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## MEMORANDUM

**TO:** The Pennsylvania State Senate

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** March 27, 2018

**RE: OPPOSITION TO SENATE BILL 652 (REGAN)**

[Senate Bill 652](#) purports to enhance penalties for people who criminally trespass on "critical infrastructure facilities." However, the provisions in the bill are redundant, as they are already covered under current criminal statutes.

**On behalf of the 59,000 members of the ACLU of Pennsylvania, I respectfully urge you to vote 'no' on Senate Bill 652 for the following reasons:**

### **Provisions are already covered by Pennsylvania's burglary and criminal statutes**

Under current law, [criminal trespass](#), a felony of the second degree, occurs when a person enters a building or occupied structure knowing he is not licensed or privileged to do so. [Burglary](#), a felony of the second degree, is defined as when an actor, with the intent to commit a crime, enters a building or occupied structure or separately secured or occupied portion.<sup>1</sup> The offenses enumerated in Senate Bill 652 are currently covered under both the burglary and criminal trespass statutes.

SB 652 also claims to create a new charge of criminal trespass – a felony of the second degree – when a person “enters the property containing a critical infrastructure facility with the intent to willfully damage destroy, vandalize, deface, tamper with, impede or inhibit operations of the facility.”<sup>2</sup> The Pennsylvania Supreme Court has repeatedly held that the burglary and criminal trespass statutes already cover this behavior in [Commonwealth v. Hagan](#), which addressed precisely this issue.<sup>3</sup> In *Hagan*, a trespasser broke a chain and lock that secured a company's lot used to store railroad steel. The Common Pleas Court convicted him both of burglary and criminal trespass. The Supreme Court upheld Hagan's conviction on both counts and held “a fenced storage lot [is] an occupied structure for the purposes of our burglary and trespass statutes.”<sup>4</sup> 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.”<sup>5</sup>

[Commonwealth v. Evans](#) also upheld burglary convictions when defendants were found in the tank farm area of an oil refinery and when defendants broke into a fenced-in SEPTA bus storage yard.<sup>6</sup> The Supreme Court has repeatedly found that commercial fenced areas deserve more protection than residential backyards when it comes to criminal trespass and burglary.<sup>7</sup>

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<sup>1</sup> 18 Pa.C.S. 3503 and 18 Pa.C.S. 3502

<sup>2</sup> Critical Infrastructure Protection Act, S.B. 652 P.N. 1584, PA General Assembly 2017-2018 Session, p. 2.

<sup>3</sup> *Commonwealth v. Hagan*, 654 A.2d 541, (Pa. 1995)

<sup>4</sup> *Id.* at 543.

<sup>5</sup> *Id.* at 544.

<sup>6</sup> *See Commonwealth v. Evans*, 574 A.2d 1051, (Pa. Super. 1990)

<sup>7</sup> *Id.*

**Trespassing on the facilities listed in the bill is already graded as a second-degree felony**

SB 652 defines twenty-one facilities as “critical infrastructure facilities” and defines those who criminally trespass on those properties as “criminal infrastructure trespassers.” Within the “critical infrastructure facility” definition, the bill specifies that the property must be “completely enclosed by a fence or other physical barrier.”<sup>8</sup> Existing Pennsylvania Supreme Court precedent has established that the offense of trespassing on secured, fenced-in commercial properties is already considered a criminal trespass felony of the second degree. As a result, SB 652 offers no new protections for these twenty-one facilities that does not already exist under current law.

**Contains grading errors**

Several offenses enumerated in [SB 652 are graded](#) as “a felony of the second degree and is punishable for a term of not more than one year and a fine of not less than \$5,000.”<sup>9</sup> But using this definition, that penalty is a misdemeanor, not a felony. [By statute](#), a second-degree felony is punishable by imprisonment up to ten years and a fine up to \$15,000.<sup>10</sup>

The bill also attempts to grade the enumerated offenses differently for minors than for adults, grading them as second-degree misdemeanors instead of felonies.<sup>11</sup> **There is no authority in the crimes code to grade an offense differently for children.** Unless the child is charged with homicide or another specifically enumerated direct file juvenile offense, the [Juvenile Act](#) has complete jurisdiction and the proceedings must be governed by juvenile court.<sup>12</sup>

**For these reasons, we urge you to vote ‘no’ on Senate Bill 652.**

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<sup>8</sup> Critical Infrastructure Protection Act, S.B. 652 P.N. 1584, PA General Assembly 2017-2018 Session, p. 4.

<sup>9</sup> Critical Infrastructure Protection Act, S.B. 652 P.N. 1584, PA General Assembly 2017-2018 Session, p. 3.

<sup>10</sup> 101 Pa. Code § 15.66

<sup>11</sup> Critical Infrastructure Protection Act, S.B. 652 P.N. 1584, PA General Assembly 2017-2018 Session, p. 3.

<sup>12</sup> 42 Pa.C.S. § 6322