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Bill Number: SB 475
Position: Unfavorable

The Maryland State's Attorneys' Association (MSAA) opposes Senate Bill 475 and urges this Committee to issue an unfavorable report.

This bill risks making threats, intimidation, and witness tampering more difficult to admit when they are cloaked in so-called "creative expression" or metaphor. In effect, it raises the burden of proof on the State and creates a potential defense where none should exist. Threats do not become less threatening simply because they are stylized, indirect, or artistic.

The legislature's attempt to define "artist" and "creative expression" is particularly troubling. Those determinations are not legislative functions. They are evidentiary questions that trial judges already handle every day under the Maryland Rules of Evidence. Courts are well equipped to assess relevance, probative value, prejudice, and context without carving out special treatment for certain forms of speech.

This bill would also have serious consequences in domestic violence, stalking, and sexual exploitation cases. Under SB 475, an abuser's poems, lyrics, or metaphor-laden statements could receive special protection simply because the references are not explicit. That same concern applies to predatory conduct disguised as "creative expression." The implications extend far beyond the narrow group the bill appears designed to protect.

Practically, this legislation invites unnecessary and harmful pretrial litigation. Would courts be required to hold pretrial hearings to determine whether a defendant meant a statement literally or figuratively? Would victims and witnesses have to testify before trial about how they interpreted a defendant's "creative" statements—subjecting them to cross-examination and retraumatization before the jury is even empaneled?

If an abuser turns threatening text messages into a haiku or a rap verse, does that trigger a special evidentiary process? That result is not only unworkable, it undermines victim safety and the truth-seeking function of the trial.

The existing rules already strike the appropriate balance between free expression and admissible evidence. SB 475 is unnecessary, overbroad, and risks real harm to victims and witnesses while complicating prosecutions in cases where context and intent are critical.

MSAA urges this Committee to issue an unfavorable report.