



MEMORANDUM

TO: The Pennsylvania Senate Judiciary Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: March 15, 2024

RE: OPPOSITION TO SENATE BILL 819 P.N. 928 (YAW)

Bill summary: [Senate Bill 819](#) (PN 928) would create a new offense under [Title 18](#) (§ 3506. Offenses relating to critical infrastructure facilities) with new suboffenses related to critical infrastructure trespassing and critical infrastructure vandalism.

Critical infrastructure trespassing would be penalized as:

- **M3:** A third-degree misdemeanor for anyone who “willfully and knowingly trespasses or enters property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant,” punishable by 30 days-1 year in jail and/or a mandatory minimum fine of \$500.
 - **M3:** And a third-degree misdemeanor for anyone who conspires to trespass on a critical infrastructure facility, punishable by a mandatory minimum fine of \$5,000.
- **F3:** A third-degree felony for anyone who “willfully and knowingly trespasses or enters” a critical infrastructure facility without permission with the “intent to willfully damage, destroy, vandalize, deface, tamper with equipment or impede or inhibit operations” of the facility, punishable by 1-3 years incarceration and/or a mandatory minimum fine of \$1,000.

Critical infrastructure vandalism would be penalized as:

- **F3:** A third-degree felony for anyone who “willfully damages, destroys, vandalizes, defaces or tampers with equipment in a critical infrastructure facility, punishable by 1-5 years in jail and/or a mandatory minimum fine of \$2,500.
- **F3:** And a third-degree felony for anyone who conspires to vandalize a critical infrastructure facility, punishable by a mandatory minimum fine of \$10,000.

SB 819 would also create a civil cause of action to permit a person arrested for or convicted of the bill’s new offense to be sued for damages to personal or real property.

On behalf of over 100,000 members of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 819.

SB 819 would create offenses already covered by Pennsylvania’s trespassing and vandalism statutes.

The offenses proposed in SB 819 are unnecessary and duplicative, as they are already covered under Pennsylvania’s existing criminal trespass and vandalism statutes.

Under current law, [criminal trespass](#) occurs when a person enters a building or occupied structure “knowing he is not licensed or privileged to do so.”¹ Criminal trespass is currently penalized as either a third or second-degree felony—more punitive than the penalties proposed under SB 819.

¹ [18 Pa.C.S. § 3503](#).

Vandalism is currently covered under two separate offenses: [criminal mischief](#) and [institutional vandalism](#).² The penalties for both offenses depend on the amount of monetary damage caused by the vandalism, ranging from a summary offense to a third-degree felony for criminal mischief, and either a second-degree misdemeanor or third-degree felony for institutional vandalism. While SB 819 does not consider monetary damage to determine its vandalism grading, SB 819 carries the same maximum charge (third-degree felony) as criminal mischief and institutional vandalism.

Furthermore, should there be any confusion as to whether current law would apply to those who trespass on critical infrastructure facilities, the Pennsylvania Supreme Court has repeatedly held that PA's criminal trespass statute covers critical infrastructure facilities. In [Commonwealth v. Hagan](#), a trespasser broke a chain and lock that secured a company's lot used to store railroad steel.³ The Common Pleas Court convicted him of both criminal trespass and burglary. The Supreme Court upheld Hagan's conviction on both counts, holding that "a fenced storage lot [is] an occupied structure for the purposes of our burglary and trespass statutes."⁴ The Court found that "any secured facility where goods are stored is a place adapted for the carrying on a business and, therefore, an occupied structure for the purposes of the criminal trespass and burglary statutes."⁵ Similarly, [Commonwealth v. Evans](#) upheld convictions where defendants were found in the tank farm area of an oil refinery and when defendants broke into a fenced-in SEPTA bus storage yard.⁶ As such, the PA Supreme Court has repeatedly found that commercial fenced areas deserve more protection than residential backyards when it comes to criminal trespass and burglary.⁷

Trespassing on the facilities listed under SB 819 is already graded as a second-degree felony.

SB 819 defines seventeen facilities as "critical infrastructure facilities." Within the "critical infrastructure facility" definition, the bill specifies that the property must be "completely enclosed by a fence or other physical barrier."⁸ Again, the Pennsylvania Supreme Court precedent referenced above has established that the offense of trespassing on secured, fenced-in commercial properties is already considered second-degree felony criminal trespassing. As a result, SB 819 offers no new protections for the seventeen facilities it enumerates in the bill. **In fact, SB 819 would grade critical infrastructure trespassing lower than what is provided for under current law.**

SB 819 departs from standard statutory grading penalties for the new offenses it creates.

SB 819 creates new offenses that are graded as either third-degree misdemeanors or third-degree felonies. But instead of using the [statutory penalties](#) for misdemeanors of the third-degree (maximum of 1 year in jail and/or \$2,000 in fines) and third-degree felonies (maximum of 7 years in prison and/or \$15,000 in fines),⁹ SB 819 sets **mandatory minimum fines** for each of its offenses, while **reducing**—or **eliminating entirely**—a term of incarceration for violating the offenses created under the bill. Creating ad hoc penalties for statutorily defined offense classifications further degrades proportionality under PA's criminal law, as this kind of hodgepodge of penalties makes it increasingly difficult to treat similar cases alike.

For these reasons, we urge you to vote NO on Senate Bill 819.

² [18 Pa.C.S. § 3304](#) and [18 Pa.C.S. § 3307](#).

³ [Commonwealth v. Hagan](#), 654 A.2d 541, (Pa. 1995)

⁴ *Id.* at 543.

⁵ *Id.* at 544.

⁶ [Commonwealth v. Evans](#), 574 A.2d 1051, (Pa. Super. 1990)

⁷ *Id.*

⁸ [S.B. 819 P.N. 928](#), PA General Assembly, 2023-2024 Session, p. 3.

⁹ [101 Pa. Code § 15.66](#).