

THE TWENTY-EIGHTH LEGISLATURE OF AMERICAN SAMOA

Second Regular Session

Begun and held at Fagatogo, Tutuila, American Samoa
on Monday, the fourteenth day of July
two thousand and three

AN ACT CLARIFYING DUE PROCESS OF CUSTODIAL INTERROGATION OF CHILDREN; CLARIFYING PENALTIES FOR THE CRIMINAL EXPLOITATION OF CHILDREN; CLARIFYING CRIMINAL PROCEDURE; CLARIFYING THE NONLIABILITY OF INFANTS; AND REPEALING THE CONSPIRACY STATUTE; AMENDING SECTIONS 45.0204, 45.0365, 46.3106, 46.3215, AND 46.2203 A.S.C.A.; AND REPEALING SECTION 46.3410 A.S.C.A.

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

Section 1. 45.0204 is amended to read:

"45.0204 Length of detention--Admissibility of evidence.

(a) Except as provided in subsection (b), a child may not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or legal custodian.

(b) If he is not released as provided in 45.0203, he must be taken directly to the court or to a detention or shelter facility without unnecessary delay.

(c) No statements or admissions of a child made as a result of custodial interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult are admissible in evidence against that child in any delinquency proceeding in which the child is a respondent unless a parent, guardian, or legal custodian of the child was present at the interrogation and the child and his parent, guardian, or legal custodian were advised of the child's right to remain silent, that any statements made may be used against him in a court of law, of the right to the presence of an attorney during the interrogation, and of the right to have counsel appointed if so requested at the

~~time of the interrogation. However, if a public defender or counsel representing the child is present at the interrogation, the statements or admissions may be admissible in evidence even though the child's parent, guardian, or legal custodian was not present. the court first determines, based upon the totality of the circumstances, that the statements or admissions were voluntary and preceded by adequate warnings of the child's constitutional rights.~~

~~(d) Notwithstanding the provisions of subsection (c), statements or admissions of a child are not inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian by marriage or by military service or if the child is a runaway from a state or territory other than American Samoa and is of sufficient age and understanding. Prior to commencement of any custodial interrogation of a child, law enforcement officials shall make reasonable efforts to obtain the presence of the child's parent or guardian, or, if a parent or guardian is not otherwise reasonably available, a responsible adult occupying a place in the child's immediate family, extended family, or village structure, or otherwise standing *in loco parentis* or otherwise in the role of care-giver to the child. Failure to obtain the presence of an individual enumerated herein shall not require suppression of the admission or statement if the court determines the statement or admission otherwise satisfies the requirements of subsection (c) above."~~

Sec 2. 45.0365 is amended to read:

"45.0365 Adult case--Penalty.

Any adult who:

(1) induces, aids, or encourages a child to violate any federal, state, or territorial law, or ordinance, or any court order; or

(2) who abuses, ill-treats, neglects, or abandons a child, upon conviction, is guilty of:

(a) in the case where the violation is of a territorial law classified as a felony, the same degree of felony as the law violated;

(b) in all other cases, a class A misdemeanor."

Sec 3. 46.2203 is amended to read:

"46.2203 Eligibility.

The court may place a person on probation for a specific period upon conviction of any offense or upon suspending imposition of sentence if, having regard to the nature and circumstances of the offense and to the history and character of the defendant, the court is of the opinion that:

(1) institutional confinement of the defendant is not necessary for the protection of the public; and

(2) the defendant is in need of guidance, training or other assistance which in his case can be effectively administered through probation supervision; or

(3) the defendant poses a significant danger to society such that continuing court supervision is appropriate."

Sec 4. 46.3106 is amended to read:

"46.3106 Time limitations.

(a) A prosecution for any class A felony may be commenced at any time.

(b) Except as otherwise provided in this section, prosecutions for other offenses must be commenced within the following periods of limitation:

(1) for any felony, 3 years;

(2) for any misdemeanor, 1 year;

(3) for any infraction, 6 months.

(c) If the period prescribed in subsection (b) has expired, a prosecution may nevertheless be commenced for:

(1) any offense a material element of which is either fraud or a breach of fiduciary obligation within 1 year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this provision extend the period of limitation by more than 3 years; and

(2) any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within 2 years thereafter but in no case shall this provision extend the period of limitation by more than 3 years.

(d) an offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity in it is terminated. Time starts to run on the day after the offense is committed.

(e) A prosecution is commenced and is pending either when ~~an indictment is found~~ a criminal complaint or an information is filed.

(f) The period of limitation does not run:

(1) during anytime when the accused is absent from the territory but in no case does this provision extend the period of limitation otherwise applicable by more than 3 years; or

(2) during any time when the accused is concealing himself from justice either within or outside this territory; or

(3) during any time when a prosecution against the accused for the offense is pending in this territory."

Sec 5. 46.3215 is amended to read:

"46.3215 Nonliability of infants.

(a) Children under 10 years of age are conclusively presumed to be incapable of committing any crime.

(b) Children between 10 and 14 years of age are conclusively presumed to be incapable of committing any crime, except for class-A felonies, in which case the presumption is rebuttable.

(c) The provisions of this section do not prevent proceedings against, or the disciplining of any person under 18 years of age as a delinquent child, a child in need of supervision, a neglected or dependent child, or under the certification provisions of 45.0340 through 45.0344.

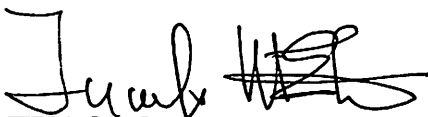
(d) "Age" means age at the time of the alleged offense.

(e) The defendant has the burden of injecting the issue of infancy."

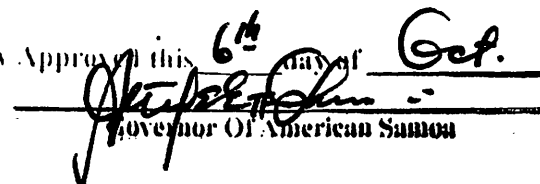
Sec 6. 46.3410 is hereby repealed:

"46.3410 Conspiracy—Effect of commission of offense. Repealed.

~~A person may not be charged, convicted, or sentenced on the basis of the same course of conduct of both the actual commission of an offense and a conspiracy to commit that offense."~~


TUAOLO M.E. FRUEAN
Senate President Pro-Tempore


SAVALI TALAVOU ALE
Vice-Speaker of the House

Hereby Approved this 6th day of Oct. 2003

Governor Of American Samoa

Fono Tele Lona Lua

Nofolia ma usuia i Fagatogo, Tutuila, Amerika Samoa
 Aso Gafua, aso sefulufā o Iulai
 lua afe ma le tolu

O SE TULAFONO E FA'AMANINO AI LE TAUALUMAGA O LE SU'ESU'EINA O LE TAOFIGA O TAMAITI; FA'AMANINOINA O FA'ASALAGA MO LE FA'AAOGAINA O TAMAITI I SOLITULAFONO MAMAFa; FA'AMANINO O LE TAUALUMAGA O SOLITULAFONO MAMAFa; FA'AMANINOINA O LE LĒ A'AFIA AI I FATUAIGA FA'ALETULAFONO O PEPE; MA LE SOLOIA O LE TULAFONO O FUAUFUAGA FA'ALILOILO; SUIA AI MAGA 45.0204, 45.0365, 46.3106, 46.3215, MA LE 46.2203 T.T.A.S.; MA SOLOIA LE MAGA 46.3410 T.T.A.S.

IA FA'ATULAFONOINA E LE FONO FAITULAFONO A AMERIKA SAMOA

Maga 1. 45.0204 ua suia e faitauina:

"45.0204 Umi e taofia ai--Fa'atagaga o fa'amaoniga.

(a) Vagana ai e pei ona aiaia i le soamaga (e), e le mafai ona taofia se tamaitiiti e ali'i/tama'ita'i ofisa fa'amalosi tulafono e sili atu nai lo le mana'oga alagatatau e maua ai lona igoa, tausaga, nu'u e alaala ai, ma isi fa'amatalaga alagatatau e feso'ota'i ai ma ōna matua, tagata o lo'o tausia po'o tagata tausia ua fa'atulafonoina.

(e) Afai e le fa'asa'olotoina o ia e pei ona aiaia i le 45.0203, e ao ona auina sa'o atu o ia i le fa'amasinoga po'o i se fale taofia po'o se fale e puipuia ai e aunoa ma le fa'atuai le talafeagai.

(i) E leai se fa'amatalaga po'o se ioega a se tamaitiiti e faia e mafua mai i le su'esu'ega e taofia ai se tamaitiiti e se ofisa fa'amalosi tulafono e fa'atatau i gaoioiga ua tuaina ai e fa'apea na faia e se tamaititi e fa'avae ai se soligatulafono pe afai sa faia e se tagata matua e fa'atagaina e fai ma fa'amaoniga i lena tamaititi i so'o se iloiloga o amioga le taupulea ua avea ai se tamaitiiti ma se tali fuaitau vagana ai se ~~matua, tagata taus, po'o tagata taus ua fa'atulafonoina o le tamaitiiti sa auai i le su'esu'ega ma sa fautuaina le tamaitiiti i ōna aiā fa'apea ma ōna matua, tagata taus po'o tagata taus ua fa'aletulafono e le faia se fa'amatalaga, ma o so'o se fa'amatalaga e faia e mafai ona fa'aaogaina e fa'asaga ia te ia i se fa'amasinoga tau tulafono, le aiai e fa'atasi ai se loia a'o faia le su'esu'ega, ma le aiā e iai se loia fautua e tofiaina~~

~~pe afai e talosagaina i le taimi o le su'esu'ega. Ae peita'i, afai e fa'atasi ai le loia puipui lautele po'o se loia fautua e suia le tamaitiiti i le su'esu'ega, o fa'amatalaga po'o ioega e mafai ona fa'atagaina e fai ma fa'amaoniga e tusa lava pe le fa'atasi ai matua o le tamaitiiti, tagata tausi po'o tagata tausi fa'aletulafono, e muai iloiloaina e le fa'amasinoga e fa'avae i le aotelega o tulaga moni e lagolagoaina ai e fa'apea o fa'amatalaga po'o le ioega sa faia ma le loto iai ma na tu'uina mai ina ua mae'a lelei ona lapata'iaina le tamaitiiti i ona aiā tau le fa'avae.~~

(o) ~~E le afaina ai tu'utu'uga o le soamaga (i), o fa'amatalaga po'o ioega a se tamaitiiti e le fa'atagaina e fai ma fa'amaoniga e maua i le le fa'atasi ai o se matua, tagata tausi, po'o se tagata tausi ua fa'atulafonoaina e i se fa'aipoipoga pe e ala i se tautua fa'alemiliteri pe afai fo'i o se tamaitiiti o se na sola 'ese mai se setete po'o se teritori e 'ese mai ai Amerika Samoa ma ua lava lona matua ma le malamalama. Ae le'i amataina so'o se su'esu'ega mo le taofiaina o se tamaitiiti, ia faia se taumafaiga talafeagai e ofisa fa'amalosi tulafono e maua le fa'atasi ai o le matua o le tamaitiiti po'o le tagata tausi, pe afai fo'i, e le avanoa e tusa ai le matua po'o le tagata tausi, o se tagata matua fa'atuatuaina o lo'o nofo i le fale o le aiga fa'apito o le tamaitiiti, aiga lautele, po'o fale o le afio'aga, po'o se tasi o tausia e pei o se totino o le aiga po'o se avegatau'ave o le tausiana o se tamaitiiti. O le lē mafai ona maua le auai mai o tagata ta'itasi e pei ona tolaulauina o le a lē mana'omia ai le fa'amalosiana o le ioeina po'o fa'amatalaga pe afai e iloiloaina e le fa'amasinoga se fa'amatalaga po'o le ioega i se isi tulaga e 'ese mai ai ua fa'amalieina le tu'utu'uga o le soamaga (i) i luga.~~

Maga 2. 45.0365 ua suia e faitauina:

"45.0365 Fa'amasinoga o tagata matutua--Fa'asalaga

So'o se tagata matua na te:

(1) fa'atosinaina, fesoasoani, pe u'una'ia se tamaitiiti e soli so'o se tulafono feterale, setete, po'o le teritori; po'o se poloa'iga, po'o se fa'atonuga a le fa'amasinoga; po'o;

(2) se na te sauaina, fai-leagaina, fa'atalale pe tu'ulafoa'iina se tamaitiiti, a fa'amaoniaina le solitulafono, ua nofosala i le:

(a) i le tulaga o le soliga o se tulafono fa'aleteteritori, ua fa'atulagaina o se solitulafono mamafa, e tutusa le tulaga ma le solitulafono mamafa e pei o le solia o le tulafono;

(e) i isi moliga uma, o se solitulafono māma i le vasega A

Maga 3. 46.2203 ua suia e faitauina:

"46.2203 Ta'uagava'aina

O le fa'amasinoga e mafai ona tu'uva'ava'aia se tagata mo se taimi fa'apitoa pe a fa'asalaina i so'o se solitulafono pe i luga o le fa'agafuaina o le fa'ae'eina atu o se fa'asalaga pe afai, e fa'atatau i le natura ma tulaga ua a'afia ai o le solitulafono fa'apea ma le tala'aga ma le amio a le-ua-molia, ua manatu le fa'amasinoga e fa'apea:

(1) falepuipuia fa'aletulafono o le-ua-molia e le alagatatau mo le puipuiga o tagata lautele; ma

(2) o le-ua-molia e iai se mana'oga mo le ta'ialaina, a'oa'oga po'o isi fesoasoani i lona tulaga e mafai ona puleaina lelei ai e ala i le fa'asa'olotoina va'ava'aia; po'o

(3) o le-ua-molia e fa'atupula'ia ai se a'afiaga mata'utia ogaoga i tagata uma ma o lea tulaga e talafeagai ai le fa'aauauina o le va'ava'aiga a le fa'amasinoga."

Maga 4. 46.3106 ua suia e faitauina:

"46.3106 Taimi fa'atapula'aina.

(a) O le itu molitagi i mo so'o se solitulafono mamafa i le vasega A e mafai ona amataina i so'o se taimi.

(e) Vanaga ai e 'ese mai ai e pei ona aiaia i lenei maga, iloiloga mo isi solitulafono e tataua ona amataina i totonu o piriota fa'atapula'aina e pei ona ta'ua i lalo:

(1) mo so'o se solitulafono mamafa, e 3 tausaga;

(2) mo so'o se solitulafono māma, e 1 tausaga;

(3) mo so'o se solitulafono mama, e 6 masina

(i) Afai ua muta le piriota ua aiaia i le soamaga (e), e ui i lea e mafai ona amataina se iloiloga mo:

(1) so'o se solitulafono o se vaega tauā a le o le taufa'asese po'o le soliga o se fatuaiga fa'atuatuaina i totonu o le 1 tausaga pe afai ua maua le solitulafono e se itu ua afaina pe mai se tagata o sē e iai se tiute fa'aletulafono e fai ma sui o le itu ua afaina ma o ia e le o se itu i le solitulafono, ae leai se tulaga o le a fa'aopoopoina ai tu'utu'uga o le piriota fa'atapula'aina e sili atu nai le 3 tausaga; ma

(2) O so'o se solitulafono e fa'avae i luga o se amioletonu i le tofi e se ofisa o le malo po'o i le galuega pe i totonu o le 2 tausaga mulimuli ane ma leai se tulaga i lenei aiaiga e fa'aopoopo ai le fa'aopoopoina o le piriota o le fa'atapula'aina e sili atu nai le 3 tausaga.

(o) ua fa'ataunu'uina se solitulafono pe afai e tula'i mai vaega uma, pe afai o se fa'amoemoega fa'aletulafono e fa'asa ai le fa'aauauina o le fa'atinoga o se amioaga le tonu ua fa'aalia manino mai, i le taimi o le fa'atinoga o se amio po'o le auai fa'atasi i le faia o se amioaga le tonu e le-ua-molia ua fa'amutaina. O le taimi ua amata ona fa'aauau mai le aso pe a uma ona faia le solitulafono.

(u) E amataina se iloiloga ma o lo'o fa'atalitali pe afai ~~o se tua'iga ua maua~~ ua failaina se tagi o le solitulafono mamafa po'o se fa'amatalaga.

(f) O le piriota fa'atapula'aina e le muta:

(1) i so'o se taimi pe afai e le o iai le-ua-molia i le teritori ma e leai se tulaga e fa'aopoopoina ai le piriota fa'atapula'a o lenei aiaiga e fa'atatauina e 'ese mai ai e sili atu nai le 3 tausaga; pe

(2) i so'o se taimi pe afai o le-ua-molia o lo'o lafi o ia i totonu po'o fafo fo'i o lenei teritori; po'o

(3) i so'o se taimi pe afai o se tagi e fa'asaga i le-ua-molia mo se solitulafono o lo'o tolo i lenei teritori."

Maga 5. 46.3215 ua suia e faitauina:

"46.3215 Leai se fatuaiga fa'alefono mo pepe.

(a) O tamaiti e i lalo o le 10 tausaga le matutua e fa'atulagaina e le agava'a e solia so'o se solitulafono.

(e) O tamaiti i le va o le 10 ma le 14 tausaga le matutua e fa'atulagaina e le agava'a e solia so'o se solitulafono, vagana ai mo solitulafono mamafa i le vasega A, o lea tulaga o le mafua'aga o le agava'a ai e fa'afinauina i le fa'amaoniga.

(i) O aiaiga o lenei maga o le a le taofia ai se iloiloga e fa'asaga, po'o le a'oa'iina o so'o se tagata e i lalo ifo o le 18 tausaga le matua o se tamaitiiti ona o amioga e le tusa ma le tulafono, o se tamaitiiti e mana'omia se va'ava'aiga, o se tamaitiiti ua le tausia pe fa'alagolago i se tasi, i lalo o aiaiga fa'amaoniaina o le 45.0340 e o'o i le 45.0344.

(o) "Tausaga" o lona uiga o tausaga i le taimi sa fa'ataunu'u ai se solitulafono.

(u) O le-ua-molia e ia te ia le avegata'uave e fa'auluina le mata'upu o le soifuaga o le pepe."

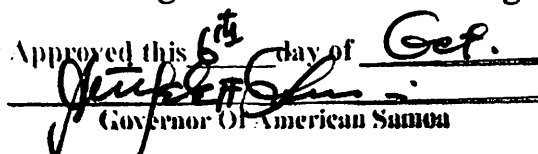
Maga 6. 46.3410 ua soloia.

"46.3410 ~~Faufuaga fa'alilolilo. A'afiaga o le fa'ataunu'uina o le solitulafono.~~ Soloia

~~E mafai ona le molia se tagata. nofosalaina pe fa'asalaina ile fa'ava e tasi o taualumaga o amioga o le fa'ataunu'uina tonu o se solitulafono ma se faufuaga fa'alilolilo e faia lenei solitulafono."~~


TUAOLO M.E. FRUEAN
Sui Peresetene, Maota Maua-luga


SAVALI TALAVOU ALE
Sui Fofoga Fetalai, Maota o Sui

Hereby Approved this 6th day of Oct. 2003

Governor Of American Samoa