

ANTIGUA AND BARBUDA



ANTI-GANG BILL 2024

No. of 2024

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ANTI-GANG BILL 2024

No. of 2024

AN ACT to provide for the maintenance of public order and public safety by discouraging membership in criminal gangs and for the punishment of gang-related activity and for other connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows—

PART I

PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as the Anti-Gang Act 2024.
- (2) This Act shall come into operation on a day to be appointed by the Minister by Notice published in the *Gazette*.

2. Interpretation

In this Act –

"educational institution" means any school, training centre, or college or such other institution of higher education as may be prescribed;

"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 Governor-General and of a calibre so prescribed;

"gang" means a combination of two or more persons, whether formally or informally organized, who acts in concert for the purpose of engaging in gang-related activity, whether

for gain or otherwise, and whether or not all or any of them are otherwise associated for a lawful purpose or purposes;

“gang leader” means a person who initiates, organizes, plans, finances, directs, manages, supervises or acts as a leader of a gang or the head of a gang;

“gang-related activity” means –

- (a) the carrying out of activities leading to the commission of any of the offences listed in sections 4 through to section 13 of this Act;
- (b) the planning, directing, ordering, authorising or commission of criminal conduct by a gang; and
- (c) includes –
 - (i) an attempt to commit the offence;
 - (ii) aiding, abetting, counselling or procuring the offence;
 - (iii) conspiracy to commit the offence; or
 - (iv) using social media to promote the offence with the aim of intimidating a person;

“law enforcement authority” includes the Antigua and Barbuda Defence Force, the Office of National Drug and Money Laundering Control Policy (ONDMP), and such other organisation as may be prescribed by the Minister with responsibility for public safety; and the term “law enforcement officer” shall similarly refer to an officer of the law enforcement authority;

“offensive weapon” includes-

- (a) any article made or adapted for, or is capable of, causing injury to a person or intended by the person having it with him for such use by him, and
- (b) any article or device made or adapted for use for causing damage to any property or intended by the person having it with him for such use by him;

"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;

“recruit” includes counsel, procure, solicit, incite, coerce or induce;

“serious offence” means any offence specified in the Schedule.

3. Evidence in relation to gangs

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, 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 –

- (a) whether the person has admitted that he is a gang leader or gang member;
- (b) evidence that the person is or has been involved with or is associated 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 a 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, a gang; or
- (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

4. Offence of forming or establishing a gang

- (1) A person shall not form or establish a gang.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding ten (10) years.

5. Offence of being a gang leader

A person who –

- (a) is a gang leader;
- (b) knowingly counsel, gives instruction or guidance to a gang; or
- (c) professes to be a gang leader in order to –
 - (i) gain a benefit for himself;
 - (ii) intimidate other persons;
 - (iii) promote a gang,

commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding fifteen (15) years.

6. Offence of being a gang member

A person who –

- (a) is a gang member;
- (b) performs an act as a condition for membership in a gang; or
- (c) professes to be a member of a gang in order to –
 - (i) gain a benefit for himself or another person;
 - (ii) intimidate other persons; or
 - (iii) to promote a gang,

commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding ten (10) years.

7. Offence of recruiting a gang member

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

- (a) On summary conviction to imprisonment for a term of imprisonment not exceeding five (5) years; or
- (b) On conviction on indictment to a term of imprisonment not exceeding ten (10) years.

(2) A person who recruits a child to a gang commits an offence and is liable –

- (a) on summary conviction to a term of imprisonment not exceeding (5) years; or
 - (b) on conviction on indictment to a term of imprisonment not exceeding ten (10) years.
- (3) Notwithstanding subsection (2), a person who –
- (a) on the premises of any educational institution or place of worship; or
 - (b) within five hundred metres of any educational institution or place of worship,
- recruits a child to a gang commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding ten (10) years.

8. Offence of aiding and abetting a gang

- (1) A person who knowingly –
- (a) provides financial or other benefit to a gang;
 - (b) conceals, dispose of or share in the proceeds of criminal activity carried out by a gang; or
 - (c) become an accessory whether before or after the fact in the carrying out a serious offence by the gang,

commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding ten (10) years.

- (2) A person who, in order to hinder or prevent the investigation of a gang or a gang related activity, incites or induces another person to –
- (a) commit a serious offence; or
 - (b) engage in an act of violence or an act that serves to intimidate others,

commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding ten (10) years.

- (3) A person who conceals, transports or disposes of or tamper with evidentiary material relating to the criminal activities of a gang commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding ten (10) years.

9. Offence of Harboursing a gang member

- (1) A person who knowingly harbours a gang leader or gang member commits an offence and is liable –
- (a) On summary conviction to a term of imprisonment not exceeding five (5) years; or
 - (b) On conviction on indictment to a term of imprisonment not exceeding ten (10) years.
- (2) For the purposes of subsection (1), where –
- (a) The gang leader or gang member is a child; and
 - (b) the person convicted under this section is the parent of the child or a person acting in *loco parentis* of the child,

the Court, in sentencing the person convicted under this section, shall take into account mitigating factors such as efforts made by the person convicted to reform or rehabilitate the child.

10. Offence of concealing a gang leader or gang member etc.

A person who knowingly conceals –

- (a) a gang leader or gang member; or
- (b) a gang related activity,

commits an offence and is liable –

- (i) on summary conviction to a term of imprisonment not exceeding five (5) years; or
- (ii) on conviction on indictment to a term of imprisonment not exceeding ten (10) years.

11. Offence of preventing a person from ceasing to be part of a gang

A person who prevents a gang leader or gang member from ceasing to be a part of a gang commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding ten (10) years.

12. Offence of taking retaliatory action

- (1) A person shall not intentionally take any retaliatory action against another person or any of that other person’s relatives, friends, associates, business or property on account of that other person –
 - (a) refusing to become a gang member;
 - (b) ceasing to be a gang leader or gang member;
 - (c) giving information to a law enforcement officer 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 the person’s relatives, friends, associates, business or property; or
 - (h) refusing to provide funding or resources to a gang, gang leader or gang member.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding ten (10) years.

13. Offence of possession of bullet proof vest, firearm, ammunition or prohibited weapon for gang related activity

A person who –

- (a) uses a bullet-proof vest, firearm, ammunition, offensive weapon or prohibited weapon; or
- (b) has in his possession a bullet-proof vest, firearm, ammunition, offensive weapon or prohibited weapon which –
 - (i) is intended to be used; or
 - (ii) he or she knows or ought reasonably to have known that it would be use,

in the commission of a gang-related activity, commits an offence and is liable on conviction on indictment to imprisonment for fifteen (15) years.

PART III

POWERS OF POLICE AND OTHER LAW ENFORCEMENT AUTHORITY

14. Police powers of entry, search and arrest

(1) A police officer or a member of a law enforcement authority may arrest without a warrant any person whom the police officer or law enforcement officer has reasonable cause to believe –

- (a) is a gang leader or gang member;
- (b) is aiding, abetting or counselling a gang or gang member;
- (c) is involve in plans to participate in gang-related activity;
- (d) is about to commit a gang-related activity;
- (e) has committed an offence under this Act.

(2) A Magistrate may issue a warrant to a police officer or other law enforcement officer authorizing the police officer or other law enforcement 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 a gang leader or gang member or a person who has committed an offence under this Act may be found in the dwelling house.

(3) A police officer or law enforcement officer may with the consent of the owner or occupier of a place or premises, not being used as a dwelling house, enter and search such place or premises if he has reasonable cause to believe that a gang leader or gang member or a person who has committed an offence under this Act may be found in the place or premises.

(4) Where the owner or occupier of premises has refused to give consent to a police officer or law enforcement officer in accordance with subsection (3) to enter and search the place or premises, not being a dwelling house, the police officer or law enforcement officer may apply to a magistrate for a warrant to enter and search the place or premises, if the officer has reasonable cause to believe that a gang leader, gang member, or a person whom the officer has reason to believe has committed an offence under this Act may be found in that place or premises.

(5) A Magistrate may issue a warrant to a police officer or law enforcement officer authorising the entry and search of a place or premises, not being used as a dwelling house, if the Magistrate is satisfied by the information received on oath, that there is reasonable ground to believe that a gang leader, gang member or a person who has committed an offence under this Act may be found in that place or premises.

PART IV
TRIAL PROCEDURE

15. Jurisdiction of the High Court

- (1) In the interest of the administration of justice, public safety, public order or public morality, a court hearing a case in the exercise of its jurisdiction under this Act, may direct that –
 - (a) the identity of any person, including a witness in the case, shall be protected in the manner specified by the Court;
 - (b) in relation to any witness called or appearing before the Court, the name, identity, and address of the witness, as in the opinion of the Court shall be kept confidential, shall not be published; or
 - (c) no particulars of the trial other than the name of the accused, the offence charged and the verdict and sentence shall be published without the prior written approval of the Court.
- (2) A person shall not publish any information in contravention of a direction under subsection (2).
- (3) A person who contravenes subsection (3) commits an offence and shall be liable –
 - (a) on summary conviction to a fine not exceeding ten thousand (\$10,000.) dollars or to a term of imprisonment not exceeding two (2) years; or
 - (b) on conviction on indictment to a fine not exceeding twenty-five thousand dollars or to a term of imprisonment not exceeding seven (7) years.

16. Imposition of a mandatory minimum sentence in special circumstances

Notwithstanding the provisions of the Abolition of Minimum Punishments Act, Cap. 1, or the requirements of any rule of sentencing requiring the reduction in the sentence that may be imposed on a convicted person in particular circumstances, a person who is convicted for an offence under this Act shall not be sentenced for any amount that is less than 50 per cent of the maximum penalty prescribed under this Act unless it appears to the presiding Judge that there are exceptional mitigating circumstances in the case that would justify a sentence of less than 50 per cent of the prescribed penalty for the offence.

17. Minors to be treated as adults

A person who –

- (a) being a gang leader or gang member;
- (b) is under the age of 18 years; and
- (c) is charged with an offence under this Act or an offence listed in the Schedule

shall, notwithstanding the provisions of any other law, be proceeded against and, if convicted, be sentenced, in accordance with the provisions of this Act or the Act creating the serious offence as if he or she was over the age of 18 years.

18. Sentences to be served consecutively

A sentence imposed on a person for an offence under this Act shall be served consecutively to any other punishment imposed on the person for an offence arising out of the same event or series of event and to any other sentence to which the person is subject at the time the sentence is imposed on the person for an offence under this Act.

19. Consequential Amendments

The following Acts are amended to the extend referenced in this section –

(1) Bail Act, 2019, No. 19 of 2019

Section 8 of the Bail Act 2019, No. 19 of 2019 is amended by inserting after paragraph (g) the following –

“(h) indictable offences under the Anti-Gang Act 2024”

SCHEDULE

(List of serious offences)

(Sections 2 and 17)

- All indictable offences under this Act;
- Indictable offences under the Larceny Act, Cap. 241;
- Indictable offences under the Forgery Act, Cap. 181;
- Indictable offences under the Misuse of Drugs Act, Cap 283;
- Indictable offences under the Money Laundering (Prevention) Act 1996, No. 9 of 1996;
- Indictable offences under the Proceeds of Crime Act 1993, No. 13 of 1993;
- Indictable offences under the Electronic Crimes Act 2013, No. 14 of 2013
- Indictable offences under the Malicious Damage Act, Cap 258;
- Indictable offences under the Firearms Act, Cap. 171;
- Indictable offences under the Electronic Transfer of Funds Crimes Act No. 16 of 2007
- Indictable offences under the Prevention of Terrorism Act, 2005, No. 12 of 2005;
- Indictable offences under the Weapons of Mass Destruction Act 2024;
- Indictable offences under the Taking of Hostages Act, 1993. No. 4 of 1993;
- Indictable offences under the Trafficking in Persons (Prevention) Act, 2010 No. 12 of 2010;

Passed the House of Representatives on
The day of , 2024.

Passed the Senate on the day of
 , 2024.

Speaker

President

Clerk to the House of Representatives

Clerk to the Senate

EXPLANATORY MEMORANDUM

This is a Bill for an Act to maintain law and order by discouraging membership of gangs and punishing gangs and gang-related activities.

The Bill contains 19 clauses divided over four (4) Parts.

Part I – Preliminary

This Part consist of Clauses 1 to 3.

Clause 1 – Short title;

Clause 2 – Interpretation. In this clause the definition of key terms for the interpretation of the Bill is provided. It also sets the context for the legislation.

Clause 3 – Evidence in relation to gangs outlines the required approach to evidence in determining if there is a gang or whether the person charged is a member of a gang.

Part II – Offences

This Part consists of clauses 4 to 13.

There are several offences captured in the Bill and which are explained under this Part:

- Offence of forming or establishing a gang;
- Offence of being a gang leader;
- Offence of being a gang member;
- Offence of recruiting a gang member;
- Offence of aiding and abetting a gang;
- Offence of Harboursing a gang member;
- Offence of concealing a gang leader or gang member etc.
- Offence of preventing a person from ceasing to be part of a gang;
- Offence of taking retaliatory action;
- Offence of possession of bullet proof vest, firearm, ammunition or prohibited weapon for gang-related activity.

Part III – Powers of Police etc. (Clause 14)

The Police has the power of arrest without a warrant in circumstances specified at Clause 14(1). The Police may enter and search premises with the consent of the owner or occupier of the place or premises, however, where the consent is not given, the police may apply to a Magistrate for the warrant. In order for the warrant to be granted, the Magistrate must be satisfied by information sworn before the Magistrate by the police or law enforcement officer that a gang leader, gang member or a person who has committed an offence under this Act, may be found in the place or premises.

Part IV – Trial Procedure

(Clauses 15 to 19)

Clause 15 deals with the issue of jurisdiction. The Court may order that certain details about the case or the person involved in the case be prevented from disclosure.

Clause 16 imposes a mandatory minimum sentence of 50% of the prescribed maximum sentence for the offence. This provision overrides the Abolition of Minimum Punishment Act, Cap. 1, but does not infringe the discretion of a Judge to apply a lesser sentence. Where extraordinary circumstances exist, the presiding Judge may impose a lesser penalty.

Clause 17 – Minors to be treated as adults

This clause aims to remove certain of the requirements under the Child Justice Act 2015, it also seeks to remove the 3 years- maximum that was capable of being imposed on a minor even where the minor was convicted of the most egregious offences. A minor who is a gang leader or gang member is to be treated as an adult, including being sentenced for a term of imprisonment as an adult.

Clause 18 – Sentences to be served consecutively

A sentence imposed on a person who is convicted of an offence under this Act will run consecutively that is, after or before, another sentence that has been imposed on that person, as opposed to concurrently, which means at the same time. Hence, a person convicted of an offence under this Act and is sentenced for 10 years, while at the same time a sentence of 7 years is imposed on him, that person will serve 17 years (consecutively), as opposed to 10 years (concurrently).

Clause 19 – Consequential amendments

This clause amends the Bail Act 2019 by adding an offence under this Act as a non-bailable offence.

Honourable Sir Steadroy C. O. Benjamin,
Attorney General
Minister of Justice, Legal Affairs and Public Safety