

HON. STACY A. MAYER
CIRCUIT COURT
JUDGE
BALTIMORE COUNTY
CHAIR

HON. RICHARD SANDY
CIRCUIT COURT
JUDGE
FREDERICK COUNTY
VICE-CHAIR



KELLEY O'CONNOR
ASSISTANT STATE COURT
ADMINISTRATOR
GOVERNMENT RELATIONS
AND PUBLIC AFFAIRS
P: (410) 260-1560

SUZANNE PELZ, ESQ.
SNR. GOVT. RELATIONS AND
PUBLIC AFFAIRS OFFICER
P: (410)260-1523

MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 662
Criminal Procedure – Evidence – Admissibility of Creative
Expression
DATE: February 7, 2024
(3/5)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 662. This bill would provide that in any criminal proceeding or juvenile proceeding, the “creative expression” of a defendant or respondent is not admissible against the defendant/respondent unless the court finds, by clear and convincing evidence, certain things.

The Judiciary recognizes the bill’s attempt to respond legislatively to the Supreme Court of Maryland’s decision in *Montague v. State*, 471 Md. 657 (2019), and takes no position on the stated intent to protect the admissibility of creative expression. That policy prerogative is appropriately reserved for the legislature. The Judiciary would note that the bill appears to cover all expression that is not literal, which could include common use of analogies and metaphors, and preclude all manner of statement from admission – more than songs, poems, and artistic expression. A litigant may raise the issue of admissibility of any analogy or metaphor thereby requiring an additional evidentiary hearing, which would delay trials on their merits.

The Judiciary is primarily concerned that this bill does not provide a carve out for juvenile cases. In particular in juvenile cases, especially at disposition, the child’s

creative expression may be of great use to the court in understanding the child and thus crafting a response that best adheres to the purposes of the juvenile court in rehabilitating the child. See Courts Article, § 3-8A-02. Keeping the court from information about the child's creative expression hampers the court and disadvantages the child. It may be appropriate to exclude juvenile dispositions from the bill's application to allow for such

cc. Hon. Nick Charles
Judicial Council
Legislative Committee
Kelley O'Connor