - This Act binds the Government.

PART II PROTECTION ORDERS

4. Application for protection order-(1) Any complainant or any person acting on behalf of a complainant under subsection (3) may apply to the Court for a protection order under the provisions of this Act.

(2) Where a complainant is not represented by a legal counsel, the Registrar shall promptly inform, whether orally or in writing, or both, the complainant and any person acting on behalf of a complainant under subsection (3), of the following matters:

- (a) the procedures required to be followed by the complainant in order to obtain remedies under this Act;
- (b) the remedies available to the complainant under this Act; and
- (c) the complainant’s right to lodge a criminal complaint against the respondent, where a criminal offence has been allegedly committed by the respondent.

(3) Subject to subsection (4), and despite the provisions of any other law, an application made under this section may be brought on behalf of the complainant by any other person acting on behalf of the complainant and may include a legal counsel, Village Representative, Child Welfare Officer, counsellor, health service provider, social worker or teacher or any other person approved by the Court.

(4) Where a person other than the complainant makes an application for an order under this section, such application shall be brought with the written consent of the complainant, except in circumstances where the complainant is:

- (a) a child;
- (b) suffering from a mental illness;
- (c) in a coma and has been unconscious for a period exceeding six (6) hours; or
- (d) is a person whom the Court reasonably considers unable to provide the required consent.

(5) Despite the provisions of any other law, any child, or any person on behalf of a child, may apply to the Court for a protection order without the assistance of a parent, legal guardian or any other person.

(6) Despite any other law, an application made under this section may be brought outside ordinary Court hours or on a day which is not an ordinary court day, where, in the opinion of the Court, the complainant is likely to be either physically or sexually harmed by the Respondent if the application is not dealt with as a matter of urgency.

(7) Any application made under this section shall be lodged with the Court through a Registrar who shall without undue delay and at an early available opportunity, submit the application to any Judge of the Court at any time or place.

5. Interim protection orders-(1) The Court shall as soon as is reasonably possible consider an application made under section 4.

(2) Where the Court is satisfied that there is sufficient, evidence that:

- (a) the respondent is committing, or has committed an act of domestic violence; and

- (b) the complainant is likely to be either physically or sexually assaulted as a result of such domestic violence if a protection order is not issued immediately,

the Court shall issue an interim protection order against the respondent.

(3) An interim protection order, upon being issued by the Court, shall:

- (a) be served on the respondent;
- (b) call upon the respondent to show cause on the return date specified in the order why a protection order should not be issued;
- (c) attach a copy of the application referred to in section 4 and the record of any evidence considered by the Judge in issuing an interim order under this section.

(4) Where the Court does not issue an interim protection order under this section, the Court shall direct the Registrar or the complainant's legal counsel, to cause certified copies of the application concerned and any supporting affidavits to be served on the respondent with a notice calling on the respondent to show cause on the return date specified in the notice as to why a protection order should not be issued.

(5) The return dates referred to in this section must not be less than 10 days after service has been effected upon the respondent.

(6) An interim protection order shall have no force and effect until it has been served on the respondent.

(7) Upon service or upon receipt of a return of service of an interim protection order, the Registrar or the Complainant's legal counsel shall forthwith cause a certified copy of the interim protection order to be served on the complainant.

6. Protection orders where respondent does not appear on due date - Where a respondent does not appear on a return date as required under section 5(3)(b) and upon the application by a complainant or a person acting on behalf of a complainant, the Court shall issue a protection Order where the Court is satisfied that:

- (a) proper service has been effected on the respondent; and
- (b) the application contains, sufficient evidence that the respondent has committed or is committing an act of domestic violence.

7. Protection orders where respondent appears on due date-

(1) Where the respondent appears on the return date required under section 5(3)(b), in order to oppose the issuing of a protection order, the Court shall:

- (a) proceed to hear the matter and consider any evidence previously received in relation to the application made under section 4; and
- (b) consider further evidence as it may direct to any party of the proceedings.

(2) The Court shall after hearing all the evidence regarding an application under this Act issue a protection order, if it finds, on a balance of probabilities, that the respondent has committed or is committing an act of domestic violence.

(3) Upon the issuing of a protection order under this section, the Registrar or the Complainant's legal counsel shall cause:

- (a) the original of such order to be served on the respondent; and
- (b) provide a certified copy of the protection order to the relevant Police station.

(4) A protection order issued in terms of this section remains in force until it is set aside, and the execution of such order shall not be automatically suspended upon the noting of an appeal.

(5) In issuing an order under this section, the Court may issue any direction to ensure that the complainant's physical address is not disclosed in any manner which may endanger the safety, health or wellbeing of the complainant.

8. Court procedures for protection of complainant-(1) The Court may, if the Court is of the opinion that it is just or desirable to do so during the hearing of an application under sections 6 or 7, order that in the examination of witnesses, a

respondent who is not represented by a legal representative shall not be entitled to directly cross-examine a witness being a person who is in a domestic relationship with the respondent.

(2) Where the Court makes an order under subsection (1), the Court shall direct the respondent to provide the Court with the questions which the respondent would like to ask the witness, and the Court shall ask the questions, instead of the respondent, to the witness.

(3) Where the Court considers it appropriate the Court may:

- (a) permit a screen to be placed between the complainant and the respondent during cross examination; or
- (b) order that video conferencing, video recordings or audio recordings be provided where the complainant or a witness so requests it provided that the witness giving evidence through such mediums shall still be required to be personally examined by the respondent and the provisions of subsection (2) may apply where the witness so chooses.

9. Protection Orders available to the Court - The Court may, in issuing a protection order under sections 5, 6 or 7 prohibit the respondent from:

- (a) committing any act of domestic violence or enlisting the help of another person to commit such act;
- (b) entering a residence, or part of such residence, shared by the complainant and the respondent;
- (c) entering the complainant's place of employment, or part of such place;
- (d) preventing the complainant who ordinarily lives or lived in a shared residence from entering or remaining in the shared residence; or
- (e) committing any other act, which the Court considers appropriate in the circumstances, in order to protect the complainant.

10. Court's power to impose conditions on protection order-(1) The Court may impose any additional conditions which it deems reasonably necessary to protect and provide for

the safety, health or wellbeing of the complainant, including an order:

- (a) to seize any arm or dangerous weapon in the possession or under the control of the respondent; and
- (b) that a Police Officer shall accompany the complainant to a specified place to assist with arrangements regarding the collection of personal property and, where applicable, for the service of any protection orders made under this Act upon the relevant respondent;
- (c) that the respondent continues to make payments towards rent of shared accommodation or vehicle, or to make mortgage payments having regard to the financial needs and resources of the complainant and the respondent;
- (d) for the custody and maintenance of dependent children of both the complainant and the respondent pursuant to the provisions of the Infants Ordinance 1961 and the Maintenance and Affiliation Act 1967 respectively; or
- (e) that the respondent pay emergency monetary relief having regard to the financial needs and resources of the complainant and the respondent.

(2) Where the Court orders a condition under subsections (1)(d) and (e), such order shall have the effect of a civil judgment of a District court.

(3) Subject to subsection (4), where the court is satisfied that it is in the best interests of any child, it may:

- (a) refuse the respondent contact with such child; or
- (b) order contact with such child on such conditions as it may consider appropriate.

(4) Despite subsection (3), the Court must award interim custody of a child to the complainant where it is shown on the evidence before it that physical violence was applied, used or inflicted by the respondent upon the complainant or to any child involved in the domestic relationship between the complainant and the respondent.

(5) The court may not refuse:
(a) to issue a protection order; or
(b) to impose any condition or make any order which it is competent to impose under this section,
merely on the grounds that other legal remedies are available to the complainant.

11. Breach of protection order-(1) Any respondent who breaches a protection order issued under the provisions of this Act shall:

- (a) where the breach involves the further physical or sexual abuse of the complainant, be imprisoned for a term not exceeding six (6) months;
- (b) where the breach involves any other act of violence not mentioned in paragraph (a), such person shall be subject to such punishment as the Court deems appropriate including sanctions available under the Community Justice Act 2008.

(2) Where a breach of a protection Order is reported to any Police Officer, such Police Officer shall have the matter referred to the relevant Police Station.

(3) Despite any other law, where the relevant Police Station is referred a reported breach of a protection Order under subsection (2), any Police Officer of that Police Station attending to the matter shall:

- (a) cause the respondent to be held in custody;
- (b) cause the respondent to be brought before the Court at the earliest possible opportunity, and not longer than 24 hours from the time that the respondent is brought under Police custody.

(4) Where a respondent is brought before the Court under this section, the Court may immediately, and without further delay, hear such evidence as the Court considers necessary in the circumstances to make a determination as to whether the respondent has breached a protection order, and upon finding:

- (a) that there was a breach, shall proceed to sentence the respondent in accordance with subsection (1); or
- (b) that there was no breach, shall order the release of the respondent from custody.

(5) Despite any other law, in making a determination under subsection (4), the Court shall only be required to decide questions of fact on the balance of probabilities.

(6) Nothing in this section shall be construed to:

- (a) prohibit the further laying of any relevant criminal charges against the respondent for the action or omission giving rise to the breach of a protection order; or
- (b) override a sanction imposed against the respondent by the Court which is higher than that provided for under subsection (1) following a trial arising from the action or omission giving rise to the breach of a protection order.

12. Variation or setting aside of protection order-(1) A complainant or a respondent may, upon written notice to the other party, apply to the Court for the variation or setting aside of a protection order issued under the provisions of this Act.

(2) Where the Court is satisfied that good cause has been shown for the variation or setting aside of the protection order, it may issue an order to that effect provided that the Court shall not grant such an application to the complainant unless it is satisfied that the application is made voluntarily.

13. Seizure of arms and dangerous weapons - The Court shall, at any time during any proceedings brought under this Act, order a Police Officer to seize any arm or dangerous weapon in the possession or under the control of a respondent, if the Court is satisfied on the evidence placed before it that:

- (a) the respondent has threatened or expressed the intention to kill or injure himself or herself, or any person in a domestic relationship, whether or not by means of such arm or dangerous weapon; or
- (b) possession of such arm or dangerous weapon is not in the best interests of the respondent or any other person in a domestic relationship, as a result of the respondent's -
 - (i) state of mind or mental condition;

- (ii) inclination to violence; or
- (iii) use of or dependence on intoxicating liquor or drugs.

14. Attendance of proceedings and prohibition of publication of certain information-(1) No person may be present during any proceedings in terms of this Act except:

- (a) officers of the Court;
- (b) the parties to the proceedings;
- (c) any person bringing an application on behalf of the complainant;
- (d) any legal representative representing any party to the proceedings;
- (e) witnesses;
- (f) any other person whom the court permits to be present,

provided that the court may, if it is satisfied that it is in the interests of justice, exclude any person from attending any part of the proceedings.

(2) Nothing in this section limits any other power of the Court to hear proceedings in chambers or to exclude any person from attending such proceedings.

(3) No person or the media, shall publish in any manner any information which might, directly or indirectly, reveal the identity of any party to the proceedings unless allowed by the Court.

(4) The Court may direct that any other information relating to proceedings held in terms of this Act shall not be published by any person or the media if it is satisfied that it is in the best interest of justice.

PART III DUTIES OF POLICE OFFICERS

15. Duty to assist and inform complainant of rights-(1) Subject to subsection (3), and in addition to other duties of a Police Officer, every Police Officer who receives a report of domestic violence by any person shall at the earliest

opportunity render such assistance to the complainant without any discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status and guarantee to all persons equal and effective protection as may be required in the circumstances.

(2) In providing assistance under subsection (1), a Police Officer shall:

- (a) where necessary, make arrangements for the complainant and the complainant's dependants to find a suitable shelter, to obtain medical treatment or counselling service where needed; and
- (b) provide information, whether written or oral, or both explaining to the complainant in a language that he or she understands, the remedies at his or her disposal in terms of this Act and the right to lodge a criminal complaint where applicable; or
- (c) where the complainant is a person under 18 years of age, to refer such person to a Child Welfare Officer.

16. Duty to Prosecute-(1) Subject to subsection (2), where a report of domestic violence involves any form of physical or sexual abuse, and provided that there is sufficient evidence for doing so, every Police Officer handling the matter shall:

- (a) ensure and undertake to do all things necessary in order that a charge or information is laid with the Court in order to commence prosecution of the matter in Court; and
- (b) not endeavour to withdraw a charge or information laid under paragraph (a).

(2) Where a report of domestic violence involves any other form not being physical or sexual, the Police Officer may where the Police Officer considers it appropriate to do so and in accordance with applicable guidelines:

- (a) have the matter referred to an authorised counselling agency and from there monitor progress of such an arrangement; or

(b) lay a charge or information to commence prosecution, particularly in cases of repeated offending of a similar nature.

(3) Failure by a Police Officer to comply with an obligation imposed in terms of this Act constitutes misconduct for the purposes of the Police Service Act 2009.

(4) Unless the Commissioner directs otherwise in any specific case for good cause, disciplinary proceedings must be issued against any Police Officer who allegedly failed to comply with an obligation referred to in subsection (1).

PART IV MISCELLANEOUS

17. Sentencing-(1) Where an offence took place within the context of a domestic relationship, the Court shall consider that fact as an aggravating factor against the offender when considering sentence.

(2) In sentencing offenders for an offence involving domestic violence, a court must also have regard to:

- (a) any special considerations relating to the physical, psychological or other characteristics of a complainant or victim of the offence, including -
 - (i) the age of the complainant or victim;
 - (ii) whether the complainant or victim was pregnant; and
 - (iii) whether the complainant or victim suffered any disability;
- (b) whether a child was present when the offence was committed, or was otherwise affected by it;
- (c) the effect of the violence on the emotional, psychological and physical well being of a victim;
- (d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a complainant or victim;
- (e) the conduct of the offender towards the complainant or victim since the offence, and any matter which indicates whether the offender -

- (i) accepts responsibility for the offence and its consequences;
 - (ii) has taken steps to make amends to a complainant or victim, including action to minimise or address the negative impacts of the offence on a complainant or victim; or
 - (iii) may pose any further threat to a complainant or victim;
- (f) evidence revealing the offender's -
- (i) attitude to the offence;
 - (ii) intention to address the offending behaviour; and
 - (iii) likelihood of continuing to pose a threat to a complainant or victim; and
- (g) whether the offender has sought and received counselling or other assistance to address the offending behaviour, or is willing to undertake such counselling or seek such assistance.

18. Offences and Penalties - Notwithstanding the provisions of any other law, any person who:

- (a) contravenes any prohibition, condition, obligation or order imposed under this Act;
- (b) fails to comply with any direction under section 7(5);
or
- (c) in an affidavit required to be provided under any provision of this Act, wilfully makes a false statement in a material respect,

is guilty of an offence and shall, upon conviction, be liable to a fine not exceeding 20 penalty units or imprisonment not exceeding two (2) years, or both.

19. Evidence and Procedure-(1) Despite any other law, the Court may receive any evidence which the Court considers necessary for it to make a decision, determination or direction for the granting or refusal of a protection order under the provisions of this Act whether the evidence is admissible or not by law.

(2) The Court, in making a decision, determination or direction for the granting or refusal of a protection order, in cases where no procedure is specifically provided for, shall apply such procedure which the Court deems best calculated to promote the ends of justice.

20. Police Officers to assist Registrar-(1) All Police Officers enlisted in the relevant Police Station shall cooperate with the Registrar and shall assist at no cost with any task required by the Registrar in order to serve or have served any application or order made by the Court under this Act.

(2) This section applies notwithstanding any provision of any law to the contrary.

21. Application for Restraining Orders under the Divorce and Matrimonial Causes Ordinance 1961 - To avoid duplication, if a restraining order is issued under Part IIIA of the Divorce and Matrimonial Causes Ordinance 1961, that restraining order is taken as a protection order issued under this Act.

22. Forms - The Minister may approve, amend, or replace the form for any application, certificate, warrant or any other document required under this Act.

23. Fees - The Minister may determine and publish by Notice in the Savali, the following in respect of any matter under this Act:

- (a) the types of fees payable;
- (b) the rate at which such fees are to be calculated; or
- (c) the amounts of such fees.

24. Protection from liability - No action shall lie against the Government, the Minister, the Ministry, the Chief Executive Officer of the Ministry, the Registrar or any member, employee or agent of the Ministry or the Police Service or any person acting pursuant to any authority conferred by the Minister, Ministry, Chief Executive Officer of the Ministry, or the

Registrar, as the case may be, in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of their respective functions conferred by or under this Act .

25. Regulations-(1) The Head of State acting on the advice of Cabinet may make regulations as may be necessary for the effective administration of this Act.

(2) Without limiting the generality of subsection (1), regulations made under this Act may make provision for:

- (a) any forms or fees required under this Act;
- (b) any matter required to be prescribed in terms of this Act.

(3) Any regulations made under this Act may provide that any person in contravention of such regulations shall be guilty of an offence and upon conviction be liable to a fine not exceeding 10 penalty units or to imprisonment for a period not exceeding three (3) months, or both.

26. Consequential Amendments-(1) Section 77(1) of the Crimes Ordinance 1961 is amended by substituting “16” with “18”.

(2) Section 26A of the Divorce and Matrimonial Causes Ordinance 1961 is amended by substituting the definition of “domestic violence” with the following:

“has the same meaning ascribed to it under the Family Safety Act 2013.”.

(3) Section 12 of the Infants Ordinance 1961 is amended by substituting “14” with “18” where it appears.

**The Family Safety Act 2013 is administered
by the Ministry of Justice and Courts Administration.**

**Printed by the Clerk of the Legislative Assembly,
by authority of the Legislative Assembly.**