



SENATE BILL 0662

DILLON YEUNG—Howard County Assistant State's Attorney

Criminal Procedure- Evidence-Admissibility of Creative Expression

POSITION: UNFAVORABLE

March 4, 2024

Ladies and gentlemen of the Senate Judicial Proceedings Committee:

Thank you for the opportunity to address you today. My name is Dillon Yeung. I am an Assistant State's Attorney, and I am here on behalf of Richard Gibson, the State's Attorney for Howard County, and the Maryland State's Attorneys' Association. I am here today to request an unfavorable report for Senate Bill 0662.

As a prosecutor, my job is to hold criminals accountable for their actions. That job becomes more difficult when we erect artificial barriers that prevent us from using evidence created by alleged perpetrators. Senate Bill 0662 creates such barriers.

First, this bill addresses an issue that has already been adequately handled by the courts. In a recent case called *Montague v. State*, the Supreme Court of Maryland established a framework for determining the admissibility of creative expression, particularly in the form of song lyrics. The Court held that such evidence is admissible only when the lyrics bear a close factual and temporal nexus to the details of an alleged crime. Once that threshold is met, the court admits such evidence only if its probative value is not substantially outweighed by unfair prejudice to the defendant. Even when such evidence is introduced, the trier of fact must still decide what, if any weight, to give that evidence. In another case called *Hannah v. State*, the court also recognized that a defendant's song lyrics are inadmissible when they fell within a category of "inadmissible works of fiction" that served only to cast the defendant in a violent light.

By attempting to codify criteria that have already been effectively addressed by the courts, this bill risks introducing unnecessary complexity and confusion into our legal framework.

I recently tried a murder case in Howard County in which the defendant was alleged to have shot at two young men, killing one of them. While incarcerated and pending trial, that defendant authored song lyrics, which described the crime in detail, and stood in stark contrast to his statement to the police, in which he denied ever handling a gun. We were able to hold this murderer accountable and obtain justice for the victim's family in part because the jury was

able to consider the defendant's lyrics, which were introduced into evidence at trial using the existing legal framework.

Second, the proposed provision requiring that "the creative expression has probative value that cannot be provided by other admissible evidence" raises critical concerns. Criminal prosecutions, by their very nature, are often circumstantial. During a trial, many pieces of evidence are introduced to prove a single issue. You would be hard pressed to find a criminal case involving creative expression where its probative value is not provided by some other admissible evidence. Such a case would unlikely pass prosecutorial muster. The practical effect of Senate Bill 0662 would be to prohibit the use of creative expression in all criminal prosecutions.

In conclusion, I appreciate your time and attention to this matter. I am here to seek an unfavorable report from the Committee on SB 0662, which will have the unintended consequence of making our communities less safe. Thank you.