

RETURNING OFFENDERS BILL 2019

SAMOA

Explanatory Memorandum

Object and reasons:

- 1.1 The Bill seeks to provide for the management and exchange of information for Returning offenders and Returning prisoners, and to provide for requirements to monitor returning offenders from overseas, and for related purposes.
- 1.2 The object of the Bill: is to monitor the arrival of Returning Offenders and Returning prisoners.

Clauses:

PART 1 PRELIMINARY

- Clause 1: - provides for the short title and commencement of the Bill.
- Clause 2: - provides for the interpretation and definition of certain terms used throughout the Bill.
- Clause 3: - provides that the Samoa Police Service is to administer the Act and lists out other government Ministries that are to work in collaboration with the Samoa Police Service in the administration of the Act.

- Clause 4:** - provides that the Act applies to Returning Offenders and Returning Prisoners.

PART 2
RETURNING OFFENDERS
MANAGEMENT AND INFORMATION

Division 1 - Returning Offenders

- Clause 5:** - defines the term Returning Offender. A Returning Offender is:
- (a) a person who was convicted overseas for an offence punishable by imprisonment in Samoa; and
 - (b) is liable to be deported or removed to Samoa while on parole; or
 - (c) is a person that is subject to parole conditions overseas but is already in Samoa for a period not exceeding 24 months; or
 - (d) or is a returning prisoner.
- Clause 6:** - sets out the requirement for a Police officer to request information of a returning offender from a competent authority of the foreign country of a returning offender and to request information from a returning offender upon entering Samoa.
- Clause 7:** - empowers a police officer to detain a returning offender for the purpose of obtaining information from him or her.
- Clause 8:** - provides that the police officer must act in a manner reasonable in the circumstance and use reasonable force if necessary in obtaining information.

- Clause 9:** - provides for the recording of the information and safe keeping of the information by the Samoa Police Service.

Division 2 - Returning prisoner

- Clause 10:** - provides that a Returning Prisoner is to be determined by the Commissioner in accordance with the criteria set out in section 11.

- Clause 11:** - sets out the criteria that determines that a person is a returning prisoner.

- Clause 12:** - sets out the timeframe in which the Commissioner has to determine if a person is a returning prisoner.

- Clause 13:** - provides that a determination notice is to be served on the returning prisoner upon his return to Samoa as soon as practicable and no later than six (6) months after arrival in Samoa.

- Clause 14:** - provides for the content of the determination notice.

- Clause 15:** - enables the Commissioner to apply to the courts to issue a warrant to enter any premises or place where a returning prisoner is residing for the purpose of serve a determination notice or to avoid being served with a determination.

- Clause 16:** - enables a returning prisoner to apply to the Commissioner to have the determination notice reviewed.

- Clause 17:** - provides that a returning offender is subject to standard release conditions once he or she is issued with a determination notice. This provision sets out the standard release conditions and provides for the period in which a returning prisoner is subject to the standard release conditions.

- Clause 18:** - provides that a returning prisoner must comply with standard release conditions.

- Clause 19:** - provides that the returning offender must comply with the special conditions imposed by the court.
- Clause 20:** - enables the Commissioner to apply for necessary interim special conditions and sets out grounds whereby such an application can be made.
- Clause 21:** - empowers the Court to vary or discharge release conditions.
- Clause 22:** - provides for circumstances whereby release conditions expires.
- Clause 23:** - provides that it is an offence if a returning prisoner breaches without reasonable excuse a release condition.

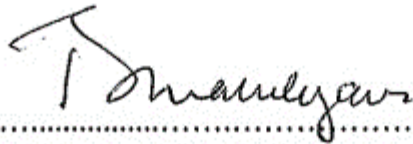
*Division 3 - Returning offender who returns to Samoa
more than six (6) months after release from custody*

- Clause 24:** - provides for the application of this division. This division only applies to a returning offender who meets the criteria provided under section 11 if he or she is returning or has returned to Samoa more than six (6) months after his or her release from custody and immediately before his or her return to Samoa has been subject to monitoring and supervision or other conditions.
- Clause 25:** - empowers the Court to impose any conditions on a returning offender in which this division applies if the Court is satisfied that such conditions are necessary for the rehabilitation and reintegration of the returning offender and to reduce risk of reoffending.

Clause 26: - provides that sections 18 to 23 also apply to returning offenders in which this division applies.

**PART 3
MISCELLANEOUS**

Clause 27: - empowers the Head of State make Regulations for the implementation of this Act.



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(Hon TUILAEPA Auelua Fatialofa Lupesoliai Lolofietele
Neioti Aiono Galumalemana Dr. Sailele Malielegaoi)
PRIME MINISTER AND MINISTER RESPONSIBLE
FOR SAMOA POLICE SERVICE

RETURNING OFFENDERS BILL 2019

SAMOA

Arrangement of Provisions

PART 1

PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Administration
4. Application

PART 2

RETURNING OFFENDERS MANAGEMENT AND INFORMATION

Division 1 - Returning offenders

5. Returning Offender
6. Request for information from a returning offender
7. Police officer may detain a returning offender for the purpose of taking information
8. Police officer to take information

9. Information to be recorded and kept on police database

Division 2 - Returning prisoner

10. Returning prisoner
11. Criterias for determining a returning prisoner
12. Time for Commissioner to determine that a person is a returning prisoner
13. Determination notice
14. Content of a determination notice
15. Serving a determination notice
16. Review of a Commissioner's determination
17. Returning prisoner subject to standard release conditions
18. Returning prisoner to comply with standard release conditions
19. Returning prisoner must comply with special conditions imposed by Court
20. Interim special conditions
21. Court may vary or discharge release conditions
22. When release conditions end
23. Offence to breach release conditions

Division 3 - Returning offender who returns to Samoa more than six (6) months after release from custody

24. Application
25. Court may impose conditions on a returning offender
26. Sections 18 to 23 apply to returning offenders to whom this Division applies

**PART 3
MISCELLANEOUS**

27. Regulations

2019, No.

A BILL INTITULED

AN ACT to provide for the management and exchange of information for Returning offenders, and to provide for requirements to monitor returning offenders and for related purposes.

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

**PART 1
PRELIMINARY**

1. Short title and commencement:

- (1) This Act may be cited as the Returning Offenders Act 2019.
- (2) This Act commences on a date nominated by the Minister.

2. Interpretation:

In this Act, unless the context otherwise requires:

“Commissioner of Police” or **“Commissioner”** means the person appointed as the Commissioner of the Samoa Police Service under section 12 of the Police Service Act 2009;

“Court” means the Supreme Court of Samoa or District Court;

“detain” in relation to a person, includes moving a person to a police station or any other place being used for purposes of the Service or for the purpose of this Act;

“determination notice” means a notice served under section 13;

“police officer” means a sworn member of any rank of the Service;

“Returning offender” has the meaning given to it in section 5;

“Returning prisoner” has the meaning given to it in section 10;

“Samoa Police Service” or **“Service”** has the meaning given in the Police Service Act 2009;

“Standard release conditions” means a condition that is referred to in section 17;

“Special condition” means a condition imposed by a court under section 19(1) or section 20(1).

3. **Administration:**

- (1) The Service is responsible for the administration of this Act.
- (2) The following government Ministries are to work in collaboration with the Service:
 - (a) Ministry of the Prime Minister and Cabinet;
 - (b) Attorney General’s Office;
 - (c) Ministry of Justice and Courts Administration;
 - (d) Ministry for Revenue.
- (3) The roles and responsibilities of the government Ministries listed under subsection (2) are set out in regulations.

4. **Application:**

This Act applies to the following:

- (a) returning offenders as defined in section 5;
- (b) returning prisoners defined in section 10.

PART 2
RETURNING OFFENDERS MANAGEMENT
AND INFORMATION

Division 1 - Returning offenders

5. Returning Offender:

A returning offender:

- (a) is a person -
 - (i) convicted in an overseas jurisdiction for an offence that is punishable by an imprisonment term in Samoa; and
 - (ii) is liable to be deported or removed while on parole conditions; and
 - (iii) who has returned to Samoa; or
- (b) is a person subject to parole conditions overseas and has been in Samoa for a period not exceeding 24 months from the date of entry into Samoa; or
- (c) is a returning prisoner.

6. Request for information from a returning offender:

- (1) Prior to arrival in Samoa, a police officer may request information of a returning offender from a competent authority of the foreign country of a returning offender.
- (2) A police officer must request the following information from a returning offender when a returning offender enters Samoa:
 - (a) proof that they are a Samoan citizen; and
 - (b) whether they are still in prison, on parole or have completed serving their sentence overseas; and
 - (c) the crime for which the returning offender was convicted; and

- (d) provide information on a medical condition or contagious disease a returning offender may have; and
 - (e) proof according to prescribed requirements that the returning offender has family in Samoa, and that his or her family accepts responsibility for the returning offender; and
 - (f) biographical details.
- (3) A police officer may take fingerprint(s), palm-print(s) or footprint(s) or a photograph of a returning offender.
 - (4) A police officer may detain the returning offender for the purpose of obtaining the information, if a returning offender refuses to divulge such information.
 - (5) The returning offender who refuses to provide information in subsection (2) commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units.

7. Police officer may detain a returning offender for the purpose of taking information:

- (1) A police officer may detain the offender at any time within six (6) months for a period not more than 48 hours for the purpose of obtaining information.
- (2) A police officer may use reasonable force if necessary, to detain an offender under subsection (1).

8. Police officer to take information:

A police officer obtaining information of a returning offender detained under section 7 must:

- (a) act in a manner reasonable in the circumstance; and
- (b) use reasonable force if necessary in obtaining such information.

9. Information to be recorded and kept on police database:

- (1) The Samoa Police Service must record and keep information of a returning offender obtained under sections 6 to 8 in their system.
- (2) The information obtained under sections 6 to 8:
 - (a) is to be kept safe and secure;
 - (b) must not be divulged to any other person unless authorised under this Act or other enactment; and
 - (c) can only be shared upon terms and conditions set by the Samoa Police Service.
- (3) Any information obtained under sections 6 to 8 that are in error must be destroyed as soon as practicable.
- (4) "Error" in subsection (3) includes mistaken identity or mistake as to whether a person meets the criteria for a returning offender.

Division 2 - Returning prisoner

10. Returning prisoner:

A returning prisoner is a person who has been determined by the Commissioner to be a returning prisoner in accordance with the criteria set out in section 11.

11. Criterias for determining a returning prisoner:

- (1) The Commissioner must determine that a person is a returning prisoner if the Commissioner is satisfied that the person:
 - (a) has been convicted in an overseas jurisdiction of an offence that is punishable by an imprisonment term in Samoa;

- (b) has been released or deported directly from an overseas prison;
 - (c) has been sentenced in respect of that conviction to -
 - (i) an imprisonment term of more than one (1) year; or
 - (ii) two (2) or more terms of imprisonment that are cumulative, the total term of which is more than one (1) year;
 - (d) is returning or has returned to Samoa within six (6) months after his or her release from custody during or at the end of the sentence.
- (2) In subsection (1), release from custody means release from custody in a prison, or where a person is detained in an immigration facility.
 - (3) A person who is released at the end of a prison sentence and has been in the community for more than six (6) months is not a returning prisoner even though that prisoner is later detained in an immigration facility or any other facility.

12. Time for Commissioner to determine that a person is a returning prisoner:

The Commissioner is to determine a person is a returning prisoner within a period of six (6) months commencing from the date the person entered Samoa.

13. Determination notice:

- (1) The Commissioner must serve a written notice on a person who has been determined to be a returning prisoner.
- (2) The notice must be served to a returning prisoner:
 - (a) upon his or her return to Samoa;
 - (b) as soon as practicable after a returning prisoner's return to Samoa;
 - (c) no later than six (6) months after a returning prisoner's return to Samoa.

14. Content of a determination notice:

A written determination notice must have the following:

- (a) name of the returning prisoner determined by the Commissioner;
- (b) release conditions the returning prisoner is subject to;
- (c) the period the returning prisoner is subject to release conditions;
- (d) standard release conditions and any special condition or interim special condition;
- (e) that a returning prisoner must report to a probation officer at a probation service centre within 72 hours of service of notice;
- (f) the location of the probation service centre;
- (g) information on contacting a probation officer;
- (h) requirement for returning prisoner to provide information;
- (i) explain a returning prisoner's right under section 16 to apply to the Commissioner for a review of the determination;
- (j) state the grounds on which the returning prisoner may apply for a Commissioner's review;
- (k) time limit for applying for a Commissioner's review;
- (l) state that a returning prisoner's release conditions are not suspended on account of a Commissioner's review;
- (m) other information that needs to be in the determination notice.

15. Serving a determination notice:

- (1) The Commissioner may apply to court for a warrant to enter the premises or place where a returning prisoner is residing for the purpose of serving a determination notice.

- (2) A court may issue the warrant for entry if satisfied that a person has refused or refuses to allow the Police officer to enter a place or premises to serve a determination notice or avoid being served with a determination notice.

16. Review of a Commissioner's determination:

- (1) A returning prisoner may apply to the Commissioner to review a determination notice issued based on the following grounds:
 - (a) returning prisoner does not meet one (1) or more of the criteria set out in the notice;
 - (b) there is a mistake in the information provided in the notice;
 - (c) notice was served more than six (6) months after a returning prisoner's return to Samoa;
 - (d) mistaken identity of returning prisoner.
- (2) Application for review must be made within 15 working days of the notice being served on the returning prisoner.
- (3) A review of notice by Commissioner must be a factual inquiry only and must be completed within 20 working days after receipt of the application.
- (4) The Commissioner must:
 - (a) give the applicant a reasonable opportunity to be heard before a decision is made;
 - (b) confirm, amend or revoke the determination notice; and
 - (c) notify the applicant of the decision in writing without delay.
- (5) Nothing in this section affects the rights of a returning prisoner to apply for judicial review of the Commissioner's decision made under this section.

17. Returning prisoner subject to standard release conditions:

- (1) A returning prisoner is subject to standard release conditions once he or she is issued with a determination notice.
- (2) The standard release conditions under subsection (1) include but is not limited to the following conditions:
 - (a) the returning prisoner must report in person to a probation or parole officer in the probation area within the vicinity in which the returning prisoner resides as soon as practicable, and not later than 72 hours, after release;
 - (b) the returning prisoner must report to a probation or parole officer as and when required to do so by a probation or parole officer, and must notify the probation or parole officer of his or her residential address and the nature and place of his or her employment when asked to do so;
 - (c) the returning prisoner must not move to a new residential address in another probation area without the prior written consent of the probation or parole officer;
 - (d) if consent is given under paragraph (c) the returning prisoner must report in person to a probation or parole officer in the new probation area in which the returning prisoner is to reside as soon as practicable, and not later than 72 hours, after the returning prisoner's arrival in the new area;
 - (e) if a returning prisoner intends to change his or her residential address within a probation area, the returning prisoner must give the probation or parole officer reasonable notice before moving from his or her residential address (unless notification is impossible in the circumstances) and must advise the probation or parole officer of the new address;

- (f) the returning prisoner must not reside at any address at which a probation or parole officer has directed the returning prisoner not to reside;
 - (g) the returning prisoner must not engage, or continue to engage, in any employment or occupation in which the probation or parole officer has directed the returning prisoner not to engage or continue to engage;
 - (h) the returning prisoner must not associate with any specified person, or with persons of any specified class, with whom the probation or parole officer has, in writing, directed the returning prisoner not to associate;
 - (i) the returning prisoner must take part in a rehabilitative and re-integrative needs assessment if and when directed to do so by a probation or parole officer.
- (3) The period in which a returning prisoner is subject to standard release conditions under subsection (2) is based on the term of his or her sentence as follows:
- (a) six (6) months if a returning prisoner was sentenced to imprisonment for a term of more than one (1) year but less than two (2) years;
 - (b) 12 months if a returning prisoner was sentenced to imprisonment for a term of more than two (2) years but less than five (5) years;
 - (c) 24 months if a returning prisoner was sentenced to imprisonment for a term of more than five (5) years but not a life sentence;
 - (d) five (5) years if a returning prisoner had indeterminate sentence of imprisonment as per the Sentencing Act 2016.

18. Returning prisoner to comply with standard release conditions:

A returning prisoner must comply with the following standard release conditions during the period he or she is subject to release conditions:

- (a) the returning prisoner must report to a probation or parole officer at the probation service centre stated in the determination notice as soon as practicable, and not later than 72 hours after service of the determination notice;
- (b) the returning prisoner must report to the probation or parole officer under whose supervision he or she is for the time being and when he or she is required to do so by the parole officer;
- (c) the returning prisoner must give to the probation or parole officer notice of his or her intention to move from his or her residence; and if the returning prisoner moves to any other address, he or she must, within 48 hours after arrival at that other address, notify the probation or parole officer of his or her arrival, at the new address;
- (d) the returning prisoner must not reside at an address that is not approved by the probation or parole officer;
- (e) the returning prisoner must not continue in any employment, or continue to engage in any occupation, that is not approved by the probation or parole officer;
- (f) the returning prisoner must not associate with any specified person, or with persons of any specified class, with whom the probation or parole officer has, in writing, warned him or her not to associate;
- (g) the returning prisoner must be of good behaviour and must not commit any offence against the law.

19. Returning prisoner must comply with special conditions imposed by Court:

- (1) On the application of the Commissioner, the court may impose special conditions on a returning prisoner that the returning prisoner must comply with.
- (2) Special conditions imposed must be within the period of the release conditions applied to the returning prisoner.
- (3) A court may impose special conditions taking into account the following:
 - (a) special conditions will reduce the risk of re-offending by the returning prisoner;
 - (b) facilitate or promote the rehabilitation and reintegration of the returning prisoner;
 - (c) provide for reasonable concerns of victims of the returning prisoner.

20. Interim special conditions:

- (1) The Commissioner may apply to the court to impose interim special conditions if the Commissioner is of the view that it is necessary to give effect to special conditions imposed under section 19.
- (2) The Court may consider the application and order interim conditions if satisfied.
- (3) The following are grounds for application:
 - (a) if the returning prisoner has a conviction for a serious offence; or
 - (b) if the returning prisoner has a conviction for a sexual offence.
- (4) Interim special conditions imposed under this section may expire after 30 working days, but the court may extend the expiry of the conditions by a reasonable period to allow an application under section 19(1) to be determined.

21. Court may vary or discharge release conditions:

- (1) The court may vary or discharge:
 - (a) a special condition, on the application of a returning prisoner or a probation officer;
 - (b) a standard release condition, on the application of a police or probation officer.
- (2) A court must discharge a standard release condition only if the period of six (6) months has passed from the service of determination.

22. When release conditions end:

Release conditions end upon:

- (a) the period in which the returning prisoner is subject to the release conditions, expires; or
- (b) the release conditions being discharged.

23. Offence to breach release conditions:

- (1) A returning prisoner who is subject to a release condition under this Act, and who without reasonable excuse, breaches that condition commits an offence.
- (2) A person who commits an offence under this section is liable upon conviction to an imprisonment term not exceeding 12 months or to a fine not exceeding 20 penalty units.

*Division 3 - Returning offender who returns to Samoa
more than six (6) months after release from custody*

24. Application:

- (1) This division applies to a returning offender who falls under the following category:
 - (a) criteria set out in section 11 for a returning prisoner except that he or she is returning or has returned to Samoa more than six (6) months after his or her release from custody in prison; and

- (b) was immediately before his or her return to Samoa from the relevant foreign jurisdiction, subject to -
 - (i) monitoring, supervision, or other conditions for the relevant sentence; or
 - (ii) conditions imposed under an order in the nature of an extended supervision order or public protection order.
- (2) In subsection 1(b), “immediately before his or her return to Samoa”, includes if the offender was in detention immediately before his or her return to Samoa, immediately before the offender was first so detained.

25. Court may impose conditions on a returning offender:

- (1) On the application of the Commissioner, the Court may impose any conditions on a returning offender to whom this Division applies and must, if it does so, specify when the conditions are to end.
- (2) The Court may impose conditions if it is satisfied that the conditions are necessary:
 - (a) to facilitate the rehabilitation and reintegration of the returning offender;
 - (b) to reduce risk of reoffending by the returning offender.
- (3) The conditions must not be imposed more than six (6) months after the returning offender’s return to Samoa.

26. Sections 18 to 23 apply to returning offenders to whom this Division applies:

- (1) Sections 17 to 22 apply to returning offenders to whom this Division applies.

- (2) Sections 18 to 23 apply to this Division with all necessary modifications as if:
- (a) the returning offender were a returning prisoner; and
 - (b) the reference in those provisions to a release condition or a special condition were a reference to a condition imposed under section 25(1).

PART 3
MISCELLANEOUS

27. Regulations:

The Head of State, acting on the advice of Cabinet, may make regulations that are necessary for the implementation of this Act and to regulate the collaborative process to be undertaken by Offices listed in section 3.
