



February 1, 2019

SENATE BILL No. 471

DIGEST OF SB 471 (Updated January 29, 2019 1:36 pm - DI 132)

Citations Affected: IC 35-31.5; IC 35-43; IC 35-46.

Synopsis: Offenses involving critical infrastructure. Repeals the term "key facility" and replaces it with "critical infrastructure facility". Provides that a person who, not having a contractual interest in the property, knowingly or intentionally enters the real property of a critical infrastructure facility without the permission of the owner of the critical infrastructure facility or an authorized person commits the offense of critical infrastructure facility trespass. Provides that a person who recklessly, knowingly, or intentionally damages or defaces property of a critical infrastructure facility commits the offense of critical infrastructure facility mischief. Provides criminal penalties and civil remedies for offenses involving a critical infrastructure facility. Provides that the chapter addressing offenses of related critical infrastructure facilities does not apply to protected conduct or collective bargaining agreements.

Effective: July 1, 2019.

Koch, Crider

January 14, 2019, read first time and referred to Committee on Homeland Security and Transportation.
January 31, 2019, amended, reported favorably — Do Pass.

SB 471—LS 7119/DI 131



February 1, 2019

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 471

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-31.5-2-79.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2019]: **Sec. 79.5. "Critical infrastructure**
4 **facility", for purposes of IC 35-43-4-2 and IC 35-46-10, has the**
5 **meaning set forth in IC 35-46-10-1(a).**

6 SECTION 2. IC 35-31.5-2-79.7 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2019]: **Sec. 79.7. "Critical infrastructure**
9 **utility", for purposes of IC 35-46-10, has the meaning set forth in**
10 **IC 35-46-10-1(b).**

11 SECTION 3. IC 35-31.5-2-179 IS REPEALED [EFFECTIVE JULY
12 1, 2019]. **Sec. 179: "Key facility" means any of the following:**

- 13 (1) **A chemical manufacturing facility;**
14 (2) **A refinery;**
15 (3) **An electric utility facility, including:**
16 (A) **a power plant;**
17 (B) **a power generation facility peaker;**

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- 1 (C) an electric transmission facility;
 2 (D) an electric station or substation; or
 3 (E) any other facility used to support the generation,
 4 transmission, or distribution of electricity.
 5 However, the term does not include electric transmission land or
 6 right-of-way that is not completely enclosed, posted, and
 7 maintained by the electric utility.
 8 (4) A water intake structure or water treatment facility.
 9 (5) A natural gas utility facility, including:
 10 (A) an age station;
 11 (B) a compressor station;
 12 (C) an odorization facility;
 13 (D) a main line valve;
 14 (E) a natural gas storage facility; or
 15 (F) any other facility used to support the acquisition,
 16 transmission, distribution, or storage of natural gas. However,
 17 the term does not include gas transmission pipeline property
 18 that is not completely enclosed, posted, and maintained by the
 19 natural gas utility.
 20 (6) A gasoline, propane, liquid natural gas (LNG), or other fuel
 21 terminal or storage facility.
 22 (7) A transportation facility, including, but not limited to, a port,
 23 railroad switching yard, or trucking terminal. However, the term
 24 does not include a railroad track that is not part of a railroad
 25 switching yard.
 26 (8) A pulp or paper manufacturing facility.
 27 (9) A pharmaceutical manufacturing facility.
 28 (10) A hazardous waste storage, treatment, or disposal facility.
 29 (11) A telecommunications facility, including a central office or
 30 cellular telephone tower site.
 31 (12) A facility:
 32 (A) that is substantially similar to a facility, structure, or
 33 station listed in this section; or
 34 (B) whose owner or operator is required to submit a risk
 35 management plan under the federal Chemical Safety
 36 Information, Site Security and Fuels Regulatory Relief Act (42
 37 U.S.C. 7412(r)).
 38 SECTION 4. IC 35-31.5-2-221.3 IS ADDED TO THE INDIANA
 39 CODE AS A NEW SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2019]: **Sec. 221.3. "Organization", for**
 41 **purposes of IC 35-46-10, has the meaning set forth in**
 42 **IC 35-46-10-1(c).**



1 SECTION 5. IC 35-43-2-2, AS AMENDED BY P.L.181-2018,
2 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 2. (a) As used in this section, "authorized person"
4 means a person authorized by an agricultural operation to act on behalf
5 of the agricultural operation.

6 (b) A person who:

7 (1) not having a contractual interest in the property, knowingly or
8 intentionally enters the real property of another person after
9 having been denied entry by the other person or that person's
10 agent;

11 (2) not having a contractual interest in the property, knowingly or
12 intentionally refuses to leave the real property of another person
13 after having been asked to leave by the other person or that
14 person's agent;

15 (3) accompanies another person in a vehicle, with knowledge that
16 the other person knowingly or intentionally is exerting
17 unauthorized control over the vehicle;

18 (4) knowingly or intentionally interferes with the possession or
19 use of the property of another person without the person's consent;

20 (5) not having a contractual interest in the property, knowingly or
21 intentionally enters the:

22 (A) property of an agricultural operation that is used for the
23 production, processing, propagation, packaging, cultivation,
24 harvesting, care, management, or storage of an animal, plant,
25 or other agricultural product, including any pasturage or land
26 used for timber management, without the consent of the owner
27 of the agricultural operation or an authorized person; or

28 (B) dwelling of another person without the person's consent;

29 (6) knowingly or intentionally:

30 (A) travels by train without lawful authority or the railroad
31 carrier's consent; and

32 (B) rides on the outside of a train or inside a passenger car,
33 locomotive, or freight car, including a boxcar, flatbed, or
34 container without lawful authority or the railroad carrier's
35 consent;

36 (7) not having a contractual interest in the property, knowingly or
37 intentionally enters or refuses to leave the property of another
38 person after having been prohibited from entering or asked to
39 leave the property by a law enforcement officer when the property
40 is:

41 (A) vacant real property (as defined in IC 36-7-36-5) or a
42 vacant structure (as defined in IC 36-7-36-6); or



- 1 (B) designated by a municipality or county enforcement
 2 authority to be abandoned property or an abandoned structure
 3 (as defined in IC 36-7-36-1);
 4 (8) not having a contractual interest in the property, knowingly or
 5 intentionally enters the real property of an agricultural operation
 6 (as defined in IC 32-30-6-1) without the permission of the owner
 7 of the agricultural operation or an authorized person, and
 8 knowingly or intentionally engages in conduct that causes
 9 property damage to:
 10 (A) the owner of or a person having a contractual interest in
 11 the agricultural operation;
 12 (B) the operator of the agricultural operation; or
 13 (C) a person having personal property located on the property
 14 of the agricultural operation; or
 15 (9) knowingly or intentionally enters the property of another
 16 person after being denied entry by a court order that has been
 17 issued to the person or issued to the general public by
 18 conspicuous posting on or around the premises in areas where a
 19 person can observe the order when the property has been
 20 designated by a municipality or county enforcement authority to
 21 be a vacant property, an abandoned property, or an abandoned
 22 structure (as defined in IC 36-7-36-1);
 23 commits criminal trespass, a Class A misdemeanor. However, the
 24 offense is a Level 6 felony if it is committed on a scientific research
 25 facility, ~~on a key facility~~, on a facility belonging to a public utility (as
 26 defined in IC 32-24-1-5.9(a)), on school property, or on a school bus or
 27 the person has a prior unrelated conviction for an offense under this
 28 section concerning the same property. The offense is a Level 6 felony,
 29 for purposes of subdivision (8), if the property damage is more than
 30 seven hundred fifty dollars (\$750) and less than fifty thousand dollars
 31 (\$50,000). The offense is a Level 5 felony, for purposes of subdivision
 32 (8), if the property damage is at least fifty thousand dollars (\$50,000).
 33 (c) A person has been denied entry under subsection (b)(1) when the
 34 person has been denied entry by means of:
 35 (1) personal communication, oral or written;
 36 (2) posting or exhibiting a notice at the main entrance in a manner
 37 that is either prescribed by law or likely to come to the attention
 38 of the public;
 39 (3) a hearing authority or court order under IC 32-30-6,
 40 IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36; or
 41 (4) posting the property by placing identifying purple marks on
 42 trees or posts around the area where entry is denied.



- 1 (d) For the purposes of subsection (c)(4):
 2 (1) each purple mark must be readily visible to any person
 3 approaching the property and must be placed:
 4 (A) on a tree:
 5 (i) as a vertical line of at least eight (8) inches in length and
 6 with the bottom of the mark at least three (3) feet and not
 7 more than five (5) feet from the ground; and
 8 (ii) not more than one hundred (100) feet from the nearest
 9 other marked tree; or
 10 (B) on a post:
 11 (i) with the mark covering at least the top two (2) inches of
 12 the post, and with the bottom of the mark at least three (3)
 13 feet and not more than five (5) feet six (6) inches from the
 14 ground; and
 15 (ii) not more than thirty-six (36) feet from the nearest other
 16 marked post; and
 17 (2) before a purple mark that would be visible from both sides of
 18 a fence shared by different property owners or lessees may be
 19 applied, all of the owners or lessees of the properties must agree
 20 to post the properties with purple marks under subsection (c)(4).
 21 (e) A law enforcement officer may not deny entry to property or ask
 22 a person to leave a property under subsection (b)(7) unless there is
 23 reasonable suspicion that criminal activity has occurred or is occurring.
 24 (f) A person described in subsection (b)(7) violates subsection
 25 (b)(7) unless the person has the written permission of the owner, the
 26 owner's agent, an enforcement authority, or a court to come onto the
 27 property for purposes of performing maintenance, repair, or demolition.
 28 (g) A person described in subsection (b)(9) violates subsection
 29 (b)(9) unless the court that issued the order denying the person entry
 30 grants permission for the person to come onto the property.
 31 (h) Subsections (b), (c), and (g) do not apply to the following:
 32 (1) A passenger on a train.
 33 (2) An employee of a railroad carrier while engaged in the
 34 performance of official duties.
 35 (3) A law enforcement officer, firefighter, or emergency response
 36 personnel while engaged in the performance of official duties.
 37 (4) A person going on railroad property in an emergency to rescue
 38 a person or animal from harm's way or to remove an object that
 39 the person reasonably believes poses an imminent threat to life or
 40 limb.
 41 (5) A person on the station grounds or in the depot of a railroad
 42 carrier:



- 1 (A) as a passenger; or
 2 (B) for the purpose of transacting lawful business.
 3 (6) A:
 4 (A) person; or
 5 (B) person's:
 6 (i) family member;
 7 (ii) invitee;
 8 (iii) employee;
 9 (iv) agent; or
 10 (v) independent contractor;
 11 going on a railroad's right-of-way for the purpose of crossing at a
 12 private crossing site approved by the railroad carrier to obtain
 13 access to land that the person owns, leases, or operates.
 14 (7) A person having written permission from the railroad carrier
 15 to go on specified railroad property.
 16 (8) A representative of the Indiana department of transportation
 17 while engaged in the performance of official duties.
 18 (9) A representative of the federal Railroad Administration while
 19 engaged in the performance of official duties.
 20 (10) A representative of the National Transportation Safety Board
 21 while engaged in the performance of official duties.
 22 SECTION 6. IC 35-43-4-2, AS AMENDED BY P.L.176-2018,
 23 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2019]: Sec. 2. (a) A person who knowingly or intentionally
 25 exerts unauthorized control over property of another person, with intent
 26 to deprive the other person of any part of its value or use, commits
 27 theft, a Class A misdemeanor. However, the offense is:
 28 (1) a Level 6 felony if:
 29 (A) the value of the property is at least seven hundred fifty
 30 dollars (\$750) and less than fifty thousand dollars (\$50,000);
 31 (B) the property is a:
 32 (i) firearm;
 33 (ii) motor vehicle (as defined in IC 9-13-2-105(a)); or
 34 (iii) component part (as defined in IC 9-13-2-34) of a motor
 35 vehicle; or
 36 (C) the person has a prior unrelated conviction for
 37 (i) theft under this section; or
 38 (ii) criminal conversion under section 3 of this chapter; and
 39 (2) a Level 5 felony if:
 40 (A) the value of the property is at least fifty thousand dollars
 41 (\$50,000);
 42 (B) the property that is the subject of the theft is a valuable



1 metal (as defined in IC 25-37.5-1-1) and:

- 2 (i) relates to transportation safety;
 3 (ii) relates to public safety; or
 4 (iii) is taken from a hospital or other health care facility,
 5 telecommunications provider, public utility (as defined in
 6 IC 32-24-1-5.9(a)), or ~~key facility~~; **critical infrastructure**
 7 **facility**;

8 and the absence of the property creates a substantial risk of
 9 bodily injury to a person; or

10 (C) the property is a:

- 11 (i) motor vehicle (as defined in IC 9-13-2-105(a)); or
 12 (ii) component part (as defined in IC 9-13-2-34) of a motor
 13 vehicle; and

14 the person has a prior unrelated conviction for theft of a motor
 15 vehicle (as defined in IC 9-13-2-105(a)) or theft of a
 16 component part (as defined in IC 9-13-2-34).

17 (b) For purposes of this section, "the value of property" means:

- 18 (1) the fair market value of the property at the time and place the
 19 offense was committed; or
 20 (2) if the fair market value of the property cannot be satisfactorily
 21 determined, the cost to replace the property within a reasonable
 22 time after the offense was committed.

23 A price tag or price marking on property displayed or offered for sale
 24 constitutes prima facie evidence of the value of the property.

25 SECTION 7. IC 35-46-10 IS ADDED TO THE INDIANA CODE
 26 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2019]:

28 **Chapter 10. Offenses Involving Critical Infrastructure**

29 **Sec. 0.5. This chapter does not apply to conduct protected under**
 30 **the Constitution of the United States, the Constitution of the State**
 31 **of Indiana, or a state or federal law or rule, including rights under:**

- 32 (1) the federal National Labor Relations Act (29 U.S.C. 151 et
 33 seq.);
 34 (2) the federal Railway Labor Act (45 U.S.C. 151 et seq.);
 35 (3) IC 22-7; or
 36 (4) a collective bargaining agreement.

37 **Sec. 1. (a) As used in this chapter, "critical infrastructure**
 38 **facility" means any of the following:**

- 39 (1) A chemical manufacturing facility.
 40 (2) A refinery.
 41 (3) A steelmaking facility.
 42 (4) An electric utility facility, including:



- 1 (A) a power plant;
 2 (B) a power generation facility peaker;
 3 (C) an electric transmission facility;
 4 (D) an electric station or substation; or
 5 (E) any other facility used to support the generation,
 6 transmission, or distribution of electricity.
 7 However, the term does not include electric transmission land
 8 or right-of-way that is not completely enclosed, posted, and
 9 maintained by the electric utility.
 10 (5) A water intake structure or water treatment facility.
 11 (6) A natural gas utility facility, including:
 12 (A) an age station;
 13 (B) a compressor station;
 14 (C) an odorization facility;
 15 (D) a main line valve;
 16 (E) a natural gas storage facility; or
 17 (F) any other facility used to support the acquisition,
 18 transmission, distribution, or storage of natural gas.
 19 However, the term does not include gas transmission
 20 pipeline property that is not completely enclosed, posted,
 21 and maintained by the natural gas utility.
 22 (7) A gasoline, propane, liquid natural gas (LNG), or other
 23 fuel terminal or storage facility.
 24 (8) A transportation facility, including, but not limited to, a
 25 port, railroad switching yard, or trucking terminal. However,
 26 the term does not include a railroad track that is not part of
 27 a railroad switching yard.
 28 (9) A pulp or paper manufacturing facility.
 29 (10) A pharmaceutical manufacturing facility.
 30 (11) A hazardous waste storage, treatment, or disposal
 31 facility.
 32 (12) A crude oil exploration and production equipment or
 33 refined products storage and distribution facility including,
 34 but not limited to, valve sites, pipeline interconnections, a
 35 pump station, a metering station, below or aboveground
 36 pipeline or piping, and a truck loading or offloading facility.
 37 (13) A telecommunications facility, including a central office
 38 or cellular telephone tower site.
 39 (14) A dam that is regulated by the department of natural
 40 resources.
 41 (15) A facility:
 42 (A) whose owner or operator is required to submit a risk



1 management plan under the federal Chemical Safety
 2 Information, Site Security and Fuels Regulatory Relief Act
 3 (42 U.S.C. 7412(r)); or

4 (B) identified and regulated by the United States
 5 Department of Homeland Security Chemical Facility
 6 Anti-Terrorism Standards (CFATS) program.

7 (16) Any aboveground portion of an oil, gas, hazardous liquid,
 8 or chemical pipeline, tank, railroad facility, or other storage
 9 facility that is completely enclosed, posted, and maintained by
 10 the critical infrastructure utility.

11 (17) A facility that is substantially similar to a facility,
 12 structure, or station listed in this subsection.

13 (b) As used in this chapter, "critical infrastructure utility"
 14 means a person that owns or operates, for public use, any plant,
 15 equipment, property, franchise, or license for the production,
 16 storage, transmission, sale, or delivery of the items listed in
 17 subsection (a).

18 (c) As used in this chapter, "organization" means a corporation,
 19 limited liability company, partnership, or unincorporated
 20 association that specifically:

- 21 (1) promotes, sponsors, or assists in;
 22 (2) participates in; or
 23 (3) has as one (1) of its goals;

24 the commission of a felony under this chapter.

25 Sec. 2. A person who, not having a contractual interest in the
 26 property, knowingly or intentionally enters the real property of a
 27 critical infrastructure facility without the permission of the owner
 28 of the critical infrastructure facility or an authorized person
 29 commits critical infrastructure facility trespass, a Level 6 felony.

30 Sec. 3. A person who recklessly, knowingly, or intentionally
 31 damages or defaces property of a critical infrastructure facility
 32 commits critical infrastructure facility mischief, a Level 5 felony.
 33 However, the offense is a Level 4 felony if:

- 34 (1) the pecuniary loss is at least fifty thousand dollars
 35 (\$50,000); or
 36 (2) the damage causes a substantial interruption or
 37 impairment of a critical infrastructure utility service
 38 rendered to the public.

39 Sec. 4. Except as provided in IC 35-50-2, if an organization is
 40 found to be a conspirator with a person who is convicted of an
 41 offense described under section 2 or 3 of this chapter, the
 42 conspiring organization shall be punished by a fine not to exceed



1 **one hundred thousand dollars (\$100,000).**

2 **Sec. 5. (a) A person aggrieved by a violation under this chapter**
3 **may recover the actual damages sustained, together with costs and**
4 **reasonable attorney's fees, from the person convicted of an offense**
5 **under section 2 or 3 of this chapter.**

6 **(b) Any other person that compensates, provides consideration**
7 **to, or remunerates a person for committing an offense under**
8 **section 2 or 3 of this chapter may be held vicariously liable for**
9 **damages imposed under this chapter.**



COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security and Transportation, to which was referred Senate Bill No. 471, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 7, between lines 28 and 29, begin a new paragraph and insert:

"Sec. 0.5. This chapter does not apply to conduct protected under the Constitution of the United States, the Constitution of the State of Indiana, or a state or federal law or rule, including rights under:

- (1) the federal National Labor Relations Act (29 U.S.C. 151 et seq.);**
- (2) the federal Railway Labor Act (45 U.S.C. 151 et seq.);**
- (3) IC 22-7; or**
- (4) a collective bargaining agreement."**

Page 8, line 24, after "oil" insert "**exploration and production equipment**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 471 as introduced.)

CRIDER, Chairperson

Committee Vote: Yeas 7, Nays 0.

