



AMERICAN SAMOA

Legal System	Constitution	Bill of Rights	Form of Government
Common Law Statutory Law	Written	Yes	Republic

A. Criminal Statutes

1. Human Trafficking and Related Offenses

a. Am. Samoa Code Ann. § 46.5002 (2014) – Human Trafficking

i. Summary

American Samoa strengthened its human trafficking laws in 2014. The American Samoa Code makes it a crime to “deprive[] or violate[] the personal liberty of another with the intent to obtain forced labor or services, or to engage in a commercial sex act, or both.” Am. Samoa Code Ann. § 46.5002.

The Code defines terms as they are used under the human trafficking laws.

- (1) “Liberty” is defined as “personal freedom; such as, but not limited to freedom from servitude, physical restraint, confinement, forced labor, or sexual exploitation,” and “a person having agency or control over their own actions and choices, and exercising his or her free will.” Am. Samoa Code Ann. § 46.5001(f).
- (2) “Forced labor or services” means “labor or services that are performed or provided by another person and are obtained or maintained through force, fraud, or coercion, deceit, or equivalent conduct that would reasonably overbear the will of the person.” Am. Samoa Code Ann. § 46.5001(e).
- (3) A “commercial sex act” is “any sex act or sexual conduct on account of which anything of value is given, promised to, or received by any person.” Am. Samoa Code Ann. § 46.5001(b). A “[s]ex act” is defined as “sexual intercourse,” meaning “any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results.” Am. Samoa Code Ann. § 46.5001(i). “Sexual conduct” includes any “sexual contact,” including “any touching of the genital or anus of any person or the breast of any female person, or any such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person.” Am. Samoa Code Ann. § 46.5001(j).

ii. Sentencing

Human trafficking is a Class B felony, which requires a prison term of not less than five years and not more than 15 years. Am. Samoa Code Ann. §§ 46.2301(2), 46.5002.

At sentencing, a trial court “may consider many factors, including the duration of trafficking, the extent of serious harm suffered, [and] the means of force, fraud, or coercion employed.” Am. Samoa Code Ann. § 46.5005.

The court also may order a defendant to pay restitution to the victim. Am. Samoa Code Ann. §§ 46.2001–2002.

iii. Statute of Limitations

A prosecution for a Class B felony generally must commence within three years of the commission of the offense. Am. Samoa Code Ann. § 46.3106(b)(1).

The period of limitation does not run when the accused is “absent from the territory” for a maximum of three years, if the accused “is concealing himself from justice,” or a prosecution is pending. Am. Samoa Code Ann. § 46.3106(f)(1)–(3).

b. Am. Samoa Code Ann. § 46.5003 (2014) – Human Trafficking of a Minor

i. Summary

American Samoa proscribes “human trafficking of a minor.” This offense extends to “[a]ny person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor to perform forced labor or services, or to engage in a commercial sex act, or both.” Am. Samoa Code Ann. § 46.5003(a). Neither the minor’s consent nor a mistake in age is a valid defense. Am. Samoa Code Ann. § 46.5003(b)–(c).

ii. Sentencing

Human trafficking of a minor is a Class A felony. The sentence for a conviction is a mandatory minimum prison term of 10 years and a maximum of 30 years without the opportunity for probation or parole. Am. Samoa Code Ann. § 46.5003(a), § 46.2301(1).

Sentencing courts may “consider many factors,” such as the “duration of trafficking, the extent of serious harm suffered, [and] the means of force, fraud, or coercion employed.” Am. Samoa Code Ann. § 46.5005.

The court also may order a defendant to pay restitution to the victim. Am. Samoa Code Ann. §§ 46.2001–2002.

iii. Statute of Limitations

Prosecution for a Class A felony “may be commenced at any time.” Am. Samoa Code Ann. § 46.3106(a).

c. Am. Samoa Code Ann. § 46.5004 (2014) – Involuntary Servitude

i. Summary

The Code also criminalizes “involuntary servitude,” outlining penalties for a person:

who holds, or attempts to hold, any person in involuntary servitude, or assumes, or attempts to assume, rights of ownership over any person, or who sells, or attempts to sell, any person to another, or receives, money or anything of value, in consideration of placing any person in the custody, or under the power or control of another, or who buys, or attempts to buy, any person, or pays money, or delivers anything of value, to another, in consideration of having any person placed in his or her custody, or under his or her power or control, or who knowingly aids or assists in any manner anyone who violates this statute

Am. Samoa Code Ann. § 46.5004.

ii. Sentencing

Committing the crime of involuntary servitude is a Class C felony. Am. Samoa Code Ann. § 46.5004. A person convicted of a Class C felony shall be sentenced to a term not to exceed seven years. Am. Samoa Code Ann. § 46.2301(3).

The court also may order a defendant to pay restitution to the victim. Am. Samoa Code Ann. §§ 46.2001–2002.

iii. Statute of Limitations

A prosecution for a Class C felony generally must commence within three years of the commission of the offense. Am. Samoa Code Ann. § 46.3106(b)(1).

The period of limitation does not run when the accused is “absent from the territory” for a maximum of three years, if the accused “is concealing himself from justice,” or a prosecution is pending. Am. Samoa Code Ann. § 46.3106(f)(1)–(3).

d. Am. Samoa Code Ann. § 46.5008 (2014) – Mandated Reports of Trafficking of a Minor

i. Summary

The Code creates a duty to report for certain individuals “who ha[ve] reasonable cause to know or suspect that a minor has been or is a victim of human trafficking.” Am. Samoa Code Ann. § 46.5008(a). This duty applies to healthcare providers, medical examiners and coroners, Christian Science practitioners, school officials or employees, and social workers. Am. Samoa Code Ann. § 46.5008(b)(1)–(14).

ii. Sentencing

Anyone who willfully fails to discharge their duty to report known or suspected human trafficking of a minor is guilty of a Class A misdemeanor, which carries a maximum prison term of one year and maximum fine of USD 1,000. Am. Samoa Code Ann. §§ 46.5008(d)(1), 46.2102(a), 46.2301(5). Violators may also be held responsible for any of the minor victim’s damages caused by the failure to report known or suspected human trafficking violations. *See* Am. Samoa Code Ann. § 46.5008(d)(2).

iii. Statute of Limitations

Prosecution of a Class A misdemeanor must commence within one year. Am. Samoa Code Ann. § 46.3106(b)(2). But as with felony prosecutions, the period of limitation does not run when the accused is “absent from the territory” for a maximum of three years, if the accused “is concealing himself from justice,” or a prosecution is pending. Am. Samoa Code Ann. § 46.3106(f)(1)–(3).

e. Am. Samoa Code Ann. § 46.5009 (2014) – Mandated Reporting of a Trafficked Minor’s Death

Healthcare providers, medical examiners, coroners, Christian Science practitioners, school officials or employees, social workers, and “anyone who has reasonable cause to suspect that a child died as a result of human trafficking,” must report the minor’s death to the Department of Public Safety. Am. Samoa Code Ann. § 46.5009. The Department of Public Safety, in turn, must investigate the death and report its findings to the Office of the Attorney General. Am. Samoa Code Ann. § 46.5009.

2. Online Child Sexual Exploitation and Child Pornography Offenses

Am. Samoa Code Ann. § 46.4402 – Promoting Pornography in the First Degree

Am. Samoa Code Ann. § 46.4403 – Promoting Pornography in the Second Degree

Am. Samoa Code Ann. § 46.4404 – Furnishing Pornographic Materials to Minors

3. Am. Samoa Code Ann. § 46.2903 (2014) – Sex Offender Registry

Persons must register as a sex offender if convicted under American Samoa or U.S. federal law of patronizing prostitution where the victim is under 18; promoting prostitution if the victim is under 18; sexual abuse of a child; sex trafficking of children; video voyeurism of a minor; sexual exploitation of children; selling or buying of children;

possession of material involving the sexual exploitation of a minor; possession of child pornography; and transportation of a minor for illegal sexual activity, among others. Am. Samoa Code Ann. § 46.2903(a)–(b).

B. Civil Liability Statutes

1. Am. Samoa Code Ann. § 45.2002 (1980) – Mandatory Reports of Abuse or Neglect

a. Summary

“Abuse” or “child abuse or neglect” includes when children are “allowed, permitted, or encouraged” by their parents, guardian, custodian, “or any other person responsible for the child’s health and welfare” to “engage in prostitution or be the subject of obscene or pornographic photographing, filming, or depicting.” Am. Samoa Code Ann. § 45.2001(a)(1)(B).

Healthcare providers, medical examiners, coroners, Christian Science practitioners, school officials or employees, and social workers must report child abuse or neglect to authorities if they have “reasonable cause to know or suspect that a child has been subjected to abuse or neglect or [have] observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect.” Am. Samoa Code Ann. § 45.2002(a), (b)(1)–(14).

b. Damages and Other Relief

Persons who willfully violate their duty to report child abuse or neglect may be “liable for those damages proximately caused.” Am. Samoa Code Ann. § 45.2002(d)(2).

c. Statute of Limitations

Civil lawsuits against individuals who failed their duty to report child abuse or neglect have a statute of limitations of three years. Am. Samoa Code Ann. § 43.0120(7).

C. Additional Statutes Specific to Human Trafficking

1. Am. Samoa Code Ann. §§ 32.0301 *et seq.* – Minimum Wage and Hour Act of American Samoa

An aggrieved employee may recover unpaid wages in a claim filed with an administrative law judge. Am. Samoa Code Ann. § 32.0341. An employee may recover unpaid minimum and overtime wages, and liquidated damages if the violation was willful. Am. Samoa Code Ann. § 32.0340.

2. Am. Samoa Code Ann. § 46.5006 (2014) – American Samoa Human Trafficking Task Force

American Samoa’s 2014 human trafficking law also creates a task force within the Office of the Governor to study the scope of human trafficking in American Samoa, develop best practices, and enhance collaboration among governmental and nongovernmental organizations.

3. Am. Samoa Code Ann. § 46.5007 (2014) – Mandatory Training for Law Enforcement and Emergency First Responders

The Department of Public Safety must work with the American Samoa Department of Homeland Security to engage in “on-going training on human trafficking for all law enforcement and emergency first responders” in the territory. Am. Samoa Code Ann. § 46.5007.

4. Am. Samoa Code Ann. § 46.5010 (2014) – Victim Services

The American Samoa government, in conjunction with the Department of American Samoa Homeland Security, must provide counseling services, emergency medical services, and education to victims of human trafficking.

5. Am. Samoa Code Ann. § 46.5011 (2014) – Temporary Protected Status

The Office of the Attorney General may grant “Temporary Protected Status” to potential victims to encourage them to “come forward and to aid the investigations and prosecutions” of suspected human traffickers.

6. Am. Samoa Code Ann. § 46.5012 (2014) – Victim Confidentiality

Information obtained from victims of human trafficking is privileged and confidential, and the American Samoa government must develop procedures to prevent disclosure.

D. Significant Cases

No significant cases regarding American Samoa’s trafficking statutes were found.

E. Academic Research/Papers

Naomi Jiyoung Bang, *Justice for Victims of Human Trafficking and Forced Labor: Why Current Theories of Corporate Liability Do Not Work*, 43 U. MEM. L. REV. 1047, 1068 (2013).

Kevin Bales et al., *Hidden Slaves: Forced Labor in the United States*, 23 BERKELEY J. INT’L L. 47 (2005).

F. Resources

U.S. Department of Health & Human Services, *American Samoa: Efforts to Combat Human Trafficking* (Sept. 2017): https://nhttac.acf.hhs.gov/sites/default/files/2019-06/american_samoa_efforts_to_combat_human_trafficking.pdf

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