

THE ANTI-GANG BILL, 2010

Arrangement of Clauses

Clause

1. Short title
2. Commencement
3. Act inconsistent with Constitution
4. Interpretation
5. Gang membership
6. Participation in criminal activity in association with gang
7. Possession of bullet-proof vest, firearm or ammunition for benefit of gang
8. Harboursing or concealing gang members
9. Harboursing or recruiting children
10. Powers of police
11. Forfeiture of property
12. Duration

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No. 13 of 2010

First Session Tenth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to make provision for the suppression of
associations established for unlawful purposes and
for the better preservation of public safety and
order and for other related matters

THE ANTI-GANG BILL, 2010

Explanatory Note

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

This Bill 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 a serious offence, *inter alia*, to 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 recruit children in a gang. The Bill also seeks to confer on a Court the power to order the forfeiture of personal property in certain circumstances. Finally, the Bill provides that it shall remain in force for five years after it comes into force. The Bill contains twelve clauses.

The Act 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.

Clause 1 provides the short title of this Act, for which this is the Bill.

Clause 2 seeks to provide the commencement provision.

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

Clause 4 seeks to provide the interpretation provision.

Clause 5 seeks to make it an offence for a person to be or become a member of a gang.

Clause 6 seeks to make it an offence for a person to participate in or support the activities of a gang or to solicit or invite support for a gang.

Clause 7 seeks to make it an offence for a person to have a bullet-proof vest, firearm or ammunition for the use or benefit of a gang.

Clause 8 seeks to make it an offence for a person to harbour or conceal a gang member who is wanted by the law enforcement authorities or to aid and abet a gang in the furtherance of its activities.

Clause 9 seeks to make it an offence for a person to harbour or recruit a child as a member of a gang.

Clause 10 seeks to confer special powers of arrest, entry and search to police officers.

Clause 11 seeks to give the Court the power to order that any personal property for the use or benefit of a gang may be forfeited in certain circumstances.

Clause 12 seeks to provide for the duration of this Act.

BILL

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[, 2010]

WHEREAS it is enacted by section 13(1) of the Preamble 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:

Enactment	ENACTED by the Parliament of Trinidad and Tobago as follows:
Short title	1. This Act may be cited as the Anti-Gang Act, 2010.
Commencement	2. This Act shall come into operation on a date to be fixed by the President by Proclamation.
Act inconsistent with Constitution	3. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.
Interpretation	4. (1) In this Act—
Chap. 16:01	<p>“ammunition” has the meaning assigned to that word in the Firearms Act;</p> <p>“bullet-proof vest” means a vest that is capable of providing protection from the penetration of bullets;</p> <p>“child” means a person who is under eighteen years of age;</p> <p>“firearm” has the meaning assigned to that word in the Firearms Act;</p> <p>“gang” means any alliance, combination, enterprise or other similar conjoining of two</p>

or more persons whether formally or informally organized that, through its membership or through the agency of any member, engages in any gang-related activity;

“gang member” means a person who belongs to a gang, or a person who knowingly acts in the capacity of an agent for or an accessory to, or is legally accountable for, or voluntarily associates himself with any gang-related activity, whether in a preparatory, executory or cover-up phase of any such activity, or a person who knowingly performs, aids, or abets any such activity;

“gang-related activity” means any criminal activity, enterprise, pursuit or undertaking acquiesced in, or consented or agreed to, or directed, ordered, authorized, requested or ratified by any gang member including a gang leader, officer, or governing or policy-making person or authority, or by any agent, representative or deputy of any such officer, person, or authority of the gang, whether with or without the intent to—

- (a) increase the gang’s size, membership, prestige, dominance or control in any geographical area;
- (b) provide the gang with any advantage in, or any control or dominance over any criminal offence;
- (c) exact revenge or retribution for the gang or any gang member;
- (d) obstruct justice, or intimidate or eliminate any witness against the gang or any gang member; or

- (e) otherwise directly or indirectly cause any benefit, aggrandisement, gain, profit or other advantage whatsoever to or for the gang, its reputation, influence, or membership;

“law enforcement authorities” include—

Act No. 7 of 2006

- (a) the Police Service established under the Police Service Act, 2006;

Chap. 78:01

- (b) the Customs and Excise Division established under the Customs Act;

Chap. 75:01

- (c) the Board of Inland Revenue established under the Income Tax Act; and

- (d) any other agency of the State in which investigative powers, similar to those exercisable by a police officer appointed under the Police Service Act, 2006, are lawfully vested;

“recruits” includes counsel, procure, lure, solicit, incite or induce.

(2) For the purpose of this Act, it shall not be necessary to show that a particular gang possesses, acknowledges or is known by any common name, insignia, flag, means of recognition, secret signal or code, creed, belief, structure, leadership or command structure, method of operation, criminal enterprise, concentration or speciality, 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 a preponderance of other admissible evidence, but any evidence reasonably tending to show or demonstrate the existence of or membership in a gang shall be admissible in any action or proceedings brought under this Act.

5. (1) It is hereby declared that gangs are unlawful and any person— Gang membership

- (a) who is or attempts to become a member of a gang; or
- (b) who professes to be a gang member when in fact he is not, whether by telling anyone that he is a gang member or otherwise suggesting to anyone that he is a gang member,

commits an offence and is liable on conviction on indictment to imprisonment for twenty years.

(2) Where the person convicted under subsection (1) is a gang leader, he is liable to imprisonment for the remaining years of his natural life.

(3) Where the person convicted under subsection (1) is a police officer, prison officer, a member of the Defence Force, a constable appointed under the Supplemental Police Act or the Special Reserve Police Act, a member of a protective service agency or a person involved in law enforcement he is liable to imprisonment for twenty-five years. Chap. 15:02
Chap. 15:03

6. (1) A person who, whether or not he is a gang member— Participation in criminal activity in association with gang

- (a) commits a gang-related activity at the direction of any gang member;
- (b) knowingly assists, aids or abets any gang member to carry out a gang-related activity;
- (c) conceals or assists in the concealment of a gang-related activity by the gang;
- (d) recruits or attempts to recruit a person to a gang, or otherwise solicits or invites support for the gang; or
- (e) knowingly commits, assists, aids or abets in the commission of any non-gang related activity at the direction of, or in concert with, or for the benefit of, the gang, or conceals or assists in the concealment of the same,

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

(2) It is a defence for a person charged for an offence under subsection (1)(a), (c) or (d) to prove that he did not know that any person under whose direction he acted, or whom he assisted, aided or abetted to carry out the offence, or for whom he concealed or assisted in the concealment of the offence, as the case may be, was or might be a gang member.

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

7. A person who has in his possession or under his care or control a bullet-proof vest, firearm or ammunition, whether lawfully obtained or not, which he intends or ought to know will be used for the benefit of or at the direction of a gang, or any gang member, commits an offence and is liable on conviction on indictment to a fine of four hundred thousand dollars and to imprisonment for fifteen years.

Harbouring or
concealing gang
members

8. A person who harbours or conceals a person whom he knows is a gang member and whom he knows is wanted by any member of the law enforcement authorities commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars and to imprisonment for five years.

Harbouring or
recruiting children

9. (1) A person who—

(a) harbours or conceals a person whom he knows or suspects is a child and a gang member; or

(b) recruits to a gang a person whom he knows or suspects is a child,

commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for ten years.

(2) Notwithstanding subsection (1)(b), a person who, within five hundred metres of a school or place of worship recruits to a gang a person whom he knows or suspects is a child, commits an offence and is liable on summary conviction to imprisonment for twenty years.

10. (1) A police officer may arrest without warrant a person whom he has reasonable cause to believe to be a gang member or whom he has reasonable cause to believe has committed an offence under this Act. Powers of police

(2) A police officer may, with a warrant issued by a Magistrate so enabling him to do, with proper assistance, enter any dwelling house, by force and breaking doors if necessary, and search the same if he has reasonable cause to believe that a gang member may be found in that dwelling house.

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

11. (1) Subject to subsection (2), the Court which convicts a person of an offence under this Act may, in addition to any other penalty, order the forfeiture of any personal property which, at the time of the offence, he had in his possession or under his control provided it is shown that he had such property for the use or benefit of a gang. Forfeiture of property

(2) Where a person, other than the convicted person, claims to be the owner of or otherwise interested in any personal property which can be forfeited by order under this section, the Court shall, before making such an order in respect of it, give him an opportunity to be heard.

12. This Act shall continue in force for a period of five years from the date of its commencement. Duration

No. 13 of 2010

FIRST SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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Received and read the

First time

Second time

Third time