

Department of Legislative Services

Maryland General Assembly

2002 Session

FISCAL NOTE

Revised

Senate Bill 461

(Senators Stone and Hughes)

(Committee to Revise Article 27 – Crimes and Punishments)

Judicial Proceedings

Judiciary

Criminal Law - Residential Picketing - Scope of Prohibition

This bill prohibits a person from engaging in picketing directed at an individual before or about the residence or dwelling place of the individual and repeals the current law prohibition against intentionally assembling with another in a manner that disrupts a person's right to tranquility in the person's home. Violators are guilty of a misdemeanor and subject to maximum penalties of a fine of \$100 and/or imprisonment for 90 days.

The bill also repeals exceptions from the current law prohibition, and clarifies injunctive relief authority of the circuit court.

Fiscal Summary

State Effect: The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

Local Effect: Enforcement of the bill's provisions is not expected to significantly affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law: The Criminal Law Article provides that a person may not intentionally assemble with another in a manner that disrupts a person's right to tranquility in the person's home. Each day on which a violation of this section occurs shall constitute a

separate offense. Violators are guilty of a misdemeanor and subject to maximum penalties of a fine of \$100 and/or imprisonment for 90 days.

The prohibition provides exceptions for: (1) picketing or assembly in connection with a labor dispute; (2) picketing in a lawful manner of a person's home when it is also the person's sole place of business; or (3) holding a meeting or assembly on any premises commonly used for the discussion of subjects of general public interest.

A circuit court may also enjoin conduct prohibited by these provisions, and may award damages, including punitive damages, against violators.

Background: The Committee to Revise Article 27 was appointed in 1991 by the Speaker and the President and charged with making both substantive and stylistic changes to the State's criminal law. The committee is composed of legislators, judges, lawyers representing both defendants and the State, and a victims' rights representative. In past sessions the committee has successfully sponsored legislation to revise the laws on accessory before and after the fact, arson, assault, benefit of clergy, burglary, destructive devices, disorderly conduct, escape, Medicaid fraud, offensive contact, prostitution, robbery, sabotage, trespass, and victims' rights.

Maryland's former residential picketing provisions were deleted from the new Criminal Law Article as unconstitutional in light of the ruling of the Court of Appeals in *State v. Schuller*, 280 Md. 305 (1977). The Criminal Law Article Review Committee noted that the court in *Schuller* found that a portion of the former provisions was invalid on its face as violating the right to freedom of speech guaranteed by the First and Fourteenth Amendments to the federal Constitution, and that another subsection, when coupled with the exemption provided for labor-related picketing, deprived persons of the right to equal protection of the laws guaranteed by the Fourteenth Amendment. The Attorney General reached a similar conclusion in a letter of advice to the Criminal Law Article Review Committee, in which the Attorney General stated that removal of the invalid portion of the provisions was imperative, and further recommended deletion of the balance of the section due to the stated constitutional defects.

However, the Attorney General also noted that more limited legislative regulation of residential picketing might be possible under federal precedent. The Attorney General specifically observed that, in *Frisby v. Schultz*, 487 U.S. 474 (1988), the U.S. Supreme Court rejected one of the alternative holdings in *Schuller* and held, in part, that the government had "a substantial and justifiable interest" in "protection of the unwilling listener against an invasion of residential privacy."

The court in *Frisby* upheld an ordinance that was narrowly drawn to only prohibit “focused picketing taking place solely in front of a particular residence.” This bill was based on the language of the ordinance that was upheld in the *Frisby* case, since it only prohibits targeted picketing of a particular residence or dwelling place of an individual, but still allows picketing of a residential area or street that is not exclusively targeting only one individual residence.

The bill is a recommendation of the Committee to Revise Article 27 as a substantive change to the law resulting from a referral from the Criminal Law Article Review Committee, which raised the constitutionality concerns based on the Attorney General’s letter.

The bill codifies a residential picketing prohibition by narrowing the scope of the prohibition to be against the targeted picketing of an individual residence.

Additional Information

Prior Introductions: None.

Cross File: HB 670 (Delegates Doory and Getty) (Committee to Revise Article 27 – Crimes and Punishments) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2002
lc/cer Revised - Senate Third Reader - March 20, 2002

Analysis by: Guy G. Cherry

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510