

Title 42

DOMESTIC RELATIONS

Chapters:

- 01 Marriage**
- 02 Divorce and Annulment**
- 03 (Reserved)**
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Chapter 01 MARRIAGE

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42.0101 Requisites of valid marriage.

To enter into a valid marriage contract:

- (a) The parties must not be related to each other nearer than the fourth degree of consanguinity.
- (b) The male shall be at least 18 years of age and the female at least 14 years of age.
- (c) If the female is less than 18 years of age, she must have the consent of one of her parents or her guardian.
- (d) Neither of the parties may have a lawful spouse living.
- (e) A marriage ceremony must be performed by a duly authorized person as provided in this chapter.

History: 1962, PL 7-32.

42.0102 Persons who may perform ceremony.

- (a) No minister of any Christian religion has authority to solemnize or perform any marriage ceremony without first having registered with the Registrar of Vital Statistics a letter of identity and confirmation of his authority as a minister in the particular church to which he belongs. Any minister performing marriage in violation of this section shall be deemed guilty of an offense against this title.
- (b) No marriage shall be invalid for a failure by the minister to register such letter of identity and confirmation of authority; if the minister is, in fact, a duly ordained and confirmed member of the clergy of any Christian religion.
- (c) The following are valid and binding marriages:
 - (1) a marriage performed by a minister of any Christian religion authorized to perform marriages;
 - (2) a marriage performed by an associate judge, or the Associate Justice or the Chief

Justice of American Samoa;

(3) All marriages solemnized before the enactment of this regulation by any minister of any Christian religion, duly appointed or ordained or reputed to be duly appointed or ordained.

(d) No marriage is void by reason only of the same having been celebrated by a person not a duly registered minister if either of the parties to the marriage believed at the time that the person was a duly registered minister.

History: 1961, PL 7-32; 1968, PL 10-52.

42.0103 License-Application and forms-Consent of parent or guardian.

(a) Persons wishing to marry shall obtain an application for marriage license from the office of the Registrar of Vital Statistics, which shall be completed and signed by the applicants under oath. Upon payment of the fee of \$10, the Registrar of Vital Statistics shall issue to the applicants a marriage license.

(b) The application for marriage license shall be substantially in the following form; one of which shall be completed by each applicant, and his or her parent or guardian:

APPLICATION FOR MARRIAGE LICENSE

I....., of the Village of....., American Samoa, being first duly sworn, depose and say: That I am an (American Samoan—other nationality), having been born at..... (location of birth) on the.....day of..... 20....., and that I am... .. years of age; that I am not presently married and that I am not related within the 4th degree of consanguinity to....., the person I propose to marry, and further, that I know of no legal impediments to this proposed marriage.

.....
(Signature)

Subscribed and sworn to before me this.....day
of.....,20.....

.....
(Registrar of Vital Statistics,
deputy or a notary public)

CONSENT OF PARENT OR GUARDIAN

I....., being first duly sworn, depose and say: That I am the (mother—father—guardian) of....., who is..... years of age, being born on the.....day of..... 20....., and that I do hereby give my permission for..... to marry.

.....
(Signature)

Subscribed and sworn to before me this.....day
of.....,20.....

.....
(Registrar of Vital Statistics.
deputy or a notary public)

(c) The application for marriage license shall be in both the English and Samoan languages.

History: 1962, PL 7-32; 1968, PL 10-52.

42.0104 License-Issuance and form.

(a) When the Registrar of Vital Statistics receives an application to marry which complies with the provisions of this chapter, both as to substance and form, he shall, if it appears that the parties are legally competent to marry under the provisions of 42.0101, issue to the parties a license to marry which shall be substantially in the following form:

MARRIAGE LICENSE

I hereby certify that.....ofVillage, American Samoa, son of(father), and.....(mother), and.....ofVillage, daughter of.....(father) and.....(mother), have made application to marry in accordance with the law, and there appearing no impediment to their marriage, a license to marry each other is hereby granted.

Dated this day of.....,20.....

.....
(Deputy) Registrar of Vital Statistics

This license expires and is invalid 90 days from the date of issuance.

(b) The marriage license shall be in both the English and the Samoan languages.

History: 1962, PL 7-32; 1968, PL 10-52.

42.0105 Marriage ceremony.

(a) At any time not less than 30 or more than 90 days after the issuance of a marriage license, any minister of any Christian religion duly appointed or ordained and duly registered in the office of the Registrar of Vital Statistics, or any Samoan Associate Judge, or the Associate Justice or Chief Justice, may marry the parties.

(b) The presence of at least 2 witnesses is requisite for the due solemnization of a marriage.

(c) The parties to the marriage, the witnesses and the minister, justice or judge shall sign, in triplicate, a certificate substantially in the following form:

CERTIFICATE OF MARRIAGE

I,....., duly authorized to solemnize and perform

marriages, being a..... (Minister—Justice—Judge) of the ,
(Church or High Court). do hereby certify that I have, on the.....day
of.....20.... celebrated and solemnized a marriage
between.....(groom) of.....Village, son of
.....(father) and(mother), and.....
.....(bride) of..... Village, daughter
of.....and.....,at.....(location),
American Samoa.

.....
(Minister—Justice—Judge)

.....
Signature of Groom

.....
Signature of Bride

.....
Signature of Witness

.....
Signature of Witness

(d) The 30-day waiting period may be waived for good cause shown by any judge of the High Court upon proper application of the parties in such form as may be prescribed by the court.

History: 1962, PL 7-32; 1968, PL 10-52; 1972, PL 12-46 § 1.

42.0106 Copies of certificate-Register of marriages-Use of records.

(a) The minister, justice, or judge shall, immediately after the solemnization of the marriage, deliver one certificate of marriage to the parties to the marriage and shall retain one copy in the church files or in a file maintained by the justice or judge in his office. The third copy shall be transmitted to the Registrar of Vital Statistics within 7 days after the solemnization of the marriage, except that in the case of a marriage in the Manu'a Islands, the time shall be 30 days. No marriage is invalid by reason of the failure of the minister, justice or judge to file the certificate of marriage with the Registrar of Vital Statistics within the prescribed time limitation.

(b) In the event of the failure of the minister, justice or judge performing the ceremony to transmit a copy to the Registrar of Vital Statistics, the Registrar may correct this omission in his records as follows:

(1) upon presentation of one of the 3 original certificates of marriage and the affidavit of one person in attendance at the marriage ceremony:

(2) in the event of the absence of, or inability to produce, one of the original 3 certificates of marriage, the presentation of affidavits of the minister, justice or judge performing the ceremony and one witness to the ceremony is sufficient:

(3) if the minister, justice or judge performing the ceremony is deceased or he cannot

be located, the affidavits of 2 witnesses to the wedding ceremony is sufficient;

(4) should the necessary number of witnesses be deceased or not available, then, any time within one year from the date of marriage, the parties may present affidavits from 4 members of the community, outside the second degree of consanguinity, attesting to the fact of a duly solemnized marriage and that the parties have lived as husband and wife since that time. No such proof of marriage may be accepted if either of the parties is no longer living.

(c) After compliance with any one of the 4 conditions set forth above, the Registrar of Vital Statistics may correct the omission in his records by creation of a certificate of late registration of marriage from the proof so furnished and may file this late registration of marriage in his records.

(d) The Registrar of Vital Statistics shall keep a register of all marriages, to be entitled "The Marriage Register", and shall keep:

- (1) records of all licenses issued by him or his deputies;
- (2) a copy of marriage certificates transmitted to him;
- (3) records supporting a late registration of marriage.

(e) The Registrar of Vital Statistics shall also keep a register of letters of identity and authorization to perform marriages, filed by ministers as required by 42.0102.

(f) An extract from the marriage register signed and certified by the Registrar of Vital Statistics shall be received in all the courts of American Samoa as evidence of the marriage on the date so set forth in the register.

History: 1962, PL 7-32; 1968, PL 10-5 2.

42.0107 Fees-Disposition.

(a) The Registrar of Vital Statistics shall charge \$10 for an application and issuance of the marriage license.

(b) A clergyman may charge not more than \$10 for the performance of a marriage ceremony.

(c) All fees collected by the Registrar of Vital Statistics in connection with this chapter shall be turned in to the Treasurer of the government pursuant to existing policies and regulations.

History: 1962, PL 7-32; 1968, PL 10-52.

42.0108 Violation-Penalty.

Any person who violates any provisions of this chapter or commits any of the following acts shall be fined not more than \$50, or imprisoned not more than 2 months, or both:

(1) solemnizes a marriage knowing that either of the parties thereto is not duly qualified to marry;

(2) knowingly solemnizes a marriage contrary to any of the provisions of this chapter;

(3) knowingly fails to transmit to the Registrar of Vital Statistics a copy of the certificate of marriage performed by him;

(4) knowingly fails to retain a copy of the marriage certificate of a marriage celebrated by him, pursuant to 42.0106, in the church records or other records depository;

(5) charges a higher fee, or any fee other than that provided in this chapter, for any marriage ceremony or service;

(6) willfully makes any false statement in order to procure a marriage license for

himself or herself or some other person;

- (7) makes any false statement knowingly upon an application for marriage license;
- (8) knowingly issues a license in violation of any of the provisions of this chapter.

History: 1962, PL 7-32; 1968, PL 10-52.

Chapter 02

DIVORCE AND ANNULMENT

Sections:

- 42.0201 Definitions.**
- 42.0202 Grounds for divorce.**
- 42.0203 Grounds for annulment.**
- 42.0204 Application for separation or dissolution.**
- 42.0205 Examination and evidence by court.**
- 42.0206 Dismissal following presentation of evidence.**
- 42.0207 Presumption of condonation.**
- 42.0208 Grant of separation or dissolution.**
- 42.0209 Order for maintenance.**
- 42.0210 Custody of minor children.**
- 42.0211 Restoration of maiden name.**

42.0201 Definitions.

As used in this chapter, "petition" includes cross-petition, and "petitioner" includes cross-petitioner.

History: 1962, PL 7-32.

42.0202 Grounds for divorce.

The High Court may dissolve any marriage contract and grant a decree of divorce, or may grant a decree of judicial separation, for any one of the following causes:

- (1) adultery;
- (2) habitual cruelty or ill usage;
- (3) desertion for 6 months or more;
- (4) sentence to imprisonment for a term of 10 or more years or for life;
- (5) voluntary continuous separation for a period of 5 years or more.
- (6) irreconcilable differences.

History: 1962, PL 7-32; amd 1996, PL 24-11.

Case Notes

Irreconcilable differences does not qualify as a basis for divorce and does not constitute habitual cruelty or ill usage. *Chun v. Chun*, 3 ASR2d 23 (1986); *Lea'e v. Lea'e*, 3 ASR2d 51(1986).

A statute specifying "habitual cruelty or ill usage" as a ground for divorce is not satisfied by proof of irreconcilable differences between husband and wife. A.S.C.A. § 42.0202. *Chun v. Chun*, 3 A.S.R.2d 23 (1986).

"Habitual cruelty or ill usage" in divorce statute does not encompass mere disagreement between the spouses, not even disagreement on matters about which the spouses have strong feelings and beliefs. A.S.C.A. § 42.0202. *Lea'e v. Lea'e*, 3 A.S.R.2d 51 (1986).

A divorce for habitual cruelty or ill usage may be granted in the absence of physical violence, but only when the record reflects a pattern of conduct that is so shameful or bizarre as to be unbearable, and in which it is reasonably clear who is the wrongdoer and who is the victim. A.S.C.A. § 42.0202. *Lea'e v. Lea'e*, 3 A.S.R.2d 51 (1986).

Territorial statute clearly prohibits court from granting divorce absent proof of "fault-based" statutory criteria, even in case where respondent had stipulated to default judgment and waived the right to contest the divorce action. A.S.C.A. §§ 42.0202, 42.0205-06. *West v. West*, 5 A.S.R.2d 88 (1987).

Spouse who did not tell her spouse about a pending criminal prosecution against her, denied it when he asked her about it, and perpetuated the lie to the evident despondency of the other spouse, was guilty of "ill usage" within meaning of divorce statute. A.S.C.A. § 42.0202(2). *Suluvale v. Suluvale*, 10 A.S.R.2d 28 (1989).

"Habitual cruelty or ill usage" as ground for divorce is not equivalent to "irreconcilable differences," "incompatibility," or other "no fault" grounds for divorce, but requires a finding of fault. A.S.C.A. § 42.0202(2). *Suluvale v. Suluvale*, 10 A.S.R.2d 28 (1989).

42.0203 Grounds for annulment.

The High Court may annul any marriage which was illegally contracted.

History: 1962, PL 7-32.

Case Notes:

Statute providing that court "may" annul illegally contracted marriages follows the general rule that annulment is an equitable remedy which may be barred by equitable defenses including estoppel, laches, or the doctrine of unclean hands. A.S.C.A. § 42.0203. *Pritchard v. Purcell*, 11 A.S.R.2d 16 (1989).

Application of equitable principles of estoppel and clean hands to action for annulment of formerly bigamous marriage was bolstered by territorial statutes providing that court "may" annul any marriage that was illegally contracted, and setting forth strict rules against judgment by default, collusive suits, and the granting of judgment in favor of a guilty party. A.S.C.A. §§ 42.0203, 42.0204-11. *Watson v. Watson*, 11 A.S.R.2d 30 (1989).

42.0204 Application for separation or dissolution.

(a) Application for judicial separation or for dissolution of a marriage contract on any ground set out in 42.0202 and 42.0203 may be made by either husband or wife by a petition to the court.

(b) Service shall be had upon the respondent as required by law.

History: 1962, PL 7-32.

Case Notes:

Application of equitable principles of estoppel and clean hands to action for annulment of formerly bigamous marriage was bolstered by territorial statutes providing that court "may" annul any marriage that was illegally contracted, and setting forth strict rules against judgment by default, collusive suits, and the granting of judgment in favor of a guilty party. A.S.C.A. §§ 42.0203, 42.0204-11. *Watson v. Watson*, 11 A.S.R.2d 30 (1989).

"Habitual cruelty or ill usage" in divorce statute includes such things as physical violence, threats, and gratuitous harassment. A.S.C.A. § 42.0204. *Chun v. Chun*, 3 A.S.R.2d 23 (1986).

42.0205 Examination and evidence by court.

The court shall examine all parties and witnesses and shall take all evidence, as far as it reasonably can, not only as to the facts alleged in the petition, but also as to whether or not the petitioner has been in any manner an accessory to the offense alleged, has connived with the respondent in the commission of the offense alleged, or has condoned the same. The court may also inquire into any countercharge which may be made against the petitioner and upon conclusion of all the testimony in the suit or proceeding, the court

shall determine the issue therein upon the merits.

History: 1962, PL 7-32.

Case Notes:

Application of equitable principles of estoppel and clean hands to action for annulment of formerly bigamous marriage was bolstered by territorial statutes providing that court "may" annul any marriage that was illegally contracted, and setting forth strict rules against judgment by default, collusive suits, and the granting of judgment in favor of a guilty party. A.S.C.A. §§ 42.0203, 42.0204-11. *Watson v. Watson*, 11 A.S.R.2d 30 (1989).

The agreement by a spouse against whom divorce is sought not to contest the divorce does not relieve a court of its statutory duty to examine all witnesses and to dismiss the action if the petitioner has failed to prove the charge. A.S.C.A. § 42.0205-06. *Chun v. Chun*, 3 A.S.R.2d 23 (1986).

Territorial statute clearly prohibits court from granting divorce absent proof of "fault-based" statutory criteria, even in case where respondent had stipulated to default judgment and waived the right to contest the divorce action. A.S.C.A. §§ 42.0202, 42.0205-06. *West v. West*, 5 A.S.R.2d 88 (1987).

Party seeking divorce must prove entitlement under statutory criteria even when respondent does not answer or appeal. A.S.C.A. 42.0205, T.C.R.C.P. Rule 50(e). *Fiu v. Fiu*, 5 A.S.R.2d 146 (1987).

Where petitioner in annulment action did not wish to present any evidence other than a copy of divorce judgment obtained by respondent against another spouse five years after her marriage to petitioner, territorial statute required court to inquire about the circumstances of the marriage whose annulment was sought. A.S.C.A. § 42.0205. *Watson v. Watson*, 11 A.S.R.2d 30 (1989).

42.0206 Dismissal following presentation of evidence.

(a) Except as provided in subsection (b), the petition shall be dismissed if upon the evidence presented the court finds any of the following:

(1) that it has not been established that either the petitioner or respondent has been a bona fide and continuous resident of American Samoa for at least one year next preceding the commencement of the action or proceeding;

(2) that the petitioner has failed to prove the charge alleged in the petition;

(3) that the petitioner has, during the marriage, been an accessory to the offense, or connived with the respondent in the offense alleged in the petition;

(4) that the petitioner has been guilty of collusion with the respondent in presenting the petition or in the trial of the action or proceeding;

(5) that the petitioner has condoned the act or acts complained of in the petition.

(b) If the petitioner seeks a divorce under paragraph (5) of 42.0202, then paragraphs (a) (3) through (a) (5) are not grounds for dismissal of the petition.

History: 1962, PL 7-32; amd 1993, PL 23-4.

Case Notes:

Application of equitable principles of estoppel and clean hands to action for annulment of formerly bigamous marriage was bolstered by territorial statutes providing that court "may" annul any marriage that was illegally contracted, and setting forth strict rules against judgment by default, collusive suits, and the granting of judgment in favor of a guilty party. A.S.C.A. §§ 42.0203, 42.0204-11. *Watson v. Watson*, 11 A.S.R.2d 30 (1989).

The agreement by a spouse against whom divorce is sought not to contest the divorce does not relieve a court of its statutory duty to examine all witnesses and to dismiss the action if the petitioner has failed to prove the charge. A.S.C.A. § 42.0205-06. *Chun v. Chun*, 3 A.S.R.2d 23 (1986).

Husband's admission that he sometimes beat his wife required the court to dismiss his action for divorce where territorial statute requires dismissal if the plaintiff is shown guilty of one of the grounds for divorce. A.S.C.A. 42.0206(a)(5). *Lea'e v. Lea'e*, 3 A.S.R.2d 51 (1986).

Territorial statute clearly prohibits court from granting divorce absent proof of "fault-based" statutory criteria, even in case where respondent had stipulated to default judgment and waived the right to contest the divorce action. A.S.C.A. §§ 42.0202, 42.0205-06. *West v. West*, 5 A.S.R.2d 88 (1987).

42.0207 Presumption of condonation.

Condonation may be presumed in all matrimonial actions and proceedings by the voluntary cohabitation of the parties with the knowledge of the offense charged.

History: 1962, PL 7-32; amd 1975, PL 14-11 § 1.

Amendments: 1975 Substituted "condonation" for "condonement" in section heading and text.

Case Notes:

Application of equitable principles of estoppel and clean hands to action for annulment of formerly bigamous marriage was bolstered by territorial statutes providing that court "may" annul any marriage that was illegally contracted, and setting forth strict rules against judgment by default, collusive suits, and the granting of judgment in favor of a guilty party. A.S.C.A. §§ 42.0203, 42.0204-11. *Watson v. Watson*, 11 A.S.R.2d 30 (1989).

When condonation of a spouse's misconduct exists, earlier misconduct cannot be grounds for divorce, but if the wrongdoer continues or revives his or her misconduct, condonation may be vitiated. A.S.C.A. § 42.0207. *Sesepasara v. Sesepasara*, 21 A.S.R.2d 71 (1992).

42.0208 Grant of separation or dissolution.

If the court is satisfied from the evidence presented that the case of the petitioner has been proved, and finds that there is no legal ground why the petition should not be granted, the court may decree judicial separation or dissolution of the marriage accordingly.

History: 1962, PL 7-32.

Case Notes:

Application of equitable principles of estoppel and clean hands to action for annulment of formerly bigamous marriage was bolstered by territorial statutes providing that court "may" annul any marriage that was illegally contracted, and setting forth strict rules against judgment by default, collusive suits, and the granting of judgment in favor of a guilty party. A.S.C.A. §§ 42.0203, 42.0204-11. *Watson v. Watson*, 11 A.S.R.2d 30 (1989).

42.0209 Order for maintenance.

When the divorce, separation or annulment is granted, the court may make an order for the maintenance of either party it deems proper and just under the circumstances.

History: 1962, PL 7-32; amd 1980, PL 16-63 § 1.

Amendments: 1980 Amended generally.

Case Notes:

Assets of corporation may be garnished to satisfy judgement owed by ex-husband to ex-wife under divorce decree where ex-wife had lost all her interests in a business previously jointly owned with her husband before the divorce, those interests were transferred to a new corporation owned by ex-husband and other person shortly before divorce papers filed by husband, and amount garnished is less than amount due to ex-wife under previously ordered property settlement to compensate her for her lost interest. *Dellumo v. Dellumo*, 4 ASR2d 48(1987).

Application of equitable principles of estoppel and clean hands to action for annulment of formerly bigamous marriage was bolstered by territorial statutes providing that court "may" annul any marriage that was illegally contracted, and setting forth strict rules against judgment by default, collusive suits, and the granting of judgment in favor of a guilty party. A.S.C.A. §§ 42.0203, 42.0204-11. *Watson v. Watson*, 11 A.S.R.2d 30 (1989).

42.0210 Custody of minor children.

When the divorce, separation or annulment is granted, the court may make a division of, or order with respect to, the property of either or both of the parties as it deems fair and proper and order for the custody, care, maintenance and support of the minor children of the parties.

History: 1962, PL7-32; amd 1980, PL 16-63 § 1.

Amendments: 1980 Added “and orders” prior to “the custody”.

Case Notes:

Application of equitable principles of estoppel and clean hands to action for annulment of formerly bigamous marriage was bolstered by territorial statutes providing that court "may" annul any marriage that was illegally contracted, and setting forth strict rules against judgment by default, collusive suits, and the granting of judgment in favor of a guilty party. A.S.C.A. §§ 42.0203, 42.0204-11. *Watson v. Watson*, 11 A.S.R.2d 30 (1989).

42.0211 Restoration of maiden name.

When the divorce, separation or annulment is granted, the court may restore to the woman the name used by her prior to the marriage when so requested.

History: 1962, PL 7-32.

Case Notes:

Application of equitable principles of estoppel and clean hands to action for annulment of formerly bigamous marriage was bolstered by territorial statutes providing that court "may" annul any marriage that was illegally contracted, and setting forth strict rules against judgment by default, collusive suits, and the granting of judgment in favor of a guilty party. A.S.C.A. §§ 42.0203, 42.0204-11. *Watson v. Watson*, 11 A.S.R.2d 30 (1989).

Chapter 03

(RESERVED)

Chapter 04

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT

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- 42.0452 Registry of foreign support orders.
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1. General Provisions

42.0401 Short title.

This chapter may be cited as the "Uniform Reciprocal Enforcement of Support Act".

History: 1965, PL 9-20.

42.0402 Purpose.

The purposes of the chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

History: 1965, PL 9-20

42.0403 Interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: 1965, PL 9-20.

42.0404 Definitions.

In this chapter, unless the context otherwise requires:

- (a) "Certification" means to be in accordance with the laws of the certifying state.
- (b) "Court" means the district court of American Samoa, and when the context requires, means the court of any state as defined in a substantially similar reciprocal law.
- (c) "Duty of support" includes any duty or support imposed or imposable by law or by any court order, decree or judgment, whether interlocutory or final whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance or otherwise.
- (d) "Governor" includes any person performing the functions of Governor or the executive authority of any state covered by the provisions of a reciprocal law substantially similar to this chapter.
- (e) "Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.
- (f) "Law" includes both common and statute law.
- (g) "Obligee" means any person to whom a duty of support is owed, and may also mean a state, or political subdivision thereof, which has furnished support to an obligee and thus has a remedy under 42.0407.
- (h) "Obligor" means any person owing a duty of support.
- (i) "Register" means to record or file in the registry of foreign support orders.
- (j) "Registering court" means the High Court of American Samoa, in which the support order of the rendering state is registered.
- (k) "Rendering state" means any state in which a support order is originally entered.
- (l) "Responding state" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.
- (m) "State" includes any state, territory or possession of the United States, and the District of Columbia, in which this or a substantially similar reciprocal law has been enacted.
- (n) "Support order" means any judgment, decree or order of support, whether temporary or final, whether subject to modification, revocation or remission, regardless of the kind of action in which it is entered.

History: 1962, PL 9-20; amd 1979, PL 16-53 § 29.

Amendments: 1979 Subsection (1,); substituted reference to district court or High Court.

42.0405 Other remedies not precluded.

The remedies provided in this chapter are in addition to and not in substitution for any other remedies.

History: 1965, PL 9-20.

42.0406 Duties of support-Presumption.

(a) Duties of support applicable under this chapter are those imposed or imposable under the law of any state where the obligor was present during the period for which support is sought.

(b) The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

History: 1965, PL 9-20.

42.0407 Remedy of jurisdiction furnishing support.

Whenever the state or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions of this chapter as the obligee to whom the support was furnished, for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

History: 1965, PL 9-20.

42.0408 Obligor bound regardless of obligee's residence.

Duties of support arising under the laws of this territory, when applicable under 42.0406, bind an obligor present in this territory, regardless of the presence or residence of the obligee.

History: 1965, PL 9-20.

42.0409 Territory information agency.

The Attorney General, or his assistant, is designated as the territory information agency under this chapter, and he shall:

(1) Transmit the name of the district court of American Samoa, Pago Pago, American Samoa, to the state information agency of every state which has adopted this or a substantially similar law;

(2) Maintain a register of lists received from states and transmit copies thereof, as soon as possible after receipt, to the district court.

History: 1965, PL9-20; amd 1979, PL 16-53 § 30.

Amendments: 1979 Substituted references to district court for references to High Court.

42.0420 Demand and surrender-Applicability of extradition laws.

(a) The Governor of this territory may demand from the governor of any state the surrender of any person found in such state who is charged in this territory with the crime of failing to provide for the support of any person in this territory, and may surrender on demand by the governor of any state any person found in this territory who is charged in such state with the crime of failing to provide for the support of any person in such state.

(b) The laws regarding extradition of criminals not inconsistent herewith apply to any demand, even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and had not fled therefrom.

(c) Neither the demand, the oath or any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or that at the time of the commission of the crime, he was in the demanding state or the state upon which the demand is made.

History: 1965, PL 9-20.

Research Guide:

For provisions of the Uniform Criminal Extradition Law, see 46.0901 et seq.

42.0421 Failure or uselessness of action by obligee as prerequisite to demand.

(a) Before making the demand on the governor of any state for the surrender of a person charged in this territory with the crime of failing to provide for the support of any person, the Governor of this territory may require the Attorney General of this territory, or his assistant, to satisfy him that at least 60 days prior thereto the obligee brought an action for the support under this chapter, or that the bringing of an action would be of no avail.

(1) When, under this or a substantially similar law, a demand is made upon the Governor of this territory by the governor of a state for the surrender of a person charged in the state with the crime of failing to provide support, the Governor may require the Attorney General or his assistant to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under this chapter or would be effective.

(c) If an action for support would be effective and no action has been brought, the Governor may delay honoring the demand for a reasonable time to permit prosecution of an action for support.

(d) If an action for support has been brought and the person demanded has prevailed in that action, the Governor may decline to honor the demand.

(e) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the Governor may decline to honor the demand so long as the person demanded is complying with the support order.

History: 1965, PL 9-20.

42.0422 Duties of district court and territorial officials when acting as responding state.

(a) After the district court, acting as a responding state, has received from the court of an initiating state copies of a complaint, the certificate of the court of the initiating state, and the initiating state's reciprocal support law, the clerk of the district court shall docket the case and notify the Attorney General of his action.

(b) It shall be the duty of the Attorney General or his assistant diligently to prosecute the case. He shall take all action necessary in accordance with the laws of this territory to give the district court jurisdiction of the defendant or his property and shall request the district court to set a time and place for a hearing.

(c) The Attorney General or his assistant shall, on his own initiative, use all means at his disposal to trace the defendant or his property, and if delay is caused by inaccuracies of the complaint or otherwise, the Attorney General or his assistant shall inform the district court to continue the case pending receipt of more accurate information or an amended complaint from the court in the initiating state.

(d) If the defendant or his property is not found in the territory and the Attorney General or his assistant discovers by any means that the defendant or his property may be found in a state, he shall so inform the district court and thereupon the clerk of the district court shall forward the documents received from the court in the initiating state to a court in the other state or to the information agency or other proper official of the other state with a request that it forward the documents to the proper court. When the clerk of a court of this territory retransmits documents to another court, he shall notify forthwith the court from which the documents came.

(e) If the Attorney General or his assistant has no information as to the whereabouts of the obligor or his property he shall so inform the initiating court.

History: 1965, PL 9-20; amd 1979, PL 16-53 § 31.

Amendments: 1979 Substituted references to district court for references to High Court.

42.0423 Duty of district court regarding payments due or from initiating state.

(a) The district court, when acting as a responding state, shall have the following duties which may be carried out through the clerk of the district court:

(1) upon the receipt of a payment made by a defendant pursuant to any order of the district court or otherwise, to transmit the same forth-with to the court of the initiating state; and

(2) upon request, to furnish to the court of the initiating state a certified statement of all payments made by a defendant.

(b) The district court, when acting as an initiating state, shall have the duty which may be carried out through the clerk of the district court to receive and disburse forthwith all payments made by a defendant or transmitted by the court of the responding state.

History: 1965, PL 9-20; amd 1979, PL 16-53 § 32.

Amendments: 1979 Substituted references to district court for references to High Court.

III. Actions for Support

42.0430 Rights and enforcement.

All duties of support, including arrearages, are enforceable by action or complaint, irrespective of the relationship between the obligor and the obligee.

History: 1965, PL 9-20.

42.0431 Jurisdiction of district court.

Jurisdiction of all proceedings under this chapter is vested in the district court of American Samoa.

History: 1965, PL 9-20; amd 1979, PL 16-53 § 33.

Amendments: 1979 Substituted reference to district court for reference to High Court.

42.0432 Arrest of defendants who may flee.

When the district court, acting either as an initiating or responding state, has reason to believe that the defendant may flee the jurisdiction, it may:

(1) as an initiating state, request in its certificate that the court of the responding state obtain the body of the defendant by appropriate process if that is permissible under the law of the responding state;

(2) as a responding state, obtain the body of the defendant by appropriate process.

History: 1965, PL 9-20; amd 1979, PL 16-53 § 34.

Amendments: 1979 Substituted reference to district court for reference to High Court.

42.0433 Conduct of proceedings.

The district court shall conduct proceedings under this chapter in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.

History: 1965, PL 9-20; amd 1979, PL 16-53 § 35.

Amendments: 1979 Substituted reference to district court for reference to High Court.

42.0434 Attorney General to represent plaintiff.

The Attorney General or his assistant shall represent the plaintiff in any proceeding under this chapter.

History: 1965, PL 9-20.

42.0435 Complaint-Contents.

The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant, his dependents for whom support is sought, and all other information which may help in locating or identifying the defendant, such as a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

History: 1965, PL 9-20.

42.0436 Complaint for a minor.

A complaint on behalf of a minor obligee may be brought by a person having legal or actual custody of the minor, without appointment as guardian ad litem.

History: 1965, PL 9-20.

42.0437 Transmission of complaint and other documents to responding state.

If the district court, acting as an initiating state, finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause 3 copies of the complaint, its certificate and this chapter to be transmitted to the court in the responding state. If the name and address of such court is unknown and the responding state has an information agency comparable to that established in this territory under 42.0409, it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

History: 1965, PL 9-20; amd 1979, PL 16-53 § 36.

Amendments: 1979 Substituted reference to district court reference to the High Court.

42.0438 Proceedings not to be stayed.

No proceeding under this chapter may be stayed because of the existence of a pending action for divorce, separation, annulment, dissolution, habeas corpus, or custody.

History: 1965, PL 9-20.

42.0439 Continuation of action in plaintiff's absence.

If the plaintiff is absent from the responding state and the defendant presents evidence which constitutes a defense, the district court shall continue the case for further hearing

and the submission of evidence by both parties.

History: 1965, PL 9-20; amd 1979, PL 16-53 § 37.

Amendments: 1979 Substituted reference to district court for reference to High Court.

42.0440 Applicable rules of evidence.

In any hearing under this chapter, the district court shall be bound by the same rules of evidence that apply in other actions for enforcement of the duty of support.

History:1965, PL 9-20; amd 1979, PL 16-53 § 38.

Amendments: 1979 Substituted reference to district court for reference to High Court.

42.0441 Communication between husband and wife.

Laws granting a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter; husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

History:1965, PL 9-20.

42.0442 Support order.

If the court of the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

History:1965, PL 9-20.

42.0443 Transmission of orders to initiating state.

The district court, when acting as responding state, shall cause to be transmitted to the court of the initiating state a copy of all orders of support or for reimbursement therefor.

History:1965, PL9-20; amd 1979, PL 16-53 § 39.

Amendments: 1979 Substituted reference to district court for reference to High Court.

42.0444 Application of payments where more than one order exists.

No order of support issued by the district court acting as a responding state may supersede any other order of support, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

History: 1965, PL 9-20; amd 1979, PL 16-53 § 40.

Amendments: 1979 Substituted reference to district court for reference to High Court.

42.0445 Costs and fees.

There may be no filing fee or other costs taxable to the obligee, but the district court acting either as an initiating or responding state, may in its discretion direct that any part of or all fees and costs incurred in this territory, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic

service for both plaintiff and defendant or either, be paid by the obligor or the territory.

History: 1965, PL 9-20; amd 1979, PL 16-53 § 41.

Amendments: 1979 Substituted reference to district court for reference to High Court.

42.0446 Effect of participation in proceedings on jurisdiction of other courts.

Participation in any proceedings under this chapter may not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

History: 1965, PL 9-20.

42.0447 Additional powers of district court over defendants.

In addition to the foregoing powers, the district court, when acting as the responding state, has the power to subject the defendant to such terms and conditions as the district court may deem proper to assure compliance with its orders and in particular:

(1) may require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the district court may deem proper to assure payment of any amount required to be paid by the defendant;

(2) may require the defendant to make payments at specified intervals to the clerk of the district court and to report personally to such clerk at such times as may be deemed necessary;

(3) may punish a defendant who violates any order of the district court to the same extent as is provided by law for contempt of the district court in any other suit or proceeding cognizable by the district court.

History: 1965, PL 9-20; amd 1979, PL 16-53 § 42.

Amendments: 1979 Substituted references to district court for references to High Court.

IV. Registration of Foreign Support Orders

42.0450 Additional remedy.

If a duty of support is based on a foreign support order, the obligee has the additional remedy provided in 42.0451 through 42.0454.

History: 1965, PL 9-20.

42.0451 Registration of foreign order.

(a) The obligee may register the foreign support order in the district court in the manner, with the effect and for the purpose provided in 42.0450 through 42.0454.

(b) The petition for registration shall be verified, and shall set forth the amount remaining unpaid and a list of any states in which the support order is registered, upon the filing of the complaint subject only to subsequent order of confirmation.

History: 1965, PL 9-20; amd 1979, PL 16-53 § 43.

Amendments: 1979 Substituted reference to district court for reference to High Court.

42.0452 Registry of foreign support orders.

The clerk of the district court shall maintain a registry of foreign support orders in

which he shall record or file foreign support orders.

History: 1965, PL 9-20; amd 1979, PL 16-53 § 44.

Amendments: 1979 Substituted reference to district court for reference to High Court.

42.0453 Jurisdiction over defendant.

(a) The procedure to obtain jurisdiction of the person or property of the obligor shall be as provided in civil cases.

(b) The obligor may assert any defense available to a defendant in an action on a foreign judgment.

(c) If the obligor defaults, the district court shall enter an order confirming the registered support order and determining the amounts remaining unpaid.

(d) If the obligor appears and a hearing is held, the district court shall adjudicate the issues including the amounts remaining unpaid.

History: 1965, PL 9-20; amd 1979, PL 16-53 § 45.

Amendments: 1979 Subsections (c) and (d): substituted reference to district court for reference to High Court.

42.0454 Effect and enforcement of order.

The support order as confirmed shall have the same effect and may be enforced as if originally entered in the district court. The procedures for the enforcement thereof shall be as in civil cases, including the power to punish the defendant for contempt as in the case of other orders for payment of alimony, maintenance or support entered in this territory.

History: 1965, PL 9-20; amd 1979, PL 16-5 3 § 46.

Amendments: 1979 Substituted reference to district court or reference to High Court.

Chapter 05

ILLEGITIMATE CHILDREN

Sections:

42.0501 Legitimization.

42.0501 Legitimization.

(a) An illegitimate child shall become legitimate upon the subsequent marriage of his parents.

(b) Any birth certificate previously issued may be reissued with the correct information on it.

History: 1962, PL 7-12.

