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(PRE-FILED)

By: Delegate Rosenberg

Requested: November 15, 1996

Introduced and read first time: January 8, 1997

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 4, 1997

CHAPTER ____

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 adding to

- 7 Article 27 - Crimes and Punishments
- 8 Section 150A
- 9 Annotated Code of Maryland
- 10 (1996 Replacement Volume)

11 BY repealing

- 12 Article 75 - Pleadings, Practice and Process at Law
- 13 Section 5
- 14 Annotated Code of Maryland
- 15 (1995 Replacement Volume and 1996 Supplement)

16 **Preamble**

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

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

2

1 ~~WHEREAS, State criminal defamation laws have frequently been used to punish~~
2 ~~eritics of government; and~~

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

7 ~~WHEREAS, In Ashton v. Kentucky, 384 U.S. 195 (1966), the Supreme Court held~~
8 ~~that the common law offense of eriminal libel was so indefinite and uncertain that it was~~
9 ~~unconstitutionally vague; and~~

10 ~~WHEREAS, Some states have repealed their criminal libel laws and the American~~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

12 ~~WHEREAS, Maryland's common law offense of criminal defamation is~~
13 ~~unconstitutional, unenforceable, and inconsistent with the letter and spirit of free~~
14 ~~expression; now, therefore,~~

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

17 **Article 27 - Crimes and Punishments**

18 150A.

19 THE COMMON LAW OFFENSE OF CRIMINAL DEFAMATION IS ABROGATED AND
20 REPEALED.

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

22 [5.

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

27 ~~SECTION 2. AND BE IT FURTHER ENACTED, That the common law offense~~
28 ~~of eriminal defamation is hereby abrogated and repealed.~~

29 SECTION 3. 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 1997.