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Third Session Eleventh Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to make provision for the maintenance
of public safety and order through discouraging
membership of criminal gangs and the
suppression of criminal gang activity and for
other related matters

THE ANTI-GANG BILL, 2018

Explanatory Notes

(These notes form no part of the Bill but are intended only to indicate its general purport)

The Anti-Gang Bill, 2018 seeks to make provision for the suppression of associations created for unlawful or criminal purposes and for the better protection of the public. The Bill seeks to make it an offence to, *inter alia*, be a member of a gang, to be in possession of a bullet-proof vest, to participate in, or contribute to, the activities of a gang, to support or invite support for a gang, or to harbour or conceal gang members or recruit persons to a gang. The Bill would be inconsistent with sections 4 and 5 of the Constitution and is therefore required to be passed by a special majority of three-fifths of the members of each House.

The Bill contains 19 clauses and two Schedules.

Clause 1 provides for the short title.

Clause 2 would provide for the Act to come into operation on Proclamation by the President.

Clause 3 provides that the Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Clause 4 would define certain terms used in the Bill.

Clause 5 seeks to indicate the type of evidence which may reasonably show or demonstrate the existence of, or membership in, a gang.

Clause 6 seeks to make it an offence for a person to be or become a member of a gang. This offence would carry a penalty of ten years' imprisonment for a first conviction and a penalty of twenty years' imprisonment for any subsequent conviction. The clause also provides that a gang leader would be liable to imprisonment for twenty-five years on conviction on indictment. This clause would also make it an offence to wound or shoot at persons involved in law enforcement or intelligence and would carry a penalty of thirty years' imprisonment on conviction on indictment.

Clause 7 seeks to make it an offence for a person to coerce, encourage, entice, aid or abet another person to be a gang member and would carry a penalty of twenty-five years' imprisonment on conviction on indictment.

Clause 8 seeks to make it an offence for persons to take retaliatory action against another person or any of that person's relatives, friends, associates or property, where *inter alia*, the other person refuses to comply with an order of a gang leader or gang member.

Clause 9 seeks to make it an offence to knowingly counsel, instruct, guide, finance or provide any type of support to a gang leader, gang member or gang.

Clause 10 seeks to make it an offence to prevent a gang member from leaving a gang and would carry a penalty of twenty-five years' imprisonment on conviction on indictment.

Clause 11 seeks to make it an offence for a person to be in possession or control of a bullet-proof vest, firearm, ammunition or prohibited weapon which he uses or ought to know may be used for the benefit of, or at the direction of, a gang or a gang member. This offence would carry a penalty of fifteen years' imprisonment on conviction on indictment.

Clause 12 seeks, *inter alia*, to make it an offence for a person to harbour a gang leader or gang member.

Clause 13 seeks, *inter alia*, to make it an offence for a person to conceal a gang leader or gang member.

Clause 14 seeks to create the offence of recruiting a person to a gang and further provides that where the person recruited is a child, a higher maximum penalty is imposed.

Clause 15 seeks to empower a police officer to arrest, without a warrant, a person who he has reasonable cause to believe is a gang leader, gang member or has committed an offence under the Act, and to enter and search a dwelling house, with a warrant, or to enter any other place or premises, without a warrant, where he has reasonable cause to believe that a gang member may be found.

Clause 16 seeks to enable a police officer to detain a person who he reasonably suspects of having committed an offence under the Act for a period not exceeding seventy-two hours, without a warrant. This clause also provides for the procedure to be followed where it becomes necessary for the period of detention to continue.

Clause 17 seeks to give the Court the power to order that the property of a person convicted under the Act may be forfeited in certain circumstances.

Clause 18 would empower the Minister with responsibility for national security to amend the Second Schedule by Order.

Clause 19 would provide for the duration of the operation of the legislation.

The First Schedule contains the list of gang-related activity offences.

The Second Schedule contains the form which is to be used in an application for a detention order.

THE ANTI-GANG BILL, 2018

Arrangement of Clauses

PART I

PRELIMINARY

Clause

1. Short title
2. Commencement
3. Act inconsistent with Constitution
4. Interpretation
5. Evidence in relation to a gang

PART II

OFFENCES

6. Gang membership
7. Coercing or encouraging gang membership
8. Retaliatory action
9. Counselling a gang
10. Preventing gang member from leaving gang
11. Possession of bullet-proof vest, firearm, ammunition or prohibited weapon for benefit of gang
12. Harboursing a gang member
13. Concealing a gang member
14. Recruiting a gang member

PART III

POWERS OF POLICE OFFICERS

15. Police powers of entry, search and arrest
16. Detention of persons

PART IV

FORFEITURE OF PROPERTY

17. Forfeiture pursuant to conviction

PART V

MISCELLANEOUS

18. Amendment of Second Schedule

19. Duration

FIRST SCHEDULE

SECOND SCHEDULE

BILL

AN ACT to make provision for the maintenance of public safety and order through discouraging membership of criminal gangs and the suppression of criminal gang activity and for other related matters

[, 2018]

WHEREAS the Constitution of the Republic of Trinidad Preamble and Tobago recognizes and protects fundamental human rights and freedoms such as the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law:

And whereas the Constitution also recognizes the existence of the right of the individual to equality before the law and the protection of the law:

And whereas the Constitution places a duty on the State to protect, promote and fulfil the above-mentioned fundamental human rights and freedoms:

And whereas there has been a rapid growth of criminal gang activity within the Republic of Trinidad and Tobago:

And whereas criminal gang activity infringes on the rights and freedoms of individuals as enshrined under the Constitution:

And whereas it is the right of every person to be protected from fear, intimidation and physical harm caused by the criminal activity of violent gangs:

And whereas criminal gang activity presents a danger to public order and safety and to economic stability, and has the potential to inflict social damage:

And whereas it is enacted by section 13(1) of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

ENACTED by the Parliament of Trinidad and Tobago as Enactment follows:

PART I
PRELIMINARY

1. This Act may be cited as the Anti-Gang Act, 2018. Short title
2. This Act comes into operation on such date as is Commencement fixed by the President by Proclamation.
3. This Act shall have effect even though inconsistent Act inconsistent with Constitution with sections 4 and 5 of the Constitution.
4. In this Act— Interpretation
 - “ammunition” has the meaning assigned to it in section 2 of the Firearms Act; Chap. 16:01
 - “child” means a person under the age of eighteen years;
 - “firearm” has the meaning assigned to it in section 2 of the Firearms Act;
 - “gang” means a combination of two or more persons, whether formally or informally organized, who engage in gang-related activity;
 - “gang leader” means a person who initiates, organizes, plans, finances, directs, manages or supervises a gang;
 - “gang member” means a person who belongs to a gang, or associates himself with a gang-related activity;
 - “gang-related activity” means—
 - (a) an offence;

(b) an attempt to commit an offence;
 (c) the aiding, abetting, counselling or procuring of an offence; or
 (d) a conspiracy to commit an offence, listed in the First Schedule, which a gang leader or gang member plans, directs, orders, authorizes, or requests;

First Schedule

“law enforcement authority” means—

- (a) the Police Service established under the Police Service Act;
 (b) the Customs and Excise Division established under the Customs Act;
 (c) the Board of Inland Revenue established under the Income Tax Act;
 (d) the Defence Force established under the Defence Act;
 (e) the Prison Service established under the Prison Service Act; and
 (f) any other agency of the State in which investigative powers, similar to those exercisable by a police officer appointed under the Police Service Act, are lawfully vested;

Chap. 15:01

Chap. 78:01

Chap. 75:01

Chap. 14:01

Chap. 13:02

“prohibited weapon” has the meaning assigned to it in section 2 of the Firearms Act;

“recruit” includes procure, lure, solicit, incite or induce; and

“school” includes an orphanage, recreation ground or park, or an establishment for the conduct of technical or vocational training, or educational, sporting or social programmes, designed for children.

5. For the purpose of this Act, it shall not be necessary to show that a particular gang possesses, acknowledges or is known by a common name, insignia, flag, means of recognition, secret signal or code, creed, belief, structure, leadership or command structure, method of operation or criminal enterprise, concentration or specialty, membership, age or other qualification, initiation rites, geographical or territorial situs, boundary or location, or other unifying mark, manner, protocol or method of expressing or indicating its membership when the gang's existence can be demonstrated by other admissible evidence, but evidence which reasonably shows or demonstrates the existence of, or membership in, a gang shall be admissible in an action or proceedings brought under this Act including—

- (a) whether the person has admitted that he is a gang leader or gang member;
- (b) evidence that the person is or has associated or been involved with a gang with the intent to facilitate the commission of a gang-related activity or to promote, further or assist in the gang-related activity;
- (c) evidence of criminal activity by the person that indicates a link or involvement with the gang;
- (d) evidence that the person knowingly assisted in or in any way facilitated the concealment, transportation or disposal of anything of evidentiary value relating to gang-related activity;
- (e) evidence that the person knowingly concealed or shared in the proceeds of gang-related activity;
- (f) any statement made or information given, distributed or communicated by that

person on behalf of, or in the name of, the gang; and

- (g) any statement made by, or on behalf of the person, whether orally or in writing, and published or otherwise distributed by him or on his behalf, indicating involvement in the commission of a crime by the gang.

PART II OFFENCES

Gang
membership

6. (1) A person who—

- (a) is a gang leader;
 (b) is a gang member; or
 (c) professes to be a gang leader or a gang member, in order to gain a benefit, intimidate other persons or promote a gang,

commits an offence.

(2) A person who commits an offence under subsection (1)(a) is liable on conviction on indictment to imprisonment for twenty-five years.

(3) A person who commits an offence under subsection (1)(b) or (c) is liable on summary conviction to imprisonment for ten years and on a subsequent conviction on indictment to imprisonment for twenty years.

Chap. 15:03

Chap. 15:02

(4) Where a police officer, prison officer, member of the Defence Force, constable appointed under the Supplemental Police Act or the Special Reserve Police Act, member of a protective service agency or a person involved in law enforcement or intelligence gathering commits an offence under this section, he is liable on conviction on indictment to imprisonment for twenty-five years.

(5) A gang leader or gang member who unlawfully and maliciously—

- (a) wounds or causes grievous bodily harm to;
 or

(b) shoots at, with intent to do some grievous bodily harm,

a police officer, prison officer, member of the Defence Force, constable appointed under the Supplemental Police Act or the Special Reserve Police Act, member of a protective service agency or a person involved in law enforcement or intelligence gathering, commits an offence and is liable on conviction on indictment to imprisonment for thirty years.

7. A person who coerces, encourages, entices, aids or abets another person to be a gang leader or gang member commits an offence and is liable on conviction on indictment to imprisonment for twenty-five years.

8. (1) A person shall not take any retaliatory action against another person or any of that other person's relatives, friends, associates or property, on account of that other person—

- (a) refusing to become a gang leader or gang member;
- (b) ceasing to be a gang leader or gang member;
- (c) giving information to a law enforcement authority or an intelligence agency in relation to a gang, gang leader, gang member or gang-related activity;
- (d) assisting in an investigation of a gang, gang leader, gang member or gang-related activity;
- (e) giving evidence in the prosecution of a gang leader or gang member;
- (f) refusing to comply with an order of a gang leader or gang member; or
- (g) refusing to participate in retaliatory action against another person or any of that other person's relatives, friends, associates or property.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to imprisonment for thirty years.

Counselling a gang

9. A person who knowingly—

- (a) counsels;
- (b) gives instruction or guidance to;
- (c) finances in any manner; or
- (d) otherwise provides support to,

a gang leader, gang member or gang in furtherance of its participation in, involvement in or commission of a gang-related activity commits an offence and is liable on conviction on indictment to imprisonment for twenty-five years.

Preventing gang member from leaving gang

10. A person who prevents a gang leader or gang member from leaving a gang commits an offence and is liable on conviction on indictment to imprisonment for twenty-five years.

Possession of bullet-proof vest, firearm, ammunition or prohibited weapon for benefit of gang

11. A person who has in his possession or under his care or control a bullet-proof vest, firearm, ammunition or prohibited weapon, whether lawfully obtained or not, which he uses or ought reasonably to know would be used for the benefit of a gang, at the direction of a gang leader or gang member, or in the commission of a gang-related activity, commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.

Harbouring a gang member

12. (1) A person who harbours a gang leader or a gang member commits an offence and is liable on summary conviction to imprisonment for five years.

(2) For the purposes of subsection (1), where—

- (a) the gang leader or gang member is a child; and
- (b) the person convicted is the parent or is acting *in loco parentis* of the child,

the Court, in sentencing the person convicted, shall take into consideration mitigating factors such as efforts made by the person convicted to reform or rehabilitate the child.

(3) It is a defence for a person charged with an offence under subsection (1) if he proves that he did not know or could not reasonably have known that the person he was harbouring was a gang leader or a gang member.

13. (1) A person who conceals—

(a) a gang leader or a gang member; or

(b) a gang-related activity,

Concealing a
gang member

commits an offence and is liable on summary conviction to imprisonment for ten years.

(2) For the purposes of subsection (1)(a), a person commits an offence if in response to an enquiry from a law enforcement authority as to the whereabouts of the gang leader or the gang member, the person does not reveal the whereabouts to the enquirer, despite knowing where that person is located.

(3) For the purposes of subsection (1)(b), a person commits an offence if, in response to an enquiry from a law enforcement authority in connection with the investigation, or the commission, of the offence, he does not reveal information to the enquirer, despite having knowledge about the offence.

(4) It is a defence for a person charged with an offence under subsection (1)(a) if he proves that he did not know or could not reasonably have known that the person he was concealing was a gang leader or a gang member.

14. (1) A person who recruits another person to a gang Recruiting gang member commits an offence and is liable—

(a) on summary conviction to imprisonment for ten years; or

(b) on conviction on indictment to imprisonment for fifteen years.

(2) A person who recruits a child to a gang commits an offence and is liable—

(a) on summary conviction to imprisonment for fifteen years; or

(b) on conviction on indictment to imprisonment for twenty years.

(3) Notwithstanding subsection (2), a person who, within five hundred metres of a school or place of worship, recruits a child to a gang commits an offence and is liable on conviction on indictment to imprisonment for twenty years.

(4) It is a defence for a person charged with an offence under subsection (2) or (3) if he proves that he did not know or could not reasonably have known that the person he recruited was a child.

PART III

POWERS OF POLICE OFFICERS

Police powers of entry, search and arrest

15. (1) A police officer may arrest without a warrant a person whom he has reasonable cause to believe is a gang leader or gang member or who he has reasonable cause to believe has committed an offence under this Act.

(2) A police officer may, with a warrant issued by a Magistrate so enabling him to do, enter a dwelling house and search it if he has reasonable cause to believe that a gang leader, gang member or a person whom he has reasonable cause to believe has committed an offence under this Act may be found in that dwelling house.

(3) A police officer may enter without a warrant and search a place or premises not used as a dwelling house if he has reasonable cause to believe that a gang

leader, gang member or a person whom he has reasonable cause to believe has committed an offence under this Act may be found in that place or premises.

16. (1) Notwithstanding any law to the contrary, a police officer may, without a warrant, detain for a period not exceeding seventy-two hours, a person whom he reasonably suspects of—

- (a) having committed; or
- (b) interfering with an investigation of,

an offence under this Act without charging him for the offence.

(2) The time from which the period of detention is to be effective shall be the time at which the person is arrested and detained.

(3) Where a person is detained under subsection (1), the police officer who made the detention shall, without delay—

- (a) inform the person of the grounds for his detention;
- (b) cause to be maintained a custody record relating to the person detained; and
- (c) record the grounds for detention in the person's custody record.

(4) Where the police officer under subsection (3) has reasonable grounds to believe that the continued detention of the person beyond seventy-two hours without charge is necessary to—

- (a) obtain, secure or preserve evidence relating to an offence under this Act;
- (b) prevent interference with an investigation of an offence under this Act; or
- (c) prevent the commission of an offence,

the police officer may, within forty-eight hours of the person's detention, apply *ex parte* to a Judge, in the form set out as Form 1 in the Second Schedule, for a detention order.

(5) A Judge may grant a detention order under subsection (4) for the further detention of the person named in the application if he is satisfied that there are reasonable grounds to believe that—

- (a) the further detention of the person to whom the application relates is justified; and
- (b) the investigation is being conducted diligently and expeditiously.

(6) The period for which a detention order may be granted under subsection (5) shall be such period as the Court thinks fit, having regard to the evidence before it, but the period shall end not later than fourteen days after the time of the arrest and detention.

PART IV

FORFEITURE OF PROPERTY

Forfeiture pursuant
to conviction

17.(1) Subject to subsection (2), where a person is convicted of an offence under this Act, the Court may order that any property—

- (a) used for, or in connection with; or
- (b) obtained as a result of, or in connection with,

the commission of the offence, be forfeited to the State.

(2) Before making an order under subsection (1), the Court shall give an opportunity to be heard to any person who claims to be the owner of, or to have an interest in, the property.

(3) Where property is forfeited to the State under this section, the Court may give directions as to the storage, investment and disposal of the property.

PART V
MISCELLANEOUS

18. The Minister with responsibility for national security may by Order, amend the Second Schedule. Amendment of
Second Schedule

19. This Act shall continue in force for a period of thirty months from the date of its commencement. Duration

FIRST SCHEDULE

(Section 4)

GANG-RELATED ACTIVITY OFFENCES

1. Possession of imitation firearms in pursuance of a criminal offence
2. Larceny of a motor vehicle
3. Arson
4. Receiving stolen goods
5. Gang membership
6. Coercing or encouraging gang membership
7. Preventing gang member from leaving gang
8. Counselling a gang leader, gang member or gang
9. Possession of bullet-proof vest, firearm, ammunition or prohibited weapon for benefit of gang
10. Harboring a gang leader or gang member
11. Concealing a gang leader, gang member or gang-related activity
12. Recruiting gang member
13. Threatening to publish with intent to extort
14. Demanding money with menaces
15. Murder
16. Shooting or wounding with intent to do grievous bodily harm, unlawful wounding
17. Robbery, robbery with aggravation, robbery with violence

18. Assault occasioning actual bodily harm
19. Possession and use of a firearm or ammunition with intent to endanger life
20. Possession of a firearm or ammunition without licence certificate or permit
21. Trafficking in a dangerous drug or being in possession of a dangerous drug for the purpose of trafficking
22. Rape
23. Grievous sexual assault
24. Kidnapping
25. Kidnapping for ransom
26. Knowingly negotiating to obtain a ransom
27. Offences under the Anti-Terrorism Act
28. Offences under the Proceeds of Crime Act

SECOND SCHEDULE

[Section 16(4)]

FORM 1

APPLICATION FOR DETENTION ORDER

Republic of Trinidad and Tobago

In the County of _____

I, _____ , _____
(name of applicant) *(office of applicant)*

hereby apply under section 16(4) of the Anti-Gang Act for a
Detention Order in favour of _____
(name of person detained)

a person detained in police custody since _____

(date and time of detention)

in connection with _____
(details of person's alleged conduct)

[sections 16(4), 16(5) and 16(6) of the Anti-Gang Act provide the grounds upon and period for which a Judge may make a Detention Order]

The grounds of the application are—

Certificate of truth

I believe that the contents of this application are true.

Signed: _____
(Name of applicant)

Dated the _____ day of _____, 20__ .

Passed in the House of Representatives this _____ day
of _____, 2018.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say, by the votes of members of the House.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2018.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say, by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 4 of 2018

THIRD SESSION
ELEVENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to make provision for the maintenance of public safety and order through discouraging membership of criminal gangs and the suppression of criminal gang activity and for other related matters

Received and read the

First time

Second time

Third time
