



## MEMORANDUM

**TO:** The Pennsylvania House of Representatives

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

**DATE:** October 4, 2021

**RE: OPPOSITION TO HB 488 P.N. 451 (BOBACK)**

**Bill summary:** [HB 488](#) (PN 451) would create a new offense under [18 Pa C.S. § 4304](#) for failure to report a missing child. If a parent, guardian, or other person supervising a child under 18 years old fails to report the child missing after 24 hours, they could be charged with a third-degree felony.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 488.**

### **HB 488 creates a new, duplicative offense nearly indistinguishable from current statute.**

The bill sponsor [notes](#) that HB 488 was introduced in response to the 2011 Florida case of Casey Anthony, who failed to report her daughter missing for nearly a month. But this behavior would already be punished in PA; in fact, the new offense created by HB 488 is nearly indistinguishable from current statute:

- [§ 4304](#): “(1) A parent, guardian or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises such a person, commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.”
- [HB 488 \(PN 451\)](#): “(4) A parent, guardian or other person supervising the welfare of a child under 18 years of age commits an offense if the parent, guardian or other person, with reckless disregard for the risk of harm to the child or for the health, safety or welfare of the child, fails to report the disappearance of the child to a law enforcement agency.” \*Disappearance is defined as not knowing the child’s whereabouts for more than 24 hours.

Not reporting a young child missing for a month would certainly violate “a duty of care, protection or support” under the current statute. Creating duplicative offenses risks creating new crimes that may be selectively and/or disproportionately enforced and arms prosecutors with a separate offense to charge and stack, threatening defendants with a felony in addition to the penalties for any other offenses charged.

### **HB 488 raises numerous troubling questions, particularly related to the 24-hour requirement:**

- Why create a new offense? Is there evidence that the current statute is insufficient to cover this behavior?
- Is there a problem in PA with parents not reporting their children missing? Is this happening often?
- When does the clock start on the duty to report? 24 hours from when the parent first realized the child was missing? At the beginning of the day when the parent(s) went to work?
- What is the standard of evidence? How does one prove that the parent knew for more than 24 hours?
- Will this be subject to mandatory reporting to child protective services?
- How will parents learn that they could be charged with a felony if they fail to report after 24 hours?
- Are police departments prepared for the flood of calls from parents fearing felony charges if they fail to report?
- How does incarcerating parents for up to 7 years or imposing the [collateral consequences](#) of a felony conviction adversely affect their children?

**For these reasons, we urge you to oppose House Bill 488.**