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First Session Tenth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 10 of 2011

[L.S.]

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

[Assented to 23rd May, 2011]

WHEREAS the Constitution of the Republic of Trinidad ^{Preamble} and Tobago recognises 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:

1. This Act may be cited as the Anti-Gang Act, 2011. Short title
2. This Act shall come into operation on a date to be 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. (1) In this Act— Interpretation
 - “ammunition” has the meaning assigned to it in the Firearms Act; Chap. 16:01
 - “bullet-proof vest” means a vest or article of covering that is capable of providing or intended to provide protection from the penetration of bullets or similar projectiles;
 - “child” means a person who is under eighteen years of age;
 - “firearm” has the meaning assigned to it in the Firearms Act;
 - “gang” means a combination of two or more persons, whether formally or informally organized, that, through its membership or through an agent, engages in any gang-related activity;
 - “gang leader” means a person who knowingly initiates, organizes, plans, finances, directs, manages or supervises 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

voluntarily associates himself with any gang-related activity, whether in a preparatory, executory or concealment phase of any such activity, or a person who knowingly performs, aids, or abets any such activity;

First Schedule

“gang-related activity” means any criminal activity, enterprise, pursuit or undertaking in relation to any of the offences listed in the First Schedule acquiesced in, or consented or agreed to, or directed, ordered, authorized, requested or ratified by any gang member, including a gang leader;

“harbours” means giving refuge or shelter to another person and encouraging or supporting, whether tacitly or explicitly, that person in committing any gang-related activity;

“law enforcement authorities” includes—

Chap. 15:01

(a) the Police Service established under the Police Service Act;

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;

Chap. 14:01

(d) the Defence Force established under the Defence Act;

Chap. 13:02

(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;

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

“school” includes an orphanage or any establishment for the conduct of technical or vocational training or social programmes designed for youth.

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

(a) who is a member of a gang; or

(b) who, in order to gain an unlawful benefit, 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 summary conviction to imprisonment for ten years and on any subsequent conviction on indictment to imprisonment for twenty years.

(2) A person who is a gang leader commits an offence and is liable on conviction on indictment to imprisonment for twenty-five years.

(3) A person who is a police officer, prison officer, member of the Defence Force, constable appointed under the Supplemental Police Act or the Chap. 15:02 Special Reserve Police Act, member of a protective Chap. 15:03 service agency or involved in law enforcement, and is a gang member, commits an offence and is liable on conviction on indictment to imprisonment for twenty-five years.

(4) A gang member who unlawfully and maliciously—

(a) by any means whatsoever, 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, commits an offence and is liable on conviction on indictment to imprisonment for thirty years.

(5) 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 or 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.

Coercing or
encouraging gang
membership

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

Preventing gang
member from
leaving gang

7. A person who prevents or attempts to prevent a gang member from leaving the membership of a gang, whether by coercion or otherwise, commits an offence and is liable on conviction on indictment to imprisonment for twenty-five years.

8. (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) assists in the concealment of a gang-related activity by the gang; or
- (d) knowingly commits, assists, aids or abets in the commission of an 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 imprisonment for twenty years.

(2) It is a defence for a person charged for an offence under subsection (1)(a) or (c) 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.

9. 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 to use or ought to know may 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 imprisonment for fifteen years. Possession of bullet-proof vest, firearm or ammunition for benefit of gang

10. (1) A person who harbours a person whom he knows or ought to know is a gang member or is wanted by any member of the law enforcement authorities for any gang-related activity commits an offence and is liable on summary conviction to imprisonment for five years. Harbouring or concealing gang members

(2) Where in subsection (1)—

- (a) the gang member or person wanted by any member of the law enforcement authorities for any gang-related activity 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 any efforts made by the person convicted to reform or rehabilitate the child.

(3) A person who conceals a person whom he knows or ought to know is a gang member or is wanted by any member of the law enforcement authorities for any gang-related activity commits an offence and is liable on summary conviction to imprisonment for ten years.

(4) A person charged with an offence under subsection (3) conceals another person if the person charged—

- (a) knows or ought to know that the other person is a gang member or is wanted by any member of the law enforcement authorities in connection with the investigation or for the commission of any gang-related activity; and
- (b) in response to an enquiry from a member of the law enforcement authorities as to the whereabouts of the other person, does not reveal the whereabouts to the enquirer, despite knowing where the other person is located.

Recruiting gang
members

11. (1) A person who recruits or attempts to recruit a person who is not a child to a gang or otherwise solicits or invites support for a gang commits an offence and is liable on conviction on indictment to imprisonment for ten years.

(2) A person who recruits to a gang a person whom he knows or ought to know is a child commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.

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

12. (1) A police officer may arrest without a 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. Police powers of entry, search and arrest

(2) A police officer may, with a warrant issued by a Magistrate so enabling him to do, enter any dwelling house 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 without a warrant and search any place or premises not used as a dwelling house if he has reasonable cause to believe that a gang member may be found in such place or premises.

13. (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 having committed an offence under this Act without charging him for the offence. Time limit for police detention of suspects

(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 additional grounds arise for continuing to detain a person within the seventy-two hour period under subsection (1), the police officer who made the detention shall record those grounds in the person's custody record and provide the person or his attorney-at-law with a copy of the custody record, upon request.

(5) Where a person is detained without charge under subsection (1), a police officer of the rank of superintendent or above who is responsible for the police station at which the person is detained, hereafter referred to as "the senior officer", shall, within forty-eight hours of the time referred to in subsection (2), review the grounds for detention and where the senior officer is satisfied that the detention of the person is not reasonably required in the public's interest having regard to the stage of the investigation, the senior officer shall order that the person be released forthwith.

(6) Where, nearing the expiration of the period referred to in subsection (1), the senior officer has reasonable grounds for believing that the continued detention of the person without charge is necessary to secure or preserve evidence relating to an offence or to obtain such evidence by questioning the detained person, the senior officer may apply *ex parte* to a Magistrate, in the manner prescribed in Form 1 of the Second Schedule, for a detention order.

(7) A Magistrate may make an order under subsection (6) 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.

(8) The period for which a detention order may be granted under subsection (7) shall be such period as the Court thinks fit, having regard to the evidence before it, but the period shall end not later than one hundred and forty-four hours after the effective time of the arrest and detention referred to in subsection (2).

14. (1) Subject to subsections (2) and (3), the Court which convicts a person of an offence under this Act shall, in addition to any other penalty, order the forfeiture of any 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.

(2) Property subject to forfeiture under subsection (1) shall include—

- (a) all profits, proceeds and instrumentalities relating to gang-related activity or the recruitment of gang members; and
- (b) all property used or intended or attempted to be used to facilitate gang-related activity or the recruitment of gang members.

(3) Where a person, other than the convicted person, claims to be the owner of or otherwise interested in any 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.

(4) The Court may give directions as to the storage, investment and disposal of property forfeited by order under subsection (1).

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

16. The Minister with responsibility for national security may by Order, subject to affirmative resolution of Parliament, amend the Schedules to this Act.

FIRST SCHEDULE

GANG-RELATED ACTIVITY OFFENCES

(Section 4)

1. Possession of imitation firearms in pursuance of any 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. Participation in criminal activity in association with gang
9. Possession of bullet-proof vest, firearm or ammunition for benefit of gang
10. Harboursing or concealing gang members
11. Recruiting gang members
12. Threatening to publish with intent to extort
13. Demanding money with menaces
14. Murder
15. Shooting or wounding with intent to do grievous bodily harm, unlawful wounding
16. Robbery, robbery with aggravation, robbery with violence
17. Assault occasioning actual bodily harm
18. Possession and use of a firearm or ammunition with intent to endanger life
19. Possession of a firearm or ammunition without licence certificate or permit
20. Trafficking in a dangerous drug or being in possession of a dangerous drug for the purpose of trafficking
21. Rape
22. Grievous sexual assault
23. Kidnapping
24. Kidnapping for ransom
25. Knowingly negotiating to obtain a ransom
26. An attempt to commit any offence listed in this Schedule

SECOND SCHEDULE

FORM I

[Section 13(6)]

APPLICATION FOR DETENTION ORDER

Republic of Trinidad and Tobago

In the County of _____

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

hereby apply under section 13(6) 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 alleged offence)

[sections 13(7) and 13(8) of the Anti-Gang Act provide the grounds upon and period
for which a Magistrate 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: _____
(Applicant)

Dated the _____ day of _____, 20____.

Passed in the House of Representatives this 1st day of April, 2011.

J. SAMPSON-MEIGUEL

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 36 members of the House.

J. SAMPSON-MEIGUEL

Clerk of the House

Passed in the Senate this 3rd day of May, 2011.

N. JAGGASSAR

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 28 Senators.

N. JAGGASSAR

Clerk of the Senate

Senate amendments were agreed to by the House of Representatives on the 16th day of May 2011.

J. SAMPSON-MEIGUEL

Clerk of the House