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DEPUTY MAJORITY WHIP

Judicial Proceedings Committee

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Children, Youth, and Families

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony for SB 475
Criminal Procedure – Evidence – Protecting Artists’ Creative Expression (PACE Act)
Before the: Judicial Proceedings Committee
February 11, 2026**

Good afternoon Chair Smith, members of the committee.

Maryland has a deep tradition of artistic and musical creativity. From Baltimore’s influential hip-hop scene to the many generations of poets, writers, and visual artists found throughout the state, Maryland has continually fostered vibrant creative expression.

Across the United States, creative works such as music lyrics, poetry, written narratives, visual art, and other forms of artistic expression have increasingly been introduced improperly as evidence in criminal proceedings. Research by University of Richmond professor Erik Nielson found that rap lyrics alone were used as evidence in approximately 500 criminal cases between 2009 and 2019, revealing a broader pattern in which artistic works are taken out of their creative context and presented to juries as factual admissions of guilt.¹ While rap lyrics are the most frequently cited examples, this practice extends across many forms of creative expression that are often fictional, metaphorical, or expressive rather than literal.

As evident in two recent cases, Maryland is very much a part of this trend. In *Montague v. State*, the Maryland Supreme Court upheld the admission of a defendant’s rap lyrics in a murder trial after concluding that the lyrics bore “a close nexus to the details of an alleged crime” and that “the probative value of the lyrics was not outweighed by the danger of unfair prejudice”.²

In *Hannah v. State*, the court found that a prosecutor had improperly cross-examined a defendant about rap lyrics he had written two years prior, because it was only done for the purpose of establishing the defendant’s propensity for violence and thus unfairly prejudicial, entitling him to

¹ <https://files01.core.ac.uk/download/pdf/346447748.pdf>

² <https://www.mdcourts.gov/data/opinions/coa/2020/75a19.pdf>

a new trial.³ The court also acknowledged that “there are certain circumstances where the lyrics possess an inherent and overriding probative purpose. One circumstance would be where the lyrics constitute an admission of guilt... others would include rebutting an offered defense and impeachment testimony.”

These cases demonstrate a clear tension in Maryland law: although courts recognize the prejudicial nature of creative expression, judges are left to apply general evidentiary rules that were never designed to address the unique nature of artistic works and the always changing forms and language found in the arts.

This legislation is strong effort to codify the common law test laid out by the Maryland Supreme Court in these two court cases, addressing this gap by establishing clear, reasonable guardrails for when creative expression may be admitted as evidence in criminal and juvenile proceedings.

Under this bill, a defendant’s artistic work may only be admitted if the court determines that:

- The defendant intended the creative work to be taken literally rather than as figurative or fictional expression;
- There is a strong and specific connection between the creative work and the alleged offense; and
- The creative work is directly relevant to a disputed issue of fact.

Importantly, this bill does not impose a blanket ban on the use of creative expression in court. Instead, it ensures that artistic works are admitted only when they genuinely serve the interests of justice and are not used to inflame jurors or reinforce harmful stereotypes. Without these protections, we risk criminalizing creativity and disproportionately impacting communities of color, whose artistic traditions, particularly in hip-hop, are more frequently scrutinized, criminalized, and misunderstood.

The music industry, civil liberties advocates, and arts organizations strongly support these protections, recognizing that this issue extends beyond individual defendants. At stake are fundamental principles of free expression, due process, and fairness in our criminal justice system.

This legislation affirms that Maryland values both public safety and constitutional rights. It ensures that our courts rely on evidence of conduct, not creative imagination, when determining guilt or innocence. By adopting the PACE Act, we provide our judiciary with clear standards, protect artistic freedom, and uphold the integrity of Maryland’s legal system.

For the aforementioned reasons, I urge this committee issue a favorable report.

³ <https://cases.justia.com/maryland/court-of-appeals/151a09.pdf?ts=1462361753>