



Tuvalu

PRISONS ACT

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Tuvalu

PRISONS ACT

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Tuvalu

PRISONS ACT

TO PROVIDE FOR THE SUPERVISION AND DISCIPLINE OF PRISONS ¹

Commencement [1 January 1986²]

PART I – PRELIMINARY

1 Short title

This Act may be cited as the Prisons Act.

2 Purpose of this Act

- (a) This Act is a revision of the Prisons Act (Cap. 72 1978 Edn.) to simplify the law governing the administration of the prison service and the control and discipline of both prisoners and prison officers, and
- (b) an extension to the sentencing options available to the courts by introducing measures for the weekend detention of offenders as an alternative to normal prison terms.

3 Interpretation

In this Act, unless the context otherwise requires —

“**civil prisoner**” means any prisoner other than a criminal prisoner;

“**criminal prisoner**” means any person committed to custody by a court exercising criminal jurisdiction;

“**juvenile**” means a person under the apparent age of 16 years;

“**officer in charge**” means any officer appointed under section 7 to be in charge of a prison;

“**prison**” means a prison established under this Act including a weekend detention centre, and may also include a police cell in the absence of any suitable alternative when so designated by the Minister;

“**prison officer**” includes the Superintendent, officer in charge, subordinate officer, and any police officer directed by the Superintendent to carry out the duties of a prison officer;

“**prisoner**” means any person convicted or not, under detention in any prison;

“**prohibited article**” means any article the introduction or removal of which into or out of the prison is prohibited by this Act;

“**Superintendent**” means the officer appointed to be Superintendent of Prisons under section 6;

“**Subordinate officer**” means any person appointed to be a subordinate officer under section 9 and includes a wardress;

“**weekend detention**” means detention from Friday afternoon until Sunday afternoon in the custody of the Superintendent, specific timings to be designated by the Superintendent in lieu of a sentence of imprisonment for the consecutive days of a seven day week;

“**weekend detention centre**” means a prison designated by the Minister for the reception and accommodation of persons sentenced to weekend detention;

“**young person**” means a person between the apparent ages of 16 and 18 years.

PART II - ESTABLISHMENT OF PRISONS

4 Designation of prison

The Minister may by notice declare any building, or part of a building or enclosed area, to be a prison for the purposes of this Act.

5 Transfer of prisoners from one prison to another

The Superintendent may at his discretion transfer prisoners from one prison to another prison to prevent over-crowding or for any other reason.

PART III - APPOINTMENT, POWERS AND DUTIES OF PRISON OFFICERS

6 Superintendent of Prisons³

- (1) The Police Commissioner is the Superintendent of Prisons, unless another person is appointed under subsection (2).
- (2) The Minister may appoint a person other than the Police Commissioner to be the Superintendent of Prisons.
- (3) The Superintendent:
 - (a) is responsible for general supervision and control of all prisons; and
 - (b) is to take custody of all convicted prisoners and civil prisoners; and
 - (c) must, to the extent practicable, periodically visit and inspect all prisons.

7 Officers in charge of prisons⁴

- (1) The Superintendent must appoint, as officer in charge of any prison:
 - (a) if the Superintendent is the Police Commissioner — a subordinate officer or a police officer; or
 - (b) if the Superintendent is not the Police Commissioner — a subordinate officer.
- (2) The officer in charge of a prison:
 - (a) is responsible for the day-to-day operation of the prison; and
 - (b) must report to the Superintendent on matters in accordance with the Act and the Prisons Regulations; and
 - (c) must comply with the Commissioner's lawful directions.

8 Responsibility of officer in charge for stores

- (1) Every officer in charge shall be responsible for all equipment issued to him including clothing and all other public stores and foodstuffs whether for the use of the prison or prison officers under his control, and for all public money for which he may be held accountable and any property of prisoners entrusted to his keeping and shall account for any loss or damage, otherwise than by unavoidable accident, theft, robbery, or actual service, or by being destroyed or otherwise disposed of under section 39.
- (2) Where any property mentioned in this section is lost or damaged the officer in charge shall determine the cause of the loss or damage, and the individual responsible and shall report his finding to the Superintendent.

9 Appointment of subordinate officers

- (1) The Superintendent may appoint subordinate officers with such ranks and in such numbers in prisons as he may deem fit subject to any written directions which the Minister may give.
- (2) The Superintendent may, subject to the provisions of this Act and to directions of the Minister, make standing orders for the observance of subordinate officers.

10 Appointment of police officers to perform the duties of subordinate officers

- (1) Where in any prison the number of subordinate officers employed is insufficient to secure good discipline and management, the Superintendent with the consent of the Minister, may temporarily employ police officers to perform the duties of a subordinate officer.
- (2) Every police officer appointed under this section shall have the powers and perform the duties of a subordinate officer.
- (3) The Superintendent shall be responsible for the safe custody of prisoners, including periods of transit or work outside a prison, and where necessary may call upon police officers to give assistance.

11 Subordinate officers not to engage in other employment or to receive fees or gratuities

- (1) No subordinate officer shall, without the consent of the Minister, engage in any employment or office whatsoever other than in accordance with his duties under this Act.
- (2) No subordinate officer shall receive any fee or gratuity from prisoners or discharged prisoners or from friends of prisoners or from visitors to a prison.

12 General powers and duties of subordinate officers

Every subordinate officer shall exercise the powers and perform the duties conferred or imposed on him and shall obey all directions which he may receive from his senior officers.

13 Subordinate officers not to enter cells at night

No subordinate officer shall except in case of sickness or emergency enter a prison cell at night unless unavoidable for the proper management of a prison.

14 Cells where females are confined

No male subordinate officer shall, except in case of sickness or emergency, enter or remain in a cell in which female prisoners are confined unless accompanied by a female prison officer or, with the approval of the officer in charge, by some other woman who is not a prisoner.

15 Prison officers to have powers of police officers

For the purpose of conveying any person to or from a prison, or for the purpose of apprehending any prisoner who may have escaped while being conveyed to or from a prison, every subordinate officer whilst engaged in any such duty shall have all the powers, protection and privileges of a police officer.

16 Prison officers always liable to duty

Every subordinate officer shall be deemed to be on duty at all times and may at any time be detailed for duty in any part of Tuvalu.

17 Examination of articles, vehicles and persons entering or leaving a prison

- (1) Any prison officer may examine anything carried into or out of any prison and may stop and search any vehicle or person entering or leaving a prison suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and if any such article or property be found, it shall be seized:

Provided that where a female is searched such search shall be carried out by a female subordinate officer or by some other female approved by the officer in charge.

- (2) Any prison officer seizing any prohibited article under this section shall immediately notify the officer in charge who shall apply to the resident magistrate for a direction on the disposal of that article.

18 Use of force by prison officers

It shall be lawful for any prison officer or police officer engaged in the duties of a prison officer to use a reasonable degree of force against any prisoner who —

- (a) is escaping or attempting to escape;
- (b) is engaged in any combined outbreak or in any attempt to force or break open the outside door or gate or enclosure wall of a prison;
- (c) is using violence to any prison officer or other person,

subject to such standing orders as the Superintendent may prescribe.

PART IV - DISCIPLINE

19 Offences by prison officers

- (1) A subordinate officer who commits any of the offences listed in Schedule 1 to this Act may be arrested without warrant by the officer in charge and shall be brought as soon as practicable before the Superintendent.
- (2) Nothing in this section shall exempt a subordinate officer from criminal proceedings in the ordinary course of the law.
- (3) The Minister may, by order, amend Schedule 1.

20 Punishment which may be awarded by certain officers

- (1) The Superintendent may inquire into the truth of any charge under section 19 against a subordinate officer and if his decision is against the accused may impose on him anyone or more of the following punishments —
 - (i) severe reprimand;
 - (ii) forfeiture of pay not exceeding the amount of pay for 14 days;
 - (iii) forfeiture of any reward or allowances which the convicted subordinate officer may have earned;
 - (iv) reduction in rank or grade; and
 - (v) dismissal.
- (2) A subordinate officer shall not be convicted under subsection (1) unless the charge has been read and investigated in his presence and he has been given sufficient opportunity to cross-examine the witnesses called against him, to give evidence or make a statement himself and to call witnesses on his behalf.
- (3) A subordinate officer who has been punished by dismissal or reduction in rank or grade may within 7 days after the decision of the Superintendent has been communicated to him appeal in the same manner as if the decision of the Superintendent had been made by the Commissioner of Police in respect of a police officer.

21 Powers of interdiction

- (1) The Superintendent may at any time interdict from duty any subordinate officer pending an enquiry under section 19 into any disciplinary offence of which he is charged or pending trial or enquiry into any offence, whether under this Act or any other law.
- (2) A subordinate officer interdicted from duty shall continue subject to the same responsibilities, discipline and penalties and to the same authority as if he had

not been interdicted although the powers, privileges and benefits vested in him as a prison officer shall be in abeyance during his interdiction.

- (3) A subordinate officer interdicted from duty shall be allowed to receive such proportion of his pay not being less than 20%, as the Minister may think fit.
- (4) On the termination of any period of interdiction from duty of a subordinate officer the Minister may, if he thinks fit, direct the whole or any part of the pay stopped under this section to be paid to such subordinate officer.

22 Inquiry by Superintendent

The Superintendent inquiring into the truth of any charge under section 19 shall have the power to summon and examine witnesses, and any person who unreasonably refuses to comply with such a summons or refuses to answer any questions on examination commits an offence.

23 Fines to be recovered by stoppage of pay

- (1) All fines imposed on a subordinate officer in respect of offences under this Act or any regulations made thereunder may be recovered by stoppage of pay.
- (2) The amount of stoppage in respect of any fines or for any other cause authorised by this Act or by the regulations made thereunder shall be in the discretion of the Superintendent but shall in no case exceed one-third of the pay of the offending subordinate officer; and whenever more than one order of stoppage is in force against the same officer so much only of his pay shall be stopped as shall leave him a residue on which he can reasonably expect to meet his living costs.
- (3) Where more than one order of stoppage is made upon the same officer the enforcement of orders later in date shall, if necessary, be postponed until earlier orders have been discharged.

24 Loss of equipment on charge to prison officer

If any subordinate officer either wilfully or neglectfully disposes, loses, or damages any government property committed to his charge he may, in addition to or in lieu of any other punishment, be ordered to make good the amount of such loss or damage, and such amount may be recovered by stoppage from his pay.

25 Pay not to accrue during absence without leave or imprisonment

Pay shall not accrue to any subordinate officer in respect of any period during which he is absent from duty without reasonable cause or excuse, or is undergoing any sentence of imprisonment:

Provided that in any case the Superintendent may in his discretion authorise the payment of such proportion of pay, not being more than two-thirds, as he may think fit.

26 Police Fund

- (1) All fines imposed under the provisions of this Act or any regulations made thereunder for any offence against discipline shall be placed to the credit of the Police Fund established by the Police Act.
- (2) For the purposes of the making of payments from the said Police Fund subordinate officers shall be deemed to be police officers.

PART V - MEDICAL EXAMINATION, ADMISSION, CUSTODY AND REMOVAL OF PRISONERS

27 Medical examination of prisoners

- (1) The officer in charge may require that every prisoner is medically examined on admission or discharge by a medical officer.
- (2) Every officer in charge may order any prisoner to be medically examined as often as he thinks necessary.

28 Admission of prisoners

- (1) No prisoner shall be admitted into a prison unless accompanied by a remand warrant or order of detention or a warrant of conviction or of committal.
- (2) Subject to the directions of the Superintendent an infant child of a female prisoner may be received into prison with its mother:
Provided that when such child has been weaned the officer in charge, on being satisfied that there are relatives or friends capable and willing to support it, shall send the child to such relatives or friends.
- (3) The officer in charge shall verify that the prisoner is the person named in the warrant or order and that such warrant or order bears the signature and seal of the proper authority and in all other respects complies with the requirements of law.
- (4) The officer in charge shall not refuse to accept a prisoner on the ground that there is an error on the face of any warrant or order of detention, and he shall take steps as soon as practicable to have the error corrected.

29 Prisoner to be informed of right to appeal

The officer in charge of the prison to which any convicted criminal prisoner is first committed after conviction shall inform such prisoner within 24 hours of his admission of his right of appeal, if any.

30 Custody of prisoners

- (1) Every prisoner confined in any prison shall be deemed to be in the legal custody of the officer in charge and shall be subject to prison discipline during the whole time of his imprisonment.
- (2) A prisoner when being taken to or from any prison or whenever he is working outside or is otherwise beyond the limits of any prison shall be deemed to be in prison and shall be subject to prison discipline in the same manner as if he were actually in prison.
- (3) Prisoners on remand or committed for trial who are required to attend any court shall be taken for that purpose into police custody at the prison to which they have been committed and shall remain under police supervision and guard until returned to the prison or discharged by the court.

31 Search of prisoners on admission

Every prisoner may be searched on admission, and at such times subsequently as the officer in charge may think necessary or as the Superintendent may direct:

Provided that no female prisoner shall be searched except by a female subordinate officer or other woman appointed for the purpose.

32 Prisoner's record to be kept

The officer in charge shall, subject to any directions of the Superintendent, keep records of all prisoners including any reasonable personal particulars.

33 Prisoner's effects to be kept safe

- (1) No prisoner may take into prison any property other than money, jewellery, valuable security, or clothing; and any such money, jewellery, valuable security, or clothing shall be placed in the custody of the officer in charge, who shall keep an inventory thereof, which shall be signed by the prisoner and returned to the prisoner when discharged; provided that a prisoner shall as directed by the officer in charge, be responsible for providing his own bedding.
- (2) If the clothes of a prisoner are worn out or filthy and cannot be cleansed, they may be destroyed.

- (3) When any prisoner arrives at prison with property other than money, jewellery, valuable security, clothes and bedding the officer in charge shall give the prisoner an opportunity to dispose of such property to his relations or otherwise.

34 Separation of prisoners

- (1) Male and female prisoners shall be confined separately.
- (2) The Superintendent may direct that the following classes of prisoners as far as the prison accommodation renders it practicable, be separated from one another, namely —
 - (a) prisoners awaiting trial from convicted prisoners;
 - (b) juveniles from adults and young persons;
 - (c) young persons from juveniles and adults;
 - (d) civil prisoners from criminal prisoners;
 - (e) prisoners sentenced to weekend detention;
 - (f) such other classes as may be specified by the Superintendent.

35 Maintenance of prisoners

- (1) A prisoner may be permitted to maintain himself and to purchase or receive from private sources at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to such other conditions as the Superintendent may impose.
- (2) The Superintendent may suspend any of the privileges outlined in this section if any of the conditions imposed by him have not been complied with, or for any disciplinary reason.

36 Prisoner of unsound mind

No prisoner who is a person of unsound mind shall be detained in any prison longer than is necessary until his transfer to another more appropriate place can be arranged.

37 Removal of sick prisoners to hospital

- (1) In case of illness the officer in charge may order the removal of a prisoner to a hospital.
- (2) Any prisoner removed to hospital under the provisions of this section shall be deemed to be under detention in the prison from which he was so removed.

- (3) On receiving advice from the medical officer in charge of a hospital to which a prisoner has been removed that he no longer is in need of hospital treatment under this section the officer in charge shall arrange for the prisoner to be returned to prison.

38 Notice of death of a prisoner to be given to Minister

On the death of a prisoner, notification shall be given to the Superintendent who shall inform the Minister, and the prisoner's next of kin.

PART VI - WORK OF PRISONERS

39 Work

Every prisoner under sentence or imprisonment may be put to work within or without the precincts of any prison and in any employment that may be prescribed.

40 Work of female prisoners

Female prisoners shall be employed only on such work as is suitable for women, within or without the prison.

41 Civil prisoners and un-convicted prisoners not required to do work

Civil prisoners and prisoners other than convicted criminal prisoners shall be required to keep their cells, precincts of cells, furniture, clothing, bedding and utensils clear but shall not be required to work without their consent.

PART VII - EXTRAMURAL PUNISHMENT

42 Penal labour in lieu of imprisonment⁵

- (1) This section applies to a person who is:
 - (a) sentenced to imprisonment or liable to be committed to prison for non-payment of a fine or costs; and
 - (b) not excluded from undertaking public work outside the prison by the sentence of the court.
- (2) The person may tell the court or the officer in charge of the prison that he or she wants to undertake public work outside the prison.

- (3) If he or she does so, the registrar of the court or the officer in charge of the prison must tell the Failautusi ote Kaupule for the island on which the person is imprisoned or to be imprisoned about that request.
- (4) If the Failautusi ote Kaupule agrees to the request, the person:
 - (a) is not to be imprisoned or, if already imprisoned, is to be released; and
 - (b) is to be employed under the supervision of a person appointed by the Failautusi ote Kaupule, without remuneration, on public work determined by the Kaupule; and
 - (c) must comply with any conditions imposed by the Failautusi ote Kaupule for the person's release.

Example for paragraph (c)

restrictions of movement or place of residence.

- (5) The period of employment is to be the same length as the balance of the term of imprisonment or liability for commitment from which the person is released.
- (6) The kind of employment is to be daily tasks that the person, having regard to his or her physical capacity, can complete in 6 hours of labour.
- (7) The person is not required to work on Sundays, Christmas Day or Good Friday. However, those days count towards the completion of the person's sentence or commitment.
- (8) The person's employment may be ended if:
 - (a) the Failautusi ote Kaupule considers that the person has failed to attend work as required or to accomplish a day's task, or is otherwise unsatisfactory; or
 - (b) the court on its own motion:
 - (i) examines the person's employment and behaviour; and
 - (ii) considers that the person is not complying with any reasonable condition imposed under subsection (4)(c) or is not carrying out work properly.
- (9) If the person's employment is ended under subsection (8), the person is to be committed to prison to complete the imprisonment to which he or she is liable, with a deduction of the number of days on which he or she has completed the daily task.

PART VIII - OFFENCES BY PRISONERS

43 Prison offences

- (1) A prisoner who commits any of the acts listed in schedule 2 to this Act commits a prison offence and is subject to disciplinary measures.
- (2) The Minister may, by, order, amend schedule 2.

44 Punishment of prisoners

Subject to section 46 the Superintendent or an officer in charge may after due enquiry punish any prisoner guilty of a prison offence by: —

- (a) penal diet, with cellular confinement, not exceeding 4 days;
- (b) loss of remission not exceeding 28 days;
- (c) deprivation of privileges;
- (d) extra work not exceeding 1 hour a day for a period not exceeding 14 days,

or to any combination of such punishments:

Provided that prisoner serving a sentence of weekend detention may not be detained for more than 48 hours each weekend.

45 Punishment for aggravated or repeated offences

Subject to section 46, the Superintendent may, in the case of aggravated or repeated offences, impose any of the following punishments —

- (a) cellular confinement with or without penal diet, for a period not exceeding 25 days;
- (b) extra work not exceeding 1 hour a day for a period not exceeding 28 days;
- (c) loss of remission not exceeding 90 days;
- (d) deprivation of privilege;

or any combination of such punishments; Provided that —

- (i) penal diet shall not exceed a continuous period of 5 days and an interval of the same period shall elapse before a further period of such penal diet;
- (ii) cellular confinement if accompanied by penal diet shall not be combined with any labour except at the request of the prisoner;
- (iii) where a prisoner serving a sentence of weekend detention commits repeated breaches of discipline the officer in charge

may bring the matter to the attention of the Court which sentenced that prisoner, and seek a substituted sentence;

- (iv) a court in substituting a sentence under the preceding subsection shall have regard to the number of weekends detention which the offender has served under the order being substituted.

46 Minister may review punishment

On a petition from a prisoner, the Minister may review any punishment imposed by the Superintendent or officer in charge and may increase, reduce, vary or remit such punishment.

47 Prisoner allowed to be heard in his defence

No prisoner shall be punished for an offence until he has had an opportunity of hearing the charge against him and making his defence.

48 Punishment to be recorded on prisoner's record

All punishments imposed on any prisoner shall be recorded on his prison record, together with reasons for that punishment.

PART IX - REMISSION SYSTEM

49 Remission of sentence

- (1) Every convicted criminal prisoner sentenced to imprisonment whether by one sentence or consecutive sentences for a period exceeding 1 month or to weekend detention exceeding four weekends, may by industry and good conduct earn a remission of up to one-third of his sentence:

Provided that nothing in this subsection shall authorise the reduction of any period of imprisonment to a period less than 31 days, or to a period of weekend detention of fewer than three weekends.

- (2) For the purpose of giving effect to subsection (1), each prisoner on admission shall be credited with the full amount of remission to which he would be entitled and shall only lose such remission as a punishment for any offence against prison discipline.
- (3) The Minister on the recommendation of the Superintendent may restore forfeited remission in whole or in part.

50 Periodical reports on certain prisoners

The Superintendent shall submit to the Minister, in such form as the Minister may direct, a report on the general condition of every prisoner who is undergoing imprisonment for life or for any term exceeding 4 years, or who is detained until His Majesty's pleasure be known, following the completion of two years imprisonment, and thereafter at two yearly intervals:

Provided however, that in the case of any prisoner who was under 21 years at the time of the commission of the offence for which imprisonment was imposed, reports shall be submitted annually or at more frequent intervals if the Minister so directs.

51 Licence to be at large

- (1) The Minister may at any time if he thinks fit release a prisoner on licence subject to such conditions, if any, as the Minister may from time to time determine.
- (2) The Minister may at any time by order recall to prison a prisoner released on licence under this section, but without prejudice to the power of the Minister to release him on licence again; and where any prisoner is so called his licence shall cease to have effect and he shall, if at large, be deemed to be unlawfully at large.

PART X - DISCHARGE OF PRISONERS**52 Responsibility of officer in charge for discharge of prisoners**

- (1) The officer in charge shall be responsible for the due discharge of all prisoners immediately upon their becoming entitled to release.
- (2) All prisoners shall be discharged before noon on the date on which they are entitled to be released, but should that date fall on a Sunday or any public holiday they shall be released before noon on the preceding day except in the case of a prisoner serving weekend detention in which case he shall complete his sentence at the time when detainees are normally released in accordance with any standing orders made by the Superintendent.
- (3) A discharged prisoner may, if he so desires, be returned at Government expense to his own island

PART XI – VISITS, COMMUNICATIONS AND VISITING JUSTICES

53 Visits from friends and relatives

- (1) The officer in charge may allow any convicted criminal prisoner to receive once in every week the privilege of a visit from friends, numbering not more than 3, in the sight and hearing of a prison officer; and no other visit, save under section 57 shall be allowed as of right except by an order in writing from the officer in charge or the Superintendent:

Provided that in the discretion of the officer in charge visiting rights may be deferred during any period when a prisoner is subject to disciplinary punishment.

- (2) Notwithstanding any other provisions of this Act, the officer in charge may, in his discretion, allow any prisoner to have with him in his cell books, a reasonable quantity of periodicals, family photographs and small articles employed in religious observance.

54 Communications by prisoners

- (1) All prisoners shall be given reasonable opportunities of communicating with their friends or legal advisers.
- (2) Every visit paid by a friend or legal adviser to any such prisoner shall take place within the sight of a prison officer.

55 Visitors to prisons

The officer in charge, and any prison officer at his discretion, may demand the name and address of every visitor to a prisoner and when the officer has any ground for suspicion, he may search a visitor or cause him to be searched, but the search shall not be made in the presence of any prisoner or of any other visitor and should any visitor refuse to permit himself to be searched he shall be denied admission:

Provided that female visitors shall only be searched by and in the presence of females.

56 Interviews of police officers with prisoners

Any police officer acting in the course of his duty may at any reasonable time, interview any prisoner.

57 Visits by Ministers of religion

Ministers of religion may be admitted at all reasonable times to a prison to visit prisoners and conduct services:

Provided that such visits do not cause unreasonable difficulties for the management of the prison, or hinder the performance of duties by prisoners.

58 Appointment and powers of visiting justices

- (1) The Minister may, from time to time, appoint by notice fit and proper persons to be visiting justices of prisons.
- (2) The Minister, the Chief Justice, magistrates and presidents of island courts are ex officio visiting justices of every prison.
- (3) A visiting justice may at any time visit a prison in respect of which he is a visiting justice.
- (4) Any visiting justice may —
 - (a) call for all books, papers and records relating to the management and discipline of the prison;
 - (b) visit every part of the prison and see every prisoner in confinement;
 - (c) inspect and test the quality and quantity of prisoners' food; and
 - (d) ascertain as far as possible that the regulations, rules and standing orders are adhered to.
- (5) Any visiting justice shall hear any complaint made to him by any prisoner and shall make such recommendations thereon as may be necessary to the Superintendent.
- (6) On the completion of the visit every visiting justice may enter in a book to be kept for the purpose such remarks, suggestions or recommendations as he may deem fit to make.

PART XII**59 Penalty for trafficking and loitering near prison**

- (1) Any person who brings, throws or by any means whatever introduces into any prison or gives to or takes from any prisoner, any spirituous liquor, tobacco, any intoxicating or poisonous drug, or any prohibited article whatsoever, without lawful authority shall be liable to a fine of \$100 or to imprisonment for 6 months.

- (2) The officer in charge shall cause to be affixed in a conspicuous place outside the prison, a notice in English and Tuvaluan setting forth the acts prohibited under this section and the penalties incurred by their commission.
- (3) No unauthorised person may remain within the boundaries of any prison area after having been instructed by the officer in charge to move and if he persists he commits an offence and may be arrested and handed over to the police.

60 Harboursing prisoners

Any person who knowingly harbours in or about his house, lands or otherwise, or who knowingly employs any person under sentence of imprisonment and illegally at large commits an offence.

61 General penalty

Any person who contravenes or fails to comply with the provisions of this Act or of any regulations made thereunder shall be guilty of an offence, and if no penalty is specially provided, shall be liable on conviction to a fine of \$100 and to imprisonment for 6 months.

62 Power to prosecute under other law not to be affected

Nothing in this Act shall exempt any person from being prosecuted under any other Act or law for the time being in force for any offence made punishable by this Act, or from being liable under any other Act or law to any other or higher penalty or punishment than is provided for such offence by this Act:

Provided that no person shall be tried twice for the same offence.

PART XIII - WEEKEND DETENTION

63 Amendment to the Penal Code

The Penal Code⁶ is amended by inserting after section 26 of the following new section.

“26A Weekend detention

- (1) A person liable to imprisonment for an offence may be sentenced to a period of weekend detention, being a specified number of consecutive weekends during which he shall report to the officer in charge of a prison designated for the purposes of weekend detention.

- (2) No person shall be sentenced to fewer than four weekends of weekend detention although the provisions for remission of sentence for prison sentences shall apply to weekend detention in a like manner.
- (3) A sentence of weekend detention is an additional disposal available to the court and shall not in anyway reduce the options and powers available to any court on the matter of sentencing.
- (4) For the purposes of jurisdiction and sentencing one weekend of a period of weekend detention shall be calculated as of like effect to seven days imprisonment.
- (5) A sentence of weekend detention shall for all purposes be regarded as a sentence of imprisonment except that a person serving weekend detention shall be released on Sunday evening unless by order of a court he is ordered to be detained for a longer period.
- (6) The Minister may make regulations for the implementation of weekend detention orders, including the classification, management, discipline and employment of persons sentenced to weekend detention in a like manner to regulations under the Prisons Act 1985 and may provide for weekend detention in such Prison Regulations.”

PART XIV - MISCELLANEOUS

64 Regulations

The Minister may make regulations providing for the following matters —

- (a) the classification of prisoners into categories and their separation accordingly;
- (b) the safe custody, management, organisation, hours, mode and kind of labour and employment, clothes, maintenance, instruction, discipline, treatment, restraint, correction and discharge of prisoners including those sentenced to weekend detention;
- (c) the provision of a suitable diet and dietary scale for prisoners according to their age, race, state of health and kind of punishment being suffered; and prescribing conditions under which such diet and scale may be varied;
- (d) the construction, description, equipment and supervision of cells and work;
- (e) the conditions of service, rates of pay, training and discipline of subordinate officers;
- (f) the duties and powers of visiting justices;

- (g) the medical inspection of prisons and prisoners and the prevention of contagious diseases in prisons;
- (h) anything which by this Act may be prescribed and generally for the effective administration of this Act or any amendments thereto, for the good management and government of prisons and the prisoners therein whether in, about or beyond the limits of such prisons.

SCHEDULE 1

(Section 19)

OFFENCES AGAINST PRISON DISCIPLINE

A subordinate officer commits a disciplinary offence if he —

1. strikes or uses or offers any violence against his senior in rank, or uses threatening or insubordinate language to his senior in rank;
2. wilfully disobeys any lawful command;
3. is drunk while on duty, or drinks intoxicant while on duty, or renders himself unfit for duty by the use of drugs or intoxicants;
4. absents himself without leave or wilfully overstays his leave;
5. sleeps at his post, or leaves it without authority, express or implied;
6. being under arrest or confinement leaves or escapes from his arrest or confinement without authority;
7. idles when on duty;
8. neglects or refuses to assist in the apprehension of any prison officer or prisoner whom it is his duty to arrest;
9. allows any prisoner to escape who is committed to his charge or whom it is his duty to keep or guard;
10. strikes or bullies any person in his custody;
11. without cause fails to appear or appears late for duty;
12. pawns, sells, loses by neglect, makes away with, wilfully damages, or fails to report any damage to any of the articles including clothing and stores supplied to him, or any medal or decoration granted to him for service or good conduct, or any Government property or any exhibit, or any lost, stolen or unclaimed property committed to his charge;
13. solicits any gratuity or without the knowledge and permission of the Superintendent accepts directly or indirectly any gratuity, present or reward from any prisoner or any member of the public in respect of anything done by him in the discharge of the duties of his office;
14. is slovenly, inattentive, uncivil, insolent, or quarrelsome;
16. does not keep his equipment or clothing clean;
16. without due authority discloses or conveys any information concerning any investigation or departmental matter;

17. malingers or feigns or wilfully produces any disease or infirmity;
18. is guilty of wilful misconduct;
19. makes any false statement or withholds any information when making any application to be employed as a subordinate officer;
20. refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send;
21. makes any false statement in relation to his duties;
22. makes a false accusation against any prison officer or prisoner knowing, or having good reason to believe, such accusation to be false;
23. engages without authority in any employment other than his duty as a prison officer;
24. is unduly familiar with prisoners;
25. assists or connives with any prisoner in having or obtaining any prohibited article or otherwise engages in such trafficking as may be defined by regulation;
26. is guilty of any other act, conduct, disorder or neglect to the prejudice of good order or discipline.

SCHEDULE 2

(Section 4)

OFFENCES AGAINST PRISON DISCIPLINE

A prisoner commits a prison offence if he —

1. quarrels with any other prisoner;
2. makes groundless complaints;
3. makes false charges or accusations against prison officers or prisoners;
4. answers untruthfully any question lawfully put to him by a prison officer, a medical officer or an official visitor;
5. without authority holds unreasonable communication in writing, by word of mouth, or otherwise, with any person unconnected with the prison, or with a prisoner of the opposite sex, civil prisoner or prisoner awaiting trial;
6. does any act calculated to create unnecessary alarm in the minds of the prisoners or prison officers;
7. omits or refuses to parade when required to do so;
8. unreasonably refuses the food provided;
9. eats or appropriates any food not assigned to him, or takes, or adds to, the portion assigned to other prisoners;
10. without permission of a prison officer removes food from the cookhouses, or from the place where meals are served, or disobeys any order as to the issue and distribution of food and drink;
11. wilfully destroys food, or throws it away without orders;
12. introduces into food or drink anything likely to render it unpalatable or unwholesome;
13. omits or refuses to wear the clothing given to him, or exchanges any portion of it for the clothing of other prisoners; or loses, discards or damages any part of it;
14. removes defaces or alters any distinctive number, mark attached to, or worn on clothing;
15. omits or refuses to keep his person clean, or disobeys any order regulating the cutting or shaving of hair;
16. omits or refuses to keep his clothing, bedding, or cell clean, or disobeys any order as to the arrangement or disposition of such articles;

17. tampers in any way with prison locks, lamps or lights or other property with which he has no concern;
18. steals prison clothing or any part of the prison kit of any other prisoner; .
19. defecates or urinates in any place other than a latrine;
20. defaces, injures, spits on, soils or damages any part of the prison or its furniture and equipment;
21. wilfully causes himself any illness, injury or disability, or refuses to submit to medical examination or undergo treatment;
22. causes or omits to assist the suppression of, violence or insubordination of any kind;
23. takes part in any attack upon any prison officer or upon another prisoner;
24. omits or refuses to help any prison officer in case of an attempted escape;
25. disobeys any lawful order of a prison officer, or omits or refuses to perform prescribed duties;
26. treats with disrespect any prison officer or servant of the prison, or any visitor, or any person employed in connection with the prison;
27. is idle, careless, or negligent at work, or refuses to work;
28. leaves his appointed work place without permission;
29. has in his possession any article he is not entitled to have;
30. takes part in any criminal assault;
31. curses, swears, or makes unnecessary noise;
32. uses immoral, disorderly, or indecent behaviour;
33. uses insulting, threatening, insolent or indecent language;
34. malingers;
35. escapes or conspires to escape or assists another prisoner to escape;
36. aids or abets or counsels or procures the commission of any prison offence;
37. mutinies or incites others to mutiny;
38. does any other act, or neglects to do any act to the prejudice of good order or discipline not specified in this section.

ENDNOTES

¹ 1990 Revised Edition, Cap. 72 – Act 10 of 1985

Amended by Act 12 of 2009, commencement 3 December 2009

² LN 27/85

³ Substituted by Act 12 of 2009

⁴ Substituted by Act 12 of 2009

⁵ Substituted by Act 12 of 2009

⁶ Cap. 10.20