
By: Delegate Rosenberg

Requested: November 15, 1996

Introduced and read first time: January 8, 1997

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Defamation - Repeal**

3 FOR the purpose of abrogating and repealing the common law offense of criminal
4 defamation; repealing as surplusage a statutory defense; and generally relating to
5 criminal defamation.

6 BY repealing

7 Article 75 - Pleadings, Practice and Process at Law

8 Section 5

9 Annotated Code of Maryland

10 (1995 Replacement Volume and 1996 Supplement)

11 Preamble

12 WHEREAS, For at least 300 years the offense of criminal defamation has existed as
13 part of the common law of Maryland; and

14 WHEREAS, Convictions for criminal libel were still being reported in Maryland in
15 the 20th century (Robinson v. State, 108 Md. 644 (1908)), and the last reported attempt
16 to charge the offense occurred in the 1950's (Norwell v. Safety Stores, 212 Md. 14 (1957));
17 and

18 WHEREAS, State criminal defamation laws have frequently been used to punish
19 critics of government; and

20 WHEREAS, Although in Maryland truth is a statutory defense to criminal libel, the
21 Supreme Court in Garrison v. Louisiana, 379 U.S. 64 (1964), has said that mere falsity is
22 not enough to support a conviction for criminal libel of a public official and that only a
23 showing of knowing or reckless falsity is constitutionally sufficient; and

24 WHEREAS, In Ashton v. Kentucky, 384 U.S. 195 (1966), the Supreme Court held
25 that the common law offense of criminal libel was so indefinite and uncertain that it was
26 unconstitutionally vague; and

27 WHEREAS, Some states have repealed their criminal libel laws and the American
28 Law Institute recommended omission of the offense from the Model Penal Code; and

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1 WHEREAS, Maryland's common law offense of criminal defamation is
2 unconstitutional, unenforceable, and inconsistent with the letter and spirit of free
3 expression; now, therefore,

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article 75 - Pleadings, Practice and Process at Law**

7 [5.

8 In case any person shall be prosecuted by indictment or any other criminal
9 prosecution for a libel the party so prosecuted shall be entitled to give the truth of the
10 matter charged in the said indictment or other prosecution, in evidence under the general
11 issue by way of justification.]

12 SECTION 2. AND BE IT FURTHER ENACTED, That the common law offense
13 of criminal defamation is hereby abrogated and repealed.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 1997.