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First Session Twelfth Parliament Republic of
Trinidad and Tobago

SENATE

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, 2021

Explanatory Notes

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

The Anti-Gang Bill, 2021 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 contains 20 clauses and two Schedules.

Clause 1 would provide the short title of the Act for which this is the Bill.

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

Clause 3 defines certain terms used in the Bill.

Clause 4 seeks to indicate the type of evidence which may reasonably show or demonstrate the existence of, or membership in, a gang.

Clause 5 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. Additionally, where a member of a law enforcement authority or a person involved in intelligence gathering commits an offence under the proposed section, that person 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 gathering and would carry a penalty of thirty years imprisonment on conviction on indictment.

Clause 6 seeks to make it an offence for a person to coerce, encourage, entice, aid or abet another person to be a gang leader or gang member and would carry a penalty of twenty-five years imprisonment on conviction on indictment.

Clause 7 seeks to make it an offence for a person to take retaliatory action against another person or any of that other 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; gives information to a law enforcement authority or an intelligence agency with respect to a gang, gang leader, gang member or gang-related activity; or gives evidence in the prosecution of a gang leader or gang member.

Clause 8 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 9 seeks to make it an offence to prevent a gang leader or gang member from leaving a gang and would carry a penalty of twenty-five years imprisonment on conviction on indictment.

Clause 10 seeks to make it an offence for a person to be in possession of a bullet-proof vest, firearm, ammunition or prohibited weapon which he uses or ought reasonably to know would be used in the commission of a gang-related activity. This offence would carry a penalty of fifteen years imprisonment on conviction on indictment.

Clause 11 seeks, *inter alia*, to make it an offence for a person to harbour a gang leader or gang member.

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

Clause 13 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 14 would provide for the offence of tipping-off where, *inter alia*, a person who knows or suspects that a police officer or any other officer of a law enforcement authority is acting or proposing to act in connection with an investigation, discloses to another person information or any other matter which is likely to prejudice the investigation.

Clause 15 seeks to empower a police officer to arrest, without a warrant, a person whom 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 leader, gang member or a person whom he has reasonable cause to believe has committed an offence under the Act may be found.

Clause 16 seeks to enable a police officer to detain a person who he reasonably suspects has committed an offence under the Act, or has interfered with the investigation of an offence under the Act, for a period not exceeding forty-eight 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 to the State in accordance with the Proceeds of Crime Act, Chap. 11:27.

Clause 18 would provide that the Minister with responsibility for national security may by Order amend the Second Schedule to the Act.

Clause 19 would provide that the Minister with responsibility for national security may make Regulations for the better carrying out of the provisions of the Act.

Clause 20 would provide for consequential amendments to be made to the Second Schedule to the Proceeds of Crime Act.

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, 2021

Arrangement of Clauses

PART I

PRELIMINARY

Clause

1. Short title
2. Commencement
3. Interpretation
4. Evidence in relation to a gang

PART II

OFFENCES

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

PART III

POWERS OF POLICE OFFICERS

15. Police powers or 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. Regulations

20. Consequential amendments

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

[, 2021]

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, 2021. Short title

Commencement	2. This Act comes into operation on such date as is fixed by the President by Proclamation.
Interpretation	3. In this Act—
Chap. 16:01	<p>“ammunition” has the meaning assigned to it in section 2 of the Firearms Act;</p> <p>“child” means a person under the age of eighteen years;</p> <p>“firearm” has the meaning assigned to it in section 2 of the Firearms Act;</p> <p>“gang” means a combination of two or more persons, whether formally or informally organized, who engage in gang-related activity;</p> <p>“gang leader” means a person who initiates, organizes, plans, finances, directs, manages or supervises a gang;</p> <p>“gang member” means a person who belongs to a gang, or associates himself with a gang-related activity;</p> <p>“gang-related activity” means—</p> <ul style="list-style-type: none"> (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,
First Schedule	<p>listed in the First Schedule, which a gang leader or gang member plans, directs, orders, authorizes, or requests;</p> <p>“law enforcement authority” means—</p> <ul style="list-style-type: none"> (a) the Police Service established under the Police Service Act; (b) the Customs and Excise Division established under the Customs Act;
Chap. 15:01	
Chap. 78:01	

- (c) the Board of Inland Revenue established under the Income Tax Act; Chap. 75:01
- (d) the Defence Force established under the Defence Act; Chap. 14:01
- (e) the Prison Service established under the Prison Service Act; Chap. 13:02
- (f) a constable as defined under the Supplemental Police Act; and Chap. 15:02
- (g) 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;

“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 a community residence as defined under the Children’s Community Residences, Foster Care and Nurseries Act, Chap. 46:04 recreation ground or park, or an establishment for the conduct of technical or vocational training, or educational, sporting or social programmes, designed for children.

4. 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 Evidence in relation to a gang

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

5. (1) A person who—

Gang membership

- (a) is a gang leader;
- (b) is a gang member;
- (c) performs an act as a condition for membership in a gang; or
- (d) professes to be a gang leader or a gang member in order to—
 - (i) gain a benefit for himself or another person;
 - (ii) intimidate other persons; or
 - (iii) 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), (c) or (d) is liable in the case of a first offence, on summary conviction to imprisonment for ten years, and, in the case of a subsequent offence, on conviction to imprisonment for twenty years.

(4) Where a member of a law enforcement authority or a person involved in 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, with intent—

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

(b) to do some grievous bodily harm, shoots at, a member of a law enforcement authority or a person involved in intelligence gathering, commits an offence and is liable on conviction on indictment to imprisonment for thirty years.

Coercing or
encouraging gang
membership

6. 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.

Retaliatory action

7. (1) A person shall not intentionally 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;
- (g) refusing to participate in retaliatory action against another person or any of that other person's relatives, friends, associates or property; or
- (h) refusing to provide funding or resources to a gang leader, gang member or gang.

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

(3) For the purposes of this section, "relative" means, in relation to a person—

- (a) his parent, step-parent or guardian;

- (b) his spouse, cohabitant or fiancé;
- (c) his child, step-child or other dependant;
- (d) his brother, sister, step-brother or step-sister;
- (e) his grandparent; or
- (f) any other person responsible for the person's care and support.

8. A person who knowingly—

Counselling a gang

- (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.

9. 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.

Preventing gang leader or gang member from leaving gang

10. (1) A person who—

- (a) uses a bullet-proof vest, firearm, ammunition, or prohibited weapon; or
- (b) has in his possession a bullet-proof vest, firearm, ammunition, or prohibited weapon which he ought reasonably to know would be used,

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

in the commission of a gang-related activity, commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.

(2) It is a defence for a person charged with an offence under subsection (1)(b) if he proves that he

did not know or could not reasonably have known that the bullet-proof vest, firearm, ammunition, or prohibited weapon in his possession would be used in the commission of a gang-related activity.

Harbouring a gang member

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

Concealing a gang leader or gang member

12. (1) A person who conceals—

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

(b) a gang-related activity,

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

(2) For the purposes of subsection (1)(a), a person commits an offence if in response to an enquiry from a police officer as to the whereabouts of the gang leader or the gang member, the person does not reveal the whereabouts to the police officer, 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 police officer in connection with the investigation, or the commission, of the offence, he does not reveal information to the police officer, despite having knowledge of the plans, participation in or commission of 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.

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

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

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

14. (1) A person who—

Tipping-off

(a) knows or suspects that a police officer or any other officer of a law enforcement authority is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into an offence under this Act; and

- (b) discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation,

commits an offence and is liable on conviction on indictment to a fine of one hundred thousand dollars and to imprisonment for twenty years.

(2) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter—

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or

(b) to any person—

- (i) in contemplation of, or in connection with, legal proceedings; and

- (ii) for the purpose of those proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) It is a defence for a person charged with an offence under subsection (1) if he proves that he did not know or suspect that the disclosure was likely to be prejudicial to the investigation or proposed investigation.

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 Magistrate may issue a warrant to a police officer authorizing the police officer to enter and search a dwelling house where the Magistrate is satisfied by evidence on oath that there is reasonable ground for believing that there may be found in the dwelling house a gang leader, gang member or a person whom the Magistrate has reasonable cause to believe has committed an offence under this Act.

(3) A police officer may enter without a warrant and search a place or premises not used as a dwelling house including a building, ship, vessel, carriage, box or receptacle, 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 forty-eight hours, a person whom he has reasonable cause to believe—

(a) has committed, is about to commit or is committing; or

(b) has interfered 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; and

(b) record the grounds for his detention in the station diary.

(4) Where the police officer under subsection (3) has reasonable grounds to believe that the continued detention of the person beyond forty-eight 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 thirty-six hours of the person's further detention, apply *ex parte* to a Judge, in the form set out in the Second Schedule, for a detention order and the application shall be supported by evidence on oath.

(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.

(7) A person detained in accordance with subsection (5) may make an application to a Judge showing cause why the detention order should be discharged.

PART IV FORFEITURE OF PROPERTY

Forfeiture pursuant
to conviction

17. (1) 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 in accordance with the Proceeds of Crime Act.

Chap. 11:27

(2) 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.

(3) For the purposes of this section, “property” means real or personal property, whether within or outside the territory and includes—

- (a) a right, interest, title, claim, chose in action, power, privilege, whether present or future and whether vested or contingent, in relation to property, or which is otherwise of value;
- (b) a conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property whereof the person executing the conveyance is proprietor or possessed or wherein he is entitled to a contingent right, either for his whole interest or for a lesser interest;
- (c) a monetary instrument;
- (d) any other instrument or securities;
- (e) any business;
- (f) a vehicle, boat, aircraft or other means of conveyance of any description; and
- (g) any other tangible or intangible property.

PART V

MISCELLANEOUS

18. The Minister with responsibility for national Amendment of
Second Schedule

security may by Order subject to negative resolution of Parliament, amend the Second Schedule.

Regulations

19. (1) The Minister with responsibility for national security may make Regulations generally for the better carrying out of the provisions of this Act.

(2) Regulations made under subsection (1), shall be subject to negative resolution of Parliament.

Consequential
amendments
Chap. 11:27
amended

20. The Proceeds of Crime Act is amended in the Second Schedule—

- (a) in paragraph (22), by deleting the word “and”;
- (b) in paragraph (23), by deleting the word “.” and substituting the words “; and”; and
- (c) by inserting after paragraph (23) the following new paragraph:

“(24) Participation in gangs and gang-related activity offences.”.

FIRST SCHEDULE

(Section 3)

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. Harboursing a gang leader or gang member
11. Concealing a gang leader, gang member or gang-related activity

12. Recruiting a 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
29. Offences under the Prevention of Corruption Act
30. Offences under the Trafficking in Persons Act
31. Misbehaviour in public office
32. Offences under the Gambling and Betting Act
33. Attempting to blow up a building with the intent to do any bodily injury to any person
34. Manslaughter
35. Hijacking
36. Hostage-taking
37. Causing or inciting prostitution
38. Controlling a child prostitute
39. Causing or inciting a child to engage in sexual activity

- 40. Offences relating to dangerous drugs under the Children Act
- 41. Offences relating to child pornography under the Children Act
- 42. The keeping or management of a brothel
- 43. Detention of a person in a brothel
- 44. Procuration for the purposes of prostitution
- 45. Living on the earnings of prostitution
- 46. Meeting a child following sexual grooming
- 47. Conspiracy to defraud the State
- 48. Forcible Entry and Forcible Detainer under the Trespass Act

SECOND SCHEDULE

[Section 16(4)]

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 against _____
(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]

SECOND SCHEDULE—CONTINUED

The grounds of the application are—

Certificate of truth

I swear to the best of my knowledge, information and belief that the contents of this application are true.

Signed: _____
(Name of applicant)

Dated the _____ day of _____, 20____.

Passed in the Senate this _____ day of _____, 2021.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this _____ day
of _____, 2021.

Clerk of the House

I confirm the above.

Speaker

No. 3 of 2021

FIRST SESSION
TWELFTH 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