

SENATE BILL 439

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1998 Regular Session
8r1247
CF 8r1248

By: **Senators Stone, Kelley, and Middlebrooks (Committee to Revise Article 27)**

Introduced and read first time: February 6, 1998

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Offensive Conduct**

3 FOR the purpose of prohibiting a person from intentionally causing unreasonable
4 physical contact that does not result in physical injury, engaging in
5 unreasonable conduct with a certain intent, or attempting to cause
6 unreasonable physical contact to another under certain circumstances;
7 providing that it is not a defense that physical injury resulted; establishing
8 penalties; providing for a trial on certain charging documents; prohibiting a trial
9 in a circuit court under certain circumstances; providing that a violation of this
10 Act is not a lesser included offense of other offenses under certain
11 circumstances; providing that a spouse may be compelled to testify as an
12 adverse witness if there has been a previous charge of offensive conduct under
13 certain circumstances; and generally relating to offensive conduct.

14 BY renumbering

15 Article 27 - Crimes and Punishments
16 Section 121A, 121B, and 122, respectively
17 to be Section 121B, 121C, and 121A, respectively
18 Annotated Code of Maryland
19 (1996 Replacement Volume and 1997 Supplement)

20 BY repealing and reenacting, without amendments,

21 Article 27 - Crimes and Punishments
22 Section 121B(a) to be under the new subheading "Harassment, Stalking, and
23 Offensive Conduct"
24 Annotated Code of Maryland
25 (1996 Replacement Volume and 1997 Supplement)
26 (As enacted by Section 1 of this Act)

27 BY adding to

28 Article 27 - Crimes and Punishments
29 Section 121D

1 Annotated Code of Maryland
2 (1996 Replacement Volume and 1997 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Courts and Judicial Proceedings
5 Section 9-106
6 Annotated Code of Maryland
7 (1995 Replacement Volume and 1997 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
9 MARYLAND, That Section(s) 121A, 121B, and 122, respectively, of Article 27 -
10 Crimes and Punishments of the Annotated Code of Maryland be renumbered to be
11 Section(s) 121B, 121C, and 121A, respectively.

12 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
13 read as follows:

14 **Article 27 - Crimes and Punishments**

15 **HARASSMENT, STALKING, AND OFFENSIVE CONDUCT**

16 121B.

17 (a) In this section "course of conduct" means a persistent pattern of conduct,
18 composed of a series of acts over a period of time, that evidences a continuity of
19 purpose.

20 121D.

21 (A) A PERSON COMMITS THE MISDEMEANOR OF OFFENSIVE CONDUCT UNDER
22 THIS SECTION WHEN THE PERSON:

23 (1) INTENTIONALLY CAUSES UNREASONABLE PHYSICAL CONTACT THAT
24 DOES NOT RESULT IN PHYSICAL INJURY TO ANOTHER WHO DOES NOT CONSENT TO
25 THE CONTACT;

26 (2) ENGAGES IN UNREASONABLE CONDUCT INTENDING TO PUT
27 ANOTHER IN FEAR OF IMMINENT OFFENSIVE PHYSICAL CONTACT; OR

28 (3) ATTEMPTS TO CAUSE UNREASONABLE PHYSICAL CONTACT TO
29 ANOTHER WHO DOES NOT CONSENT TO THE ATTEMPTED CONTACT.

30 (B) IT IS NOT A DEFENSE THAT PHYSICAL INJURY RESULTED.

31 (C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR
32 AND ON CONVICTION IS SUBJECT TO A FINE OF NOT MORE THAN \$500 OR
33 IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR BOTH.

1 (D) (1) AN OFFENSE UNDER THIS SECTION MAY BE TRIED ON A STATEMENT
2 OF CHARGES, CITATION, OR CRIMINAL INFORMATION.

3 (2) AN OFFENSE UNDER THIS SECTION MAY NOT BE TRIED IN A CIRCUIT
4 COURT UNLESS:

5 (I) AN APPEAL IS TAKEN FROM A CONVICTION IN THE DISTRICT
6 COURT; OR

7 (II) THERE IS ANOTHER CHARGE ARISING OUT OF THE SAME
8 CIRCUMSTANCES WHICH ENTITLES THE DEFENDANT TO A TRIAL IN A CIRCUIT
9 COURT.

10 (E) UNLESS A VIOLATION OF THIS SECTION IS SPECIFICALLY CHARGED,
11 OFFENSIVE CONDUCT UNDER THIS SECTION MAY NOT BE TREATED AS A LESSER
12 INCLUDED OFFENSE OF ANY GREATER OFFENSE DEFINED IN THIS ARTICLE OR AT
13 COMMON LAW.

14 **Article - Courts and Judicial Proceedings**

15 9-106.

16 (a) The spouse of a person on trial for a crime may not be compelled to testify
17 as an adverse witness unless the charge involves:

18 (1) The abuse of a child under 18; or

19 (2) Assault in any degree OR OFFENSIVE CONDUCT UNDER ARTICLE 27, §
20 121D OF THE CODE in which the spouse is a victim if:

21 (i) The person on trial was previously charged with assault in any
22 degree [or], assault and battery, OR OFFENSIVE CONDUCT of the spouse;

23 (ii) The spouse was sworn to testify at the previous trial; and

24 (iii) The spouse refused to testify at the previous trial on the basis of
25 the provisions of this section.

26 (b) (1) If the spouse of a person on trial for assault in any degree OR
27 OFFENSIVE CONDUCT in which the spouse was a victim is sworn to testify at the trial
28 and refuses to testify on the basis of the provisions of this section, the clerk of the
29 court shall make and maintain a record of that refusal, including the name of the
30 spouse refusing to testify.

31 (2) When an expungement order is presented to the clerk of the court in
32 a case involving a charge of assault in any degree OR OFFENSIVE CONDUCT, the clerk
33 shall check the record to determine whether the defendant's spouse refused to testify
34 on the basis of the provisions of this section.

1 (3) If the record shows such refusal, the clerk shall make and maintain a
2 separate record of the refusal, including the defendant's name, the spouse's name, the
3 case file number, a copy of the charging document, and the date of the trial in which
4 the spouse refused to testify.

5 (4) The separate record specified under paragraph (3) of this subsection:

6 (i) Is not subject to expungement under Article 27, §§ 735 through
7 741 of the Code; and

8 (ii) Shall be available only to the court, a State's Attorney's office,
9 and an attorney for the defendant.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 1998.