

J. CHARLES SMITH, III
STATE'S ATTORNEY

JOYCE R. KING
DEPUTY STATE'S ATTORNEY

RICKY W. LEWIS
CHIEF COUNSEL



STATE'S ATTORNEY'S OFFICE

County Courthouse
100 West Patrick Street
Frederick, Maryland 21701

www.statesattorney.us

CIRCUIT COURT DIVISION
301-600-1523

DISTRICT COURT DIVISION
301-600-2573

CHILD SUPPORT DIVISION
301-600-1538

JUVENILE DIVISION
301-600-2980

DATE: February 11, 2026

BILL NUMBER: SB 475

POSITION: Unfavorable

Dear Chair Smith, Vice Chair Waldstreicher, Members of the Judicial Proceedings Committee:

I write to you on behalf of the Maryland State's Attorney's Association and the Frederick County State's Attorney's Office in strong opposition to SB 475.

While the intent behind SB 475 may be admirable, the consequences of such legislation to the prosecution of offenders who victimize the most vulnerable individuals in our community is significant. It appears as though the proposed legislation is attempting to codify the rulings already laid out by the Court of Special Appeals in *Montague v. State*, 244 Md. App. 24 (2019). In *Montague* the court addresses the application of Md. Rule 5-401 (relevancy) and Md. Rule 5-404(b) (other bad acts) specifically to the admissibility of rap lyrics in a criminal case against a defendant. However, SB 475 goes far beyond the holding in *Montague*. Rather, it makes the admissibility requirements more stringent than current rules of evidence and case law, and expands the holding in *Montague* to all "creative expression." The combination of these additions, naturally expands the types of cases that would be impacted by this proposed legislation.

Additionally, while SB 475 appears to attempt to limit the items that would fall under "creative expression" the reality is that the definitions included are not limiting. For example, the legislation indicates that it applies to items that are eligible for federal copyright protection. However when you look at 17 U.S.C. §102, copyright protection applies to "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." In effect, that includes any type of expression by an individual. With that understanding, I urge you to consider the following hypothetical scenarios which under current caselaw and statutory scheme the evidence would be admissible, but under the proposed legislation, the evidence would be inadmissible.

Child Sexual Abuse

Hypothetically, if an individual who is alleged to have sexually abused a child writes a note or journal entry or other literary piece insinuating to their bad conduct in general terms, or utilizing a figurative term to describe their conduct with no additional detailed facts, under this legislation that writing would not be admissible. Under the current case law and statutory scheme, the court would hold a hearing to determine whether such evidence provided relevancy to the charged acts, including a comparison between the date of the writing and the date of the offense. However, under the proposed legislation the court would not be

able to even consider such facts and would simply be unable to admit such evidence if it found it was in fact “creative expression” due to there not being reference to specific facts of the case. Therefore, a potentially crucial piece of evidence would become inadmissible under the proposed legislation.

Domestic Violence

Hypothetically, if an individual who is alleged to have committed a crime against their intimate partner later writes the victim a poem, letter or song apologizing for hurting the victim, without mentioning any specifics regarding the facts of the offense, under the proposed legislation such writing would also be inadmissible. Furthermore, if the offender had a protective order against them, and they wrote a poem or song referring to the victim, and sent that poem or song to the victim, they could argue that the poem or song was “creative expression” and if it does not reference the existence of a protective order it may be inadmissible against the offender in a prosecution for Violation of Protective Order. Additionally, if an offender had prior writings that could potentially provide motive for an offense, if there was not a direct reference to the specific facts of the case, under the requirements of the proposed legislation, those writings would be inadmissible.

Sex Trafficking

It is well known that there is an inherent connection between offenders who commit sex trafficking and their use of “creative expression” to perpetuate the crime and recruit additional victims. Hypothetically, if an individual were to post a photograph with a large amount of cash and have a song referencing “pimping” playing as background music it would be a derivative use of the creative expression. However, under the proposed legislation, such evidence would be inadmissible if it did not refer to a specific victim. Whereas, under the current statutory scheme and caselaw a court would weigh the relevancy of the evidence in terms of timing of the photograph related to the crime, location of the photograph related to location of the incident, and other factors.

These are just a few examples of hypothetical scenarios where under the current statutory scheme and caselaw, important pieces of evidence would be admissible, or at least subject to an admissibility hearing. However, under the proposed legislation, these pieces of evidence would become inadmissible. In my experience as a prosecutor and in speaking with other prosecutors throughout my office and the State of Maryland, criminal defendants frequently attempt to cloak their admissions as “creative expressions” through writings, poems, songs, etc. By issuing a favorable report on SB 475, we would be encouraging more offenders to do so, and significantly limiting important evidence in criminal prosecutions.

The current statutory scheme and case law already provides significant protections to defendants charged with criminal acts to ensure that propensity evidence is not utilized in a criminal case and to ensure that unfairly prejudicial evidence is not admitted against a criminal defendant. Impletmening this proposed legislation would have wide-spread consequences in the ability to effectively prosecute offenders who commit crimes against some of our most vulnerable victims.

For these reasons, the Maryland State’s Attorney’s Association and the Frederick County State’s Attorney’s Office request an unfavorable report on SB 475.



Lindsey M. Carpenter
Chief, Special Victims Unit
Frederick County State’s Attorney’s Office