



Bill Essentials

The Anti-Gang Bill, 2018

(As amended in the House of Representatives)

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BACKGROUND AND PURPOSE

1. **The Anti-Gang Bill, 2018**, was first introduced in the House of Representatives by the Honourable Faris Al-Rawi, Attorney General and Minister of Legal Affairs and was passed on March 9, 2018.
2. The Bill provides for the suppression of associations created for unlawful or criminal purposes and to provide for the enhanced protection of the public.
3. The Bill also seeks to make it an offence to, *inter alia*:
 - (a) be a member of a gang,
 - (b) be in possession of a bullet-proof vest,
 - (c) participate in, or contribute to, the activities of a gang,
 - (d) support or invite support for a gang, or
 - (e) harbour or conceal gang members or recruit persons to a gang.

4. The Bill infringes an individual's rights and freedoms as provided for in **Section 4** and **5** of the **Constitution of Trinidad and Tobago** and therefore requires a special majority of three-fifths of the members of each House to be passed.

KEY FEATURES OF THE BILL

DEFINITIONS OF KEY TERMS

5. Key definitions are contained in **Clause 4** of the Bill.
6. **"Gang"** means a combination of two or more persons, whether formally or informally organized, who engage in gang-related activity and **"gang leader"** means a person who initiates, organizes, plans, finances, directs, manages or supervises a gang.
7. Under the proposed legislation **"gang related activity"** occurs when a gang leader or gang member plans, directs, orders, authorises, or requests the commission of, attempt to commit, the aiding, abetting, counselling or procuring of, or conspiracy to commit an offence listed in the First Schedule.
8. Additionally, **Clause 4** ascribes the terms **"ammunition"**¹, **"firearm"**² and **"prohibited weapon"**³ the same meanings as assigned under **Section 2** of the **Firearms Act, Chap 16:01**.⁴

¹ **"Ammunition"**, means (a) ammunition for any firearm of any kind; (b) every shell, cartridge case, bomb, hand grenade, bullet or like missile, whether containing any explosive or gas or chemical or not, and whether intended to be discharged from or by any gun or other propelling or releasing instrument or mechanism or not, except missiles which can be used only for the purpose of extinguishing fires; (c) every part of any such shell, cartridge case, bomb, hand grenade, bullet or missile, whether such shell, cartridge case, bomb, hand grenade, bullet or missile may have been completely formed at any time or not; (d) every fuse, percussion cap, or priming cap, adapted, or prepared for the purpose of causing the propulsion of or exploding any shell, bomb, hand grenade, bullet or other projectile; (e) every bullet clip or cartridge clip; (f) any explosive when enclosed in any case or contrivance adapted or prepared so as to form a cartridge, charge or complete round for any firearm or any other weapon, or to form any tube for firing explosives, or to form a detonator, or a projectile, which can be used (whether singly or in suitable combinations) as, or in connection with, a missile; (g) everything declared by Order of the President to be ammunition.

² **"Firearm"** means any lethal barrelled weapon from which ammunition can be discharged or any prohibited weapon, and includes any component part of any such weapon and any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon, but does not include any air rifle, air gun, or air pistol, of a type prescribed by Order made by the President and of a calibre so prescribed.

³ **"Prohibited Weapon"** means, (a) any artillery or automatic firearm; (b) any grenade, bomb or other like missile; or (c) any weapon of whatever description or design which is adapted for the discharge of any noxious liquid, gas or other thing.

⁴ Fire Arms Act, Chap 16:01 http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/16.01.pdf

EVIDENCE IN RELATION TO A GANG

9. **Clause 5** of the Bill prescribes the evidence which may reasonably demonstrate the existence of, or membership in a gang. Therefore, it is not necessary to show that a particular gang possesses or is known by a common name, insignia or other means of recognition.

CREATION OF OFFENCES

10. **Clauses 6 to 14** create the following offences:

Offence	Penalty
Being a gang leader.	Imprisonment for twenty-five (25) years .
Being a gang member, or professing to be a gang leader or a gang member in order to gain a benefit, intimidate other persons or promote a gang.	Imprisonment for ten (10) years and on a subsequent conviction on indictment to imprisonment for twenty (20) years .
Where a police officer, prison officer, member of the Defence Force, constable, member of a protective service agency or a person involved in law enforcement or intelligence: (a) is found to be a gang leader, a gang member or professes to be a gang leader or member to gain a benefit, intimidate other persons or promote a gang; or (b) being a gang leader or member he unlawfully and maliciously wounds or causes grievous bodily harm to or shoots at, with intent to do some grievous bodily harm to a police officer, prison officer, member of the Defence Force, constable member of a protective service agency or a person involved in law enforcement or intelligence.	Imprisonment for twenty-five (25) years .
Where a gang leader or gang member 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, member of a protective service agency or a person involved in law enforcement or intelligence.	Imprisonment for thirty (30) years .

<p>Coercing, encouraging, enticing, aiding or abetting another person to be a gang leader or gang member.</p>	<p>Imprisonment for twenty-five (25) years.</p>
<p>Taking retaliatory action against another person or any of that other person’s relatives, friends, associates or property, on account of that person refusing to comply with an order of a gang leader or gang member.</p>	<p>Imprisonment for thirty (30) years.</p>
<p>Knowingly-</p> <p>(a) Counselling;</p> <p>(b) Giving instruction or guidance to;</p> <p>(c) Financing in any manner; or</p> <p>(d) Otherwise providing support to,</p> <p>a gang leader, gang member or gang in furtherance of its participation in, involvement in or commission of a gang-related activity</p>	<p>Imprisonment for twenty-five (25) years.</p>
<p>Preventing a gang leader or gang member from leaving a gang.</p>	<p>Imprisonment for twenty-five (25) years.</p>
<p>Possession of or having under one’s care or control:</p> <p>(a) a bullet-proof vest;</p> <p>(b) firearm;</p> <p>(c) ammunition; or</p> <p>(d) prohibited weapon,</p> <p>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.</p>	<p>Imprisonment for fifteen (15) years.</p>
<p>Harbouring a gang leader or a gang member who commits an offence.</p>	<p>Imprisonment for five (5) years.</p>
<p>Concealing-</p> <p>(a) a gang leader or gang member for a gang-related activity;</p> <p>or</p> <p>(b) gang-related activity.</p>	<p>Imprisonment for ten (10) years.</p>
<p>Recruiting another person to a gang.</p>	<ul style="list-style-type: none"> ▪ Imprisonment for ten (10) years on summary conviction. ▪ Imprisonment for fifteen (15) years on conviction on indictment.
<p>Recruiting a child to a gang</p>	<ul style="list-style-type: none"> ▪ Imprisonment for fifteen (15) years on summary conviction.

- Imprisonment for **twenty (20) years** on conviction on indictment.

If however, a person recruits a child being within five hundred metres of a school or place of worship he is liable on conviction on indictment to imprisonment for **twenty (20) years**.

POWERS OF POLICE OFFICERS

11. **Clause 15** empowers a police officer:

- (a) 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,
- (b) to enter and search a dwelling house, **with a warrant**, or
- (c) to enter any other place or premises, **without a warrant**, where he has reasonable cause to believe that a gang member may be found.

12. **Clause 16** enables a police officer to detain a person who he reasonably suspects of having committed an offence for **a period not exceeding seventy-two (72) hours**. This detention can be effected **without a warrant**.

13. Additionally, **Clause 16(4)** provides for the procedure a police officer must follow where he has reasonable grounds to detain a person beyond seventy two (72) hours.

FORFEITURE OF PROPERTY

14. **Clause 17** empowers the Court to order that the property of a person convicted under the Act may be forfeited in certain circumstances.

15. **Clause 18** empowers the Minister with responsibility for national security to amend the Second Schedule which contains the application form for detention order.

16. **Clause 19** provides for the duration of the operation of the legislation via a **sunset clause**. It proposes that the Bill will continue in force for a period of **thirty (30) months** from the date of its commencement.

COMPARATIVE LEGISLATION

NAME OF ACT	SIMILARITIES WITH THE BILL	DIFFERENCES WITH THE BILL
JAMAICA		
Criminal Justice (Suppression of Criminal Organizations) Act, 2014.	<ul style="list-style-type: none"> ▪ The Act makes it an offence to: <ul style="list-style-type: none"> ✓ Be a part of or participate in or lead a criminal organization. ✓ Recruit an adult to be a part of or participate in a criminal organisation. ✓ Knowingly facilitate the commission of a serious offence by or on behalf of a criminal organization. ✓ Conceal the criminal activity of a criminal organisation or harbor or conceal a person, knowing that the person is a part of or a participant in a criminal organisation. 	<ul style="list-style-type: none"> ▪ The Act makes it an offence to: <ul style="list-style-type: none"> ✓ Establish a criminal organisation. ✓ Provide a benefit to or to gain a benefit from a criminal organisation. ✓ Dispose of or share in the proceeds of the criminal activity of a criminal organisation. ✓ Knowingly aid or abet a criminal organisation or become an accessory before or after the fact in the carrying out of a serious offence. ✓ Profess to be a participant in a criminal organisation to gain an unlawful benefit. ✓ Put on or assume the dress, name, designation or description of a law enforcement officer or identify as such in furtherance of criminal activity. ▪ Where a citizen of Jamaica or a person who is not a citizen but is resident in Jamaica, carries out an act or is responsible for an omission which would constitute an offence under the Act, he is liable to be prosecuted as if the act or omission had occurred in Jamaica. ▪ A Court, hearing a case in exercise of its jurisdiction under this Act may direct the protection of the identity, name, address and particulars of any person in the interest of the administration of justice, public safety, public order or public morality.

AUSTRALIA

**Serious and Organised
Crime (Control)
Act 2008**

- The Act makes it an offence to recruit a person to become member of declared organisation.
- Declarations of criminal organisations are made upon application by the Commissioner to the Court. These declarations are published in the Gazette and in a newspaper circulating generally throughout the State.
- The Commissioner may also apply to the court for a control order relating to a person who is or has been a member of a declared organisation or a person who associates with a member of a declared organisation. The order will prohibit a person from:
 - ✓ associating with a specified person or persons of a specified class;
 - ✓ holding an authorisation to carry on a prescribed activity while the control order remains in force;
 - ✓ being present at, or being in the vicinity of, a specified place or premises or a place or premises of a specified class;
 - ✓ possessing a specified article or weapon, or articles or weapons of a specified class;
 - ✓ carrying on his or her person more than a specified amount of cash;
 - ✓ using for communication purposes, or being in possession of, a telephone, mobile phone, computer or other communication device except as may be specified; and or
 - ✓ engaging in other conduct of a specified kind that the Court considers could be relevant to the commission of serious criminal offences.

To contravene a control order is an offence which carries a maximum penalty of imprisonment for five (5) years.
- The Act makes it an offence to:

		<ul style="list-style-type: none"> ✓ Permit premises to be habitually used as place of resort by members of declared organization. ✓ Associate with a person who is a member of a declared organisation or the subject of a control order. ▪ The Act applies in relation to a child in the same way as it applies to an adult (a child means a person under 18 years of age), however, a control order may not be made in relation to a child who is under 16 years of age.
CANADA		
<p>The Criminal Code, 1985</p>	<ul style="list-style-type: none"> ▪ The Code makes it an offence to: <ul style="list-style-type: none"> ✓ Possess any explosive substance for the benefit of, at the direction of or in association with a criminal organisation. ✓ Participate in or contribute to any activity of the criminal organisation. ✓ Recruit, solicit, encourage, coerce or invite a person to join a criminal organisation. ✓ To commit or instruct to commit, directly or indirectly any offence for the benefit of or in association with a criminal organisation. 	<ul style="list-style-type: none"> ▪ In determining whether an accused participates in or contributes to any activity of a criminal organisation, the Court may consider, among other factors, whether the accused: <ul style="list-style-type: none"> ✓ uses a name, word, symbol or other representation that identifies, or is associated with, the criminal organisation; ✓ frequently associates with any of the persons who constitute the criminal organisation; ✓ receives any benefit from the criminal organisation; or ✓ repeatedly engages in activities at the instruction of any of the persons who constitute the criminal organisation. ▪ The Code also makes it an offence to commit or instruct to commit, directly or indirectly any offence for the benefit of or in association with a criminal organisation.

REFERENCES

- **Jamaica - Criminal Justice (Suppression of Criminal Organizations) Act, 2014**
http://www.japarliament.gov.jm/attachments/341_The%20Disruption%20and%20Suppression%20of%20criminal%20organizations.pdf
- **Australia - Serious and Organised Crime (Control) Act 2008**
[https://www.legislation.sa.gov.au/LZ/C/A/SERIOUS%20AND%20ORGANISED%20CRIME%20\(CONTROL\)%20ACT%202008/CURRENT/2008.13.UN.PDF](https://www.legislation.sa.gov.au/LZ/C/A/SERIOUS%20AND%20ORGANISED%20CRIME%20(CONTROL)%20ACT%202008/CURRENT/2008.13.UN.PDF)
- **Canada - The Criminal Code, 1985**
<http://laws-lois.justice.gc.ca/PDF/C-46.pdf>

LEGISLATION MENTIONED IN THE BILL

- **Fire Arms Act, Chap 16:01**
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/16.01.pdf
- **Police Service Act, Chap. 1501**
http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/15.01.pdf
- **Customs Act, Chap. 78:01**
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/78.01.pdf
- **Income Tax Act, Chap.75:01**
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/75.01.pdf
- **Defence Act, Chap. 75:01**
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/14.01.pdf
- **Prison Service Act, Chap 13:02**
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/13.02.pdf
- **Supplemental Police Act, Chap. 15:02**
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/15.02.pdf
- **Special Reserve Police Act, Chap 15:03**
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/15.03.pdf

OTHER USEFUL MATERIAL

- **Katz, C.M., D. Choate, and A. Fox. 2010. Understanding and Preventing Gang Membership in Trinidad and Tobago. Phoenix: Arizona State University.**
https://www.researchgate.net/profile/Charles_Katz/publication/282981088_Understanding_and_Preventing_Gang_Membership_in_Trinidad_and_Tobago/links/5625852408aed3d3f137154e/Understanding-and-Preventing-Gang-Membership-in-Trinidad-and-Tobago.pdf

- **Katz, C.M., and A. Fox. 2010. “Risk and Protective Factors Associated with Gang Involved Youth in a Caribbean Nation: Analysis of the Trinidad and Tobago Youth Survey”. Pan-American Journal of Public Health/Revista Panamericana de Salud Pública 27(3): 187–202.**
<https://www.scielosp.org/pdf/rpsp/v27n3/a06v27n3.pdf>
- **Katz, C.M., E.R. Maguire, and D. Choate. 2011. “A Cross-National Comparison of Gangs in the United States and Trinidad and Tobago”. International Criminal Justice Review 21(3): 243–62.**
<http://cvpcs.asu.edu/sites/default/files/content/products/katz%20maguire%20choate.PDF>
- **U.S. Department of Justice, Office of Justice Programs Office of Juvenile Justice and Delinquency Prevention. “Gang Suppression and Intervention problems and Response.” October, 1994.**
<https://www.ncjrs.gov/pdffiles/gangprob.pdf>

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