

**TURKS AND CAICOS ISLANDS
ANTI-GANG ORDINANCE 2022**

(Ordinance 24 of 2022)

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

SECTION

1. Short title and commencement
2. Interpretation
3. Evidence in relation to gang

PART II

OFFENCE

4. Gang membership
5. Coercing or encouraging gang membership
6. Retaliatory action
7. Counselling a gang
8. Preventing gang member from leaving gang
9. Possession of bullet-proof vest, firearm, ammunition or prohibited weapon for benefit of gang
10. Harboursing a gang member
11. Concealing a gang member
12. Recruiting a gang member
13. Tipping-off

PART III

POWER OF POLICE OFFICERS

14. Police powers of entry, search and arrest
15. Detention of persons

PART IV

FORFEITURE OF PROPERTY

16. Forfeiture pursuant to conviction

PART V

MISCELLANEOUS

17. Amendment of Schedules
18. Duration



ANTI-GANG ORDINANCE 20222022

(Ordinance 24 of 2022)

Assent.....27th October 2022

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Commencement..... *in accordance with section 1*

AN ORDINANCE 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 CONNECTED PURPOSES.

ENACTED by the Legislature of the Turks and Caicos Islands.

PART I

PRELIMINARY

Short title and commencement

1. This Ordinance may be cited as the Anti-Gang Ordinance 2022 and shall come into force on such day as the Governor may appoint by Notice published in the *Gazette*.

Interpretation

2. In this Ordinance—

“ammunition” has the meaning assigned to it in section 2 of the Firearms Ordinance;

“child” means a person under the age of eighteen years;

“firearm” has the meaning assigned to it in section 2 of the Firearms Ordinance;

“gang” means a combination of two or more persons, whether formally or informally organised, who engage in gang-related activity;

“gang leader” means a person who initiates, organises, 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 the planned, ongoing, continuous or repeated participation or involvement in any serious offence;

“law enforcement authority” means—

(a) the Police Force established under the Police Force Ordinance;

(b) the Customs Department established under the Customs Ordinance;

(c) His Majesty’s Prison established under the Prison Ordinance;

(d) a constable as defined under the Police Force Ordinance; and

(e) any other Government agency in which investigative powers, similar to those exercisable by a police officer appointed under the Police Force Ordinance, are lawfully vested;

“prohibited weapon” has the meaning assigned to it in section 2 of the Firearms Ordinance;

“recruit” includes procure, lure, solicit, incite or induce;

“school” as defined by section 12 of the Education Ordinance means an institution for providing preschool, primary or secondary education or any combination thereof, recreation ground or park, or an establishment for the conduct of technical or vocational training, or educational, sporting or social programmes, designed for children;

“serious offence” means an offence specified in Schedule 1.

Evidence in relation to gang

3. For the purpose of this Ordinance, 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 Ordinance including—

- (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

OFFENCE

Gang membership

4. (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 a term of 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 conviction on indictment to imprisonment for a term of ten years, and, in the case of a subsequent offence, on conviction to imprisonment for a term of 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 a term of 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 a term of thirty years.

Coercing or encouraging gang membership

5. 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 a term of twenty-five years.

Retaliatory action

6. (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—

- (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 a term of 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 stepsister;
- (e) his grandparent;
- (f) his father-in-law, mother-in-law, brother-in-law or sister-in-law; or
- (g) any other person responsible for the person's care and support.

Counselling a gang

7. 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 his or 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 a term of twenty-five years.

Preventing gang member from leaving gang

8. 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 a term of twenty-five years.

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

9. (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,

in the commission of a gang-related activity, commits an offence and is liable on conviction on indictment to imprisonment for a term of 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.

Harbouring a gang member

10. (1) A person who harbours a gang leader or a gang member commits an offence and is liable on summary conviction to imprisonment for a term of ten years.

(2) 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.

(3) In this section “harbour” means supplying a person with shelter, food, drink, money or clothes, guns, ammunition or means of conveyance, or assisting a person in any way to evade apprehension.

Concealing a gang member

11. (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 conviction on indictment to imprisonment for a term of fifteen years.

(2) 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

12. (1) A person who recruits another person to a gang commits an offence and is liable on conviction on indictment to imprisonment for a term of twenty years.

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

(3) Notwithstanding subsection (2), a person who, within fifteen hundred feet of a school or place of worship, recruits a child to a gang commits an offence and is liable on conviction on indictment to the maximum term of imprisonment of twenty-five years.

Tipping-off

13. (1) A person who—

- (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 Ordinance; 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 a term of twenty years.

(2) Nothing in subsection (1) makes it an offence for an attorney at law 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 attorney 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

POWER OF POLICE OFFICERS

Police powers of entry, search and arrest

14. (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 Ordinance.

(2) A Magistrate may issue a warrant to a police officer authorising 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 Ordinance.

(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 Ordinance may be found in that place or premises.

Detention of persons

15. (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 has reasonable cause to believe—

(a) has committed; or

(b) has interfered with an investigation of,

an offence under this Ordinance 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 (incident book and custody record).

(4) Where the Commissioner of Police has reasonable grounds to believe that the continued detention of the person beyond seventy-two hours without charging him is necessary to—

- (a) obtain, secure or preserve evidence relating to an offence under this Ordinance;
- (b) allow investigating officers sufficient time to obtain the results of forensic testing in order to determine whether to charge the person with an offence,
- (c) prevent interference with an investigation of an offence under this Ordinance; or
- (d) prevent the commission of an offence,

the Commissioner of Police may authorise the keeping of that person in police detention for a further seventy-two hours.

(5) Where a police officer of at least the rank of superintendent has reasonable grounds to believe that the continued detention of the person beyond the further seventy-two hours without charge is necessary to—

- (a) obtain, secure or preserve evidence relating to an offence under this Ordinance;
- (b) allow investigating officers sufficient time to obtain the results of forensic testing in order to determine whether to charge the person with an offence,
- (c) prevent interference with an investigation of an offence under this Ordinance; or
- (d) prevent the commission of an offence,

the police officer may, apply to a Judge, in the form set out as Form 1 in Schedule 2, for a detention order and the application shall be supported by evidence on oath.

(6) A Judge may grant a detention order under subsection (5) 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.

(7) The period for which a detention order may be granted under subsection (6) 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.

(8) A person detained in accordance with subsection (6) 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

16. (1) Where a person is convicted of an offence under this Ordinance, 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 Crown.

(2) Before the Court makes an order under subsection (1), the Registrar of the Supreme Court, as the case may be, shall publish a notice identifying the property referred to under subsection (1) in the *Gazette* and one newspaper in general circulation in Islands.

(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 Schedule 2, with the Registrar of the Supreme Court 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 Crown under this section, the Court may give directions as to the storage, investment and disposal of the property.

PART V

MISCELLANEOUS

Amendment of Schedules

17. The Governor may by Order amend Schedule 1 or Schedule 2.

Duration

18. (1) This Ordinance shall continue in force for a period of thirty-six months from the date of its coming into force.

(2) Before the expiration of the time referred to in subsection (1) the provisions of this Ordinance shall be reviewed by the Cabinet.

SCHEDULE 1

(Section 2)

SERIOUS OFFENCES

1. Murder
2. Manslaughter
3. Theft of a motor vehicle/taking conveyance without authority
4. Setting fire to building or vehicle
5. Handling/receiving/disposal of stolen goods
6. Possession of bullet-proof vest, firearm, ammunition or prohibited weapon for benefit of gang
7. Threatening to publish with intent to extort
8. Demanding money with menaces
9. Shooting or wounding with intent to do grievous bodily harm, wounding
10. Robbery
11. Assault occasioning actual bodily harm
12. Carrying of a firearm or ammunition with intent to endanger life or cause injury to property
13. Possession of a firearm or ammunition without licence
14. Possession of imitation firearms in pursuance of a criminal offence
15. Trafficking in a controlled drug or being in possession of a controlled drug for the purpose of trafficking
16. Rape
17. Sexual assault
18. Kidnapping
19. Kidnapping for ransom
20. Knowingly negotiating to obtain a ransom
21. Offences under the Proceeds of Crime Ordinance
22. Offences under the Integrity Commission Ordinance

23. Attempting to blow up a building with the intent to do any bodily injury to any person
24. Hijacking
25. Assisting illegal entry contrary to the Immigration Ordinance
26. Trafficking in person contrary to the Trafficking in Persons (Prevention) Ordinance

SCHEDULE 2

(sections 15, 16 and 17)

FORM 1

APPLICATION FOR DETENTION ORDER

Turks and Caicos Islands

I, _____,

(name of applicant)

(office of applicant)

hereby apply under section 15(5) of the Anti-Gang Ordinance 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 15(5), 15(6) and 15(7) of the Anti-Gang Ordinance 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 ____ .

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)
