

Article 75 – Pleadings, Practice and Process at Law

Section 5

Annotated Code of Maryland

(1995 Replacement Volume and 1996 Supplement)

Preamble

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

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

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

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

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

WHEREAS, Some states have repealed their criminal libel laws and the American Law Institute recommended omission of the offense from the Model Penal Code; and

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

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

Article 27 – Crimes and Punishments150A.

THE COMMON LAW OFFENSE OF CRIMINAL DEFAMATION IS ABROGATED AND REPEALED.

Article 75 – Pleadings, Practice and Process at Law

[5.

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