

# **Domestic and Family Violence [Title 47]**

## **Title 47**

### **DOMESTIC AND FAMILY VIOLENCE**

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#### **Chapter 01**

### **GENERAL PROVISIONS.**

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##### **47.0101 Purpose.**

The purpose of this title is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. It is the intent of the Legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the Legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.

**History:** 2004, PL 28-16.

## **47.0102 Definitions.**

As used in this chapter, unless the context clearly requires otherwise:

(1) "Domestic or family violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

(A) Attempting to cause or causing physical harm to another family or household member:

(B) Placing a family or household member in fear of physical harm; or

(C) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

(2) "Family or household members" include:

(A) Adults or minors who are current or former spouses;

(B) Adults or minors who live together or who have lived together;

(C) Adults or minors who are dating or who have dated;

(D) Adults or minors who are engaged in or who have engaged in a sexual relationship;

(E) Adults or minors who are related by blood or adoption;

(F) Adults or minors who are related or formerly related by marriage;

(G) Persons who have a child in common; and

(H) Minor children of a person in a relationship that is described in paragraphs (A) through (H).

**History:** 2004, PL 28-16.

## **Chapter 02**

### **CIVIL ORDERS FOR PROTECTION**

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**47.0201 Eligible petitioners for order.**

(a) A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a family or household member who commits an act of domestic or family violence.

(b) A parent, guardian, or other representative may file a petition for an order for protection on behalf of a child against a family or household member who commits an act of domestic or family violence.

(c) There is no minimum requirement of residency to petition for an order for protection.

**History:** 2004, PL 28-16.

**47.0202 Uniform form required for petitions and orders—Required statements in petitions and orders—Duty of clerk to provide petitions and clerical assistance.**

(a) The Attorney General's Office shall:

(1) Develop and adopt uniform forms for petitions and orders for protection, including but not limited to such orders issued pursuant to divorce, custody, and other domestic relations hearings; and

(2) Provide the forms to the clerk of each court authorized to issue such orders.

(b) In addition to any other required information, the petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.

(c) The following statements must be printed in bold face type or in capital letters on the order for protection:

(1) "Violations of this order may be punished by confinement in jail and by a fine".

(2) "If so ordered by the court, the respondent is forbidden to enter or stay at the petitioner's residence, even if invited to do so by the petitioner or any other person. In no event is the order for protection voided."

(d) The clerk of the court or other designated person shall provide to a person requesting an order for protection:

(1) The forms adopted pursuant to subsection (a); and

(2) Clerical assistance in filling out the forms and filing the petition.

**History:** 2004, PL 28-16.

**47.0203 Emergency order for protection—Available relief—Availability of judge or court officer—Expiration of order.**

(a) A court may issue a written or oral emergency order for protection ex parte when a law enforcement officer states to the court in person or by telephone, and the court finds reasonable grounds to believe, that the petitioner is in immediate danger of domestic or family violence based on an allegation of a recent incident of domestic or family violence by a family or household member.

(b) A law enforcement officer who receives an oral order for protection from a court shall:

(1) Write and sign the order on the form required pursuant to section 47.0202;

(2) Serve a copy on the respondent;

(3) Immediately provide the petitioner with a copy of the order; and

(4) Provide the order to the court by the end of the next judicial day.

(c) The court may grant the following relief in an emergency order for protection:

(1) Enjoin the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household members;

(2) Prohibit the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

(3) Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;

(4) Order the respondent to stay away from the residence, school, place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;

(5) Order possession and use of an automobile and other essential personal effects, regardless of the ownership of the essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(6) Grant temporary custody of a minor child to the petitioner; and

(7) Order such other relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member.

(d) A judge or other court officer with authority to issue an order for protection must be available 24 hours a day to hear petitions for emergency orders for protection.

(e) An emergency order for protection expires 72 hours after issuance.

**History:** 2004, PL 28-16.

**47.0204 Order for protection—Modification of orders—Relief available ex parte—Relief available after hearing—Duties of the Court—Duration of order.**

(a) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic or family violence has occurred or a modification of an order for protection is required, a court may:

(1) Without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte as it deems necessary to protect the petitioner.

(2) Upon notice, issue an order for protection or modify an order after a hearing whether or not the respondent appears.

(b) A court may grant the following relief without notice and hearing in an order for protection or a modification issued ex parte:

(1) Enjoin the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household member;

(2) Prohibit the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

(3) Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;

(4) Order the respondent to stay away from the residence, school, or place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;

(5) Prohibit the respondent from using or possessing a firearm or other weapon specified by the court;

(6) Order possession and use of an automobile and other essential personal effects, regardless of the ownership of the essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored

to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(7) Grant temporary custody of any minor children to the petitioner; and

(8) Order such other relief as it deems necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

(c) A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:

(1) Grant the relief available in accordance with subsection (b).

(2) Specify arrangements for visitation of any minor child by the respondent and require supervision of that visitation by the third party or deny visitation if necessary to protect the safety of the petitioner or child.

(3) Order the respondent to pay attorney's fees.

(4) Order the respondent to:

(a) Pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or minor child.

(b) Reimburse the petitioner or other person for any expenses associated with the domestic or family violence, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property; and

(c) Pay the costs and fees incurred by the petitioner in bringing the action;

(d) The Court shall:

- (1) Cause the order to be delivered to the appropriate authority for service;
  - (2) Make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present;
  - (3) Transmit, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner; and
  - (4) Transmit a copy of the order to the American Samoa Registry.
- (e) An order for protection issued ex parte or upon notice and hearing or a modification of an order for protection issued ex parte or upon notice and hearing is effective until further order of the court.
- (f) The designated authority shall provide expedited service for orders for protection.

**History:** 2004, PL 28-16.

**47.0205 Required hearings—Duty of court when order for protection denied.**

- (a) Except as otherwise provided in subsection (b), if a court issues an order for protection ex parte or a modification of an order for protection ex parte and the court provides relief pursuant to section 47.0204 (b), upon a request by either party within 30 days after service of the order or modification, the court shall set a date for a hearing on the petition. The hearing must be held within ten days after the request for a hearing is filed unless continued by the court for good cause shown.
- (b) The court shall set a date for a hearing on the petition within 10 days after the filing of the petition if a court issues an order for protection ex parte or a modification of an order of protection ex parte, and:
- (1) The petitioner requests or the court provides relief in accordance with section 47.0204(b) (7), concerning custody of a minor child; or
  - (2) The petitioner requests relief pursuant to section 47.0204(c) (2) (4).



**History:** 2004, PL 28-16.

**47.0206 Court costs and fees.**

Fees for filing and service of process must not be charged for any proceeding seeking only the relief provided in this chapter.

**History:** 2004, PL 28-16.

**47.0207 Registration and enforcement of foreign orders for protection—Duties of court clerk.**

(a) A certified copy of an order for protection issued in the United States may be filed in the office of the clerk of the High Court. The clerk shall act upon the order in the same manner as the clerk acts upon an order for protection issued by the High Court.

(b) A filed order for protection has the same effect and must be enforced in the same manner as an order for protection issued by a court of this Territory. The court shall enforce all provisions of a registered foreign order for protection whether or not such relief is available in this Territory.

**History:** 2004, PL 28-16.

## **Chapter 03**

### **FAMILY AND CHILDREN**

**Sections:**

**47.0301 Presumptions concerning custody and residence of child.**

**47.0302 Factors in determining custody and visitation.**

**47.0303 Conditions of visitation in cases involving domestic and family violence.**

**47.0301 Presumptions concerning custody and residence of child.**

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption that it is:

(1) detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence.

(2) In the best interest of the child to reside with the parent who is not a perpetrator of domestic or family violence in the location of that parent's choice, within or outside the Territory.

**History:** 2004, PL 28-16.

#### **47.0302 Factors in determining custody and visitation.**

(a) In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the Court has made a finding of domestic or family violence:

(1) The Court shall consider as primary the safety and well being of the child and of the parent who is the victim of domestic or family violence.

(2) The Court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person.

(b) If a parent is absent or relocates because of an act of domestic or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

(c) In every proceeding in which there is at issue the modification of an order for custody or visitation of a child, the finding that domestic or family violence has occurred since the last custody determination constitutes a finding of a change of circumstances.

**History:** 2004, PL 28-16.

#### **47.0303 Conditions of visitation in cases involving domestic and family violence.**

(a) A court may award visitation by a parent who committed domestic or family violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of domestic or family violence can be made.

(b) In a visitation order, a Court may:

(1) Order an exchange of a child to occur in a protected setting.

(2) Order visitation supervised by another person or agency.

(3) Order the perpetrator of domestic or family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation.

(4) Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding the visitation.

(5) Order the perpetrator of domestic or family violence to pay a fee to defray the costs of supervised visitation.

(6) Prohibit overnight visitation.

(7) Require a bond from the perpetrator of domestic or family violence for the return and safety of the child.

(8) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic or family violence, or other family or household member.

(c) The Court may refer but shall not order an adult who is a victim of domestic or family violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic or family violence as a condition of receiving custody of a child or as a condition of visitation.

(d) If a Court allows a family or household member to supervise visitation, the Court shall establish conditions to be followed during visitation.

**History:** 2004, PL 28-16.

## **Chapter 04**

### **CRIMINAL VIOLATIONS**

#### **Sections:**

**47.0401 Crime involving domestic or family violence defined.**

**47.0402 Mandatory fine for conviction of a crime of domestic or family violence.**

**47.0403 Violation of certain orders for protection is misdemeanor.**

**47.0404 Enhancement of penalty for second or subsequent crime involving domestic or family violence.**

**47.0401 Crime involving domestic or family violence defined.**

(a) A "crime involving domestic or family violence" occurs when a family or household member, as defined in section 47.0102(1), commits one or more of the following crimes against another family or household member:

(1) arson;

(2) assault and harassment;

(3) burglary, robbery, tampering;

(4) property damage;

(5) homicide offenses (murder and manslaughter, negligent homicide);

(6) kidnapping, felonious restraint, false imprisonment;

(7) sex offenses (rape, sexual assault, deviate sexual assault, sexual abuse, child molesting);

(8) stealing and related offenses;

(9) weapon law violations (unlawful use of weapons, possessing a defaced firearm, unlawfully transferring a weapon, unlawful possession of firearms and firearm ammunition);

(10) offenses against public order (disturbing public peace, disbursing private peace);

(11) family offenses (bigamy, incest, abandonment of child; criminal nonsupport, endangering the welfare of a child, abuse of a child);

(12) property damage and trespass; and

(13) any other crimes which the Attorney General deems relevant and necessary.

(b) The above criminal laws encompassing (a)(1)-(13) shall be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.

**History:** 2004, PL 28-16.

**47.0402 Mandatory fine for conviction of a crime of domestic or family violence.**

A person convicted of a crime of domestic or family violence is required to pay to the court a minimum of one hundred fifty dollars (\$150) to be disbursed as specified below;

(a) The Court may utilize not more than one-third of each payment to offset administrative costs for depositing this payment, for the free filing fee charges for victims alleging domestic violence, and

costs of providing legal forms relating to this chapter.

(b) The remainder shall be transferred, quarterly, to the general fund earmarked for deposit in the victims of crime advocacy program/department of health and social services, in an amount equal to two-third of funds collected during the preceding quarter. Moneys deposited in the victims of crime advocacy program shall be distributed as follows:

(1) One-half will be given to creating, developing, and operating a batter's program, or any other appropriate counseling.

(2) One-half shall support the development of a territorial wide training and education program to increase public awareness of domestic violence and to improve the scope and quality of services provided to the victims of domestic violence.

**History:** 2004, PL 28-16.

#### **47.0403 Violation of certain orders for protection is misdemeanor.**

Violation of one of the following orders issued as a protection against domestic and family violence, is a misdemeanor:

(a) An order enjoining the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner or other family or household member.

(b) An order prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly.

(c) An order removing and excluding the respondent from the residence of the petitioner.

(d) An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member.

(e) An order prohibiting the respondent from using or possessing a firearm or other

weapon specified by the Court.

**History:** 2004, PL 28-16.

**47.0404 Enhance of penalty for second or subsequent crime involving domestic or family violence.**

When a defendant makes a judicial admission, pleads guilty to, or has been found guilty to, or has been found guilty of a second or subsequent crime involving domestic or family violence within five years, the penalty is enhanced by one class above the class otherwise provided for that offense in the territorial statute

**History:** 2004, PL 28-16.

## **Chapter 05**

### **CRIMINAL PROCEEDINGS**

**Sections:**

**47.0501 Spousal privileges inapplicable in criminal proceedings involving domestic or family violence.**

**47.0502 Record of dismissal required in Court file.**

**47.0503 Duty of prosecutor to notify victim.**

**47.0501 Spousal privileges inapplicable in criminal proceedings involving domestic or family violence.**

The following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving domestic or family violence perpetrated by the other spouse:

(a) The privilege of confidential communication between spouses.

(b) The testimonial privilege of spouses.

**History:** 2004, PL 28-16.

**47.0502 Record of dismissal required in Court file.**

When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic or family violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reason why the witness is unavailable and the reasons the case cannot be prosecuted.

**History:** 2004, PL 28-16.

**47.0503 Duty of prosecutor to notify victim.**

A prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic or family violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement.

**History:** 2004, PL 28-16.

## **Chapter 06**

### **DUTIES AND RESPONSIBILITIES OF LAW ENFORCEMENT**

**Sections:**

**47.0601 Duties of law enforcement officer to victim of domestic or family violence—Required notice to victim.**

**47.0602 Duties of law enforcement officer to prosecutor's office.**

**47.0603 Mandatory arrest for crimes involving domestic or family violence—Determination of primary aggressor—Required report.**

**47.0604 Mandatory arrest for certain violations of orders for protection.**

**47.0605 Authority of law enforcement officer to seize weapons.**



## **47.0606 Mandatory arrest for violation of conditions of release.**

### **47.0601 Duties of law enforcement officer to victim of domestic or family violence—Required notice to victim.**

(a) A law enforcement officer who responds to an allegation of domestic or family violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

(1) Taking the action necessary to provide for the safety of the victim and any family or household member.

(2) Confiscating any weapon involved in the alleged domestic or family violence.

(3) Transporting or obtaining transportation for the victim and any child to a shelter.

(4) Assisting the victim in removing essential personal effects.

(5) Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility.

(6) Giving the victim immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic or family violence.

(b) As part of the notice required by (a) (6), the law enforcement officer shall give a written notice to the adult victim substantially as follows:

"If you are the victim of domestic or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report at no cost from the law enforcement department. You may ask the prosecuting attorney to file a criminal complaint. You also have the right to file a petition in the High Court requesting an order for protection from domestic or family violence which could include any of the following

orders:

- (1) An order enjoining your abuser from threatening to commit or committing further acts of domestic or family violence;
- (2) An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;
- (3) An order removing your abuser from your residence;
- (4) An order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another family or household member;
- (5) An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the Court;
- (6) An order granting you possession and use of the automobile and other essential personal effects;
- (7) An order granting you custody of your child or children;
- (8) An order denying your abuser visitation;
- (9) An order specifying arrangements for visitation, including requiring supervised visitation; and
- (10) An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney's fees.

The forms you need to obtain an order for protection are available from the Department of Human and Social Services or the Office of the Attorney General. The resources are available through the appropriate government agencies for information relating to domestic family violence, treatment of injuries, and places of safety and shelters. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings, or support, and other expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is less than \$3,000."

(c) The written notice:

(1) Must not include the addresses of shelters, unless the location is public knowledge.

(2) Must be available in Samoan and English and provided to the victim in his or her native language, if practicable, when the native language of the victim is not Samoan or English.

**History:** 2004, PL 28-16.

**47.0602 Duties of law enforcement officer to prosecutor's office.**

Law enforcement officers who respond to allegations of domestic or family violence are required within 72 hours of the response to either inform the prosecutor's office or provide a copy of their police report to the prosecutor's office.

**History:** 2004, PL 28-16.

**47.0603 Mandatory arrest for crimes involving domestic or family violence—Determination of primary aggressor—Required report.**

(a) A law enforcement officer shall, without a warrant, arrest and charge a person with the appropriate crime if the officer has probable cause to believe that the person has committed a crime involving domestic or family violence, whether the offense is a felony or a misdemeanor, or was committed in or outside the presence of the officer.

(b) If a law enforcement officer receives complaints of domestic or family violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed domestic or family violence. In determining whether a person is the primary aggressor the officer shall consider:

(1) Prior complaints of domestic or family violence;

(2) The relative severity of the injuries inflicted on each person;

(3) The likelihood of future injury to each person; and

(4) Whether one of the persons acted in self-defense.

(c) A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party.

(d) In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of domestic or family violence or who arrests two or more persons for a crime involving domestic or family violence must submit a detailed, written report setting forth the grounds for not arresting or for arresting both parties.

**History:** 2004, PL 28-16.

#### **47.0604 Mandatory arrest for certain violations of orders for protection.**

When a law enforcement officer has probable cause to believe that a respondent has violated one of the following orders of the court and verifies the existence of the order, the officer shall, without a warrant, arrest the apparent violator whether the violation was committed in or outside the presence of the officer:

(a) An order enjoining the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner or other family or household member.

(b) An order prohibiting the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, either directly or indirectly.

(c) An order removing and excluding the respondent from the residence of the petitioner.

(d) An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member.

(e) An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court.

**History:** 2004, PL 28-16.

**47.0605 Authority of law enforcement officer to seize weapons.**

Incident to an arrest for a crime involving domestic or family violence, a law enforcement officer:

(a) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime.

(b) May seize a weapon that is in the plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons.

**History:** 2004, PL 28-16.

**47.0606 Mandatory arrest for violation of conditions of release.**

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed on a perpetrator of family and domestic violence and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

**History:** 2004, PL 28-16.

## **Chapter 07**

### **PROBATION AND PAROLE**

#### **Sections:**

**47.0701 Conditions of probation for perpetrator convicted of crime involving domestic or family violence—Required reports by probation department.**

**47.0702 Conditions of parole for perpetrator convicted of crime involving domestic or family violence—Required reports by parole board.**

**47.0701 Conditions of probation for perpetrator convicted of crime involving domestic or family violence—Required reports by probation department.**

(a) Before placing a perpetrator who is convicted of a crime involving domestic or family violence on probation, the court shall consider the safety and protection of the victim of domestic or family violence and any member of the victim's family or household.

(b) The court may condition the suspension of sentence or granting of probation to a perpetrator on compliance with one or more orders of the court, including but not limited to:

(1) Enjoining the perpetrator from threatening to commit or committing acts of domestic or family violence against the victim or other family or household member.

(2) Prohibiting the perpetrator from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly.

(3) Requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented regularly by the victim and any designated family or household member.

(4) Prohibiting the perpetrator from possessing or consuming alcohol or controlled substance.

(5) Prohibiting the perpetrator from using or possessing a firearm or other specified weapon.

(6) Directing the perpetrator to surrender any weapons owned or possessed by the perpetrator.

(7) Directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment.

(8) Directing the perpetrator to pay restitution to the victim.

(9) Requiring the defendant make payments to a battered women's shelter, up to a maximum of two thousand dollars (\$2,000).

(10) Imposing any other condition necessary to protect the victim of domestic or family violence and any other designated family or household member or to rehabilitate the perpetrator.

(c) The perpetrator shall pay the costs of any condition of probation, according to ability.

(d) The Court shall establish policies and procedures for responding to reports of nonattendance or noncompliance by a perpetrator with the conditions of probations imposed pursuant to subsection (b).

(e) The probation department shall immediately report to the court and the victim any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the court or probation department, and any threat of harm made by the perpetrator.

(f) The probation department shall establish policies and procedures:

(1) For the exchange of information concerning the perpetrator with the court and the victim; and

(2) For responding to reports of nonattendance or noncompliance by the perpetrator with conditions imposed pursuant to subsection (b).

**History:** 2004, PL 28-16.

**47.0702 Conditions of parole for perpetrator convicted of crime involving domestic or family violence—Required reports by parole board.**

(a) In additions to other conditions imposed on a perpetrator convicted of a crime involving domestic or family violence, the parole board or other designated authority may impose any condition of parole upon the perpetrator necessary to protect the safety of the victim and family or household members of the victim, including but not limited to the conditions provided for in section 47.0701(b)(1)(10).

(b) The perpetrator shall pay the costs of any condition of parole, according to ability.

(c) The parole board or other designated authority shall report to the court and the victim any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the parole board or other designated authority, and any threat of harm made by the perpetrator.

(d) The parole board or other designated authority shall establish policies and procedures:

(1) For the exchange of information concerning the perpetrator with the court and the victim;

(2) For the protection and safety of the victim, including the release of a perpetrator in a jurisdiction other than where the victim lives; and

(3) For responding to reports of nonattendance or noncompliance by the perpetrator with conditions imposed pursuant to subsection (a).

**History:** 2004, PL 28-16.

## **Chapter 08**

### **PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE**

#### **Sections:**

**47.0801 Creation of an American Samoan advisory council on domestic and family violence—Purpose—Required report.**

**47.0802 Composition and qualification of members.**

**47.0803 Duties of Department of Public Health.**

**47.0804 Duties of Department of Public Safety.**

**47.0801 Creation of an American Samoan advisory council on domestic and family violence—Purpose—Required report.**



(a) There is hereby created the American Samoa advisory council on domestic and family violence.

(b) The purpose of the advisory council is to increase the awareness and understanding of domestic and family violence and its consequences and to reduce the incidence of domestic and family violence within the Territory by:

(1) Promoting effective strategies for identification of the existence of domestic or family violence and intervention by public and private agencies serving persons who are victims of domestic or family violence;

(3) Facilitating communication between public and private agencies that provide programs for victims of domestic and family violence and programs of intervention for perpetrators;

(4) Providing assistance to public and private agencies to develop statewide procedures and community education, including procedures for reviewing fatalities in local communities;

(5) Developing a comprehensive and coordinated plan of data collection concerning domestic and family violence for courts, prosecutors, law enforcement officers, health care practitioners, and other state agencies, in consultation with each other and in a manner that protects the identity of victims of domestic and family violence; and

(6) Promoting the organization of local councils on domestic and family violence and providing assistance and support to established local councils.

(c) The advisory council shall report to the Governor, the Speaker of the House and President of the Senate.

**History:** 2004, PL 28-16.

#### **47.0802 Composition and qualification of members.**

(a) The American Samoa advisory council on domestic and family violence consists of five members. The Governor shall appoint the members of the advisory council after consulting with public and private agencies that provide programs for victims of domestic or family violence, advocates for victims, and persons who have demonstrated expertise and experience in providing services to victims of domestic and family violence and their children.

(b) The membership of the advisory council must include as many relevant disciplines as practicable. The Governor shall appoint persons to the advisory council to provide significant representation by victims of domestic and family violence.

**History:** 2004, PL 28-16.

#### **47.0803 Duties of Department of Public Health.**

(a) The Department of Public Health shall make available to practitioners and health care facilities a written notice of the rights of victims and remedies and services available to victims of domestic or family violence in accordance with subsection (c).

(b) A practitioner who becomes aware that a patient is a victim of domestic or family violence shall provide to the patient and every health care facility shall make available to all patients the notice provided pursuant to subsection (a).

(c) The notice to victims of domestic or family violence must be substantially as follows:

"If you are the victim of domestic or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that an officer assist in providing for your safety, including asking for an emergency order for protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place including but not limited to a designated meeting place for a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report at no cost from the law enforcement department. You may ask the prosecuting attorney to file a criminal complaint. You also have the right to file a petition in the High Court requesting an order for protection from domestic or family violence which could include any of the following orders:

(1) An order enjoining your abuser from threatening to commit or committing further acts of domestic or family violence;

(2) An order granting you possession and use of the automobile and other essential personal effects;

(3) An order granting you custody of your child or children;

(4) An order denying your abuser visitation;

(5) An order specifying arrangements for visitation, including requiring supervised visitation; and

(6) An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney's fees.

The forms you need to obtain an order for protection are available from the Department of Human and Social Services or the Office of the Attorney General. The resources are available in this community for information relating to domestic and family violence, treatment of injuries, and places of safety and shelters. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is less than \$3,000".

(d) The written notice:

(1) Must not include the addresses of shelters, unless the location is public knowledge.

(2) Must be provided in Samoan and English or in the native language of the victim, if practicable.

**History:** 2004, PL 28-16.

#### **47.0804 Duties of Department of Public Safety.**

(a) The Department of Public Safety shall establish or make available:

(1) Programs of education and counseling for offenders who are also victims of domestic or family violence; and

(2) Programs of intervention for perpetrators convicted of crimes involving domestic or family violence.

(b) The Director shall adopt rules or regulations requiring initial training and continuing education for employees of the correctional institutions concerning domestic and family violence. A new employee must receive the initial training during the orientation of the employee to the institution.

(c) The Department of Public Safety shall develop or adopt and put into effect written policies and procedures concerning:

(1) The effective response to cases involving domestic and family violence.

(2) Enforcement of American Samoa statutes concerning domestic and family violence.

(3) Protection and safety of the victims of domestic violence and other family and household members.

(4) Coordination with hospitals and programs for victims of domestic or family violence.

**History:** 2004, PL 28-16.