
Third Session Eleventh Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 1 of 2018

[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 15th May, 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,
- First Schedule listed in the First Schedule, which a gang leader or gang member plans, directs, orders, authorizes, or requests;
- “law enforcement authority” means—
- 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;
- Chap. 15:02 (f) a constable as defined under the Supplemental Police Act; and
- (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, recreation ground or park, or an establishment for the conduct of technical or vocational training, or educational, sporting or social programmes, designed for children. Chap. 46:04

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— Evidence in relation to a gang

- (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;
 - (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.

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. Coercing or encouraging gang membership

8. (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— Retaliatory action

(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.

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.

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.

11. (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,

Preventing gang member from leaving gang
Possession of bullet-proof vest, firearm, ammunition or prohibited weapon for benefit of gang

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.

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 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.

Harbouring a gang member

(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 member

13. (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 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.

Recruiting a gang member

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

(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.

15. (1) A person who—

Tipping-off

- (a) knows or suspects that a police officer 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

16. (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.

17.(1) Notwithstanding any law to the contrary, a Detention of persons police officer may, without a warrant, detain for a period not exceeding seventy-two hours, a person whom he has reasonable cause to believe—

(a) has committed; 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 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 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

18. (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.

(2) Before the Court makes an order under subsection (1), the Clerk of the Peace or the Registrar of the Supreme Court of Judicature, as the case may be, shall

publish a notice identifying the property referred to under subsection (1) in two newspapers in daily circulation in Trinidad and Tobago.

(3) A person who claims to be the owner of, or to have an interest in, the property shall file a notification of interest in the form set out as Form 2 in the Second Schedule, with the Clerk of the Peace or the Registrar of the Supreme Court of Judicature, as the case may be, within two weeks of the date of publication of the notice referred to under subsection (2).

(4) Before making an order under subsection (1), the Court shall give an opportunity to be heard to any person who has filed a notification of interest claiming to be the owner of, or to have an interest in, the property.

(5) Notwithstanding subsections (3) and (4), the Court may give a person claiming to be the owner of, or to have an interest in, the property an opportunity to be heard, where the Court considers it is in the interest of justice to do so.

(6) 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

19. The Minister with responsibility for national security may by Order subject to negative resolution of Parliament, amend the Second Schedule.

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

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. Harboursing 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

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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

SECOND SCHEDULE

[Section 17(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 17(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 17(4), 17(5) and 17(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 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 _____.

SECOND SCHEDULE—CONTINUED

[Section 18(3)]

FORM 2

NOTIFICATION OF INTEREST

Take notice that I _____ of

_____ ,

make oath and say that I am [the lawful owner of/the person with an interest in] the following property hereinafter identified:

[state the nature and amount of, and type of interest in, the property].

Sworn by the above-named at _____ on the _____ day of _____ , 20 _____ .

[In the case of a company, the corporate seal is to be affixed and attested to.]

Signed: _____

(The applicant)

Passed in the House of Representatives this 9th day of March, 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 37 members of the House.

J. SAMPSON-MEIGUEL

Clerk of the House

Passed in the Senate this 11th day of April, 2018.

B. CAESAR

Clerk of the Senate (Ag.)

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 29 Senators.

B. CAESAR

Clerk of the Senate (Ag.)

Senate amendments were agreed to by the House of Representatives this 4th day of May, 2018.

J. SAMPSON-MEIGUEL

Clerk of the House