

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 940
Judiciary

(Delegate Amprey)

Criminal Procedure - Evidence - Admissibility of Creative Expression

This bill prohibits the “creative expression” of a defendant or respondent from being admitted against the defendant or respondent in a criminal or juvenile proceeding unless the court makes specified findings.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finance and operations.

Local Effect: The bill is not expected to materially affect local finances and operations.

Small Business Effect: None.

Analysis

Bill Summary: In any criminal or juvenile proceeding, the creative expression of a defendant or respondent is not admissible against the defendant or respondent unless the court find, by clear and convincing evidence, that:

- the defendant or respondent intended the creative expression to be literal, rather than figurative or fictional *or* if the creative expression is derivative, the defendant intended to adopt the literal meaning of the creative expression as their own;
- there is a strong indication that the creative expression refers to the specific facts of the alleged offense;
- the creative expression is relevant to a disputed issue of fact; and

- the creative expression has probative value that cannot be provided by other admissible evidence.

“Creative expression” means the expression or application of creativity or imagination in the production or arrangement of forms, sounds, words, movements, or symbols.

Current Law: The Maryland Rules of Evidence generally follow the Federal Rules of Evidence. Except as otherwise specified, all relevant evidence is admissible. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Although relevant, evidence may be excluded under Maryland Rule 5-403 if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Generally, evidence of a person’s character or character trait is not admissible to prove that a person acted in accordance with the character trait on a particular occasion.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2023
km/jkb

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