



## HOUSE BILL 0940

RICH GIBSON, HOWARD COUNTY STATE'S ATTORNEY

**POSITION: UNFAVORABLE FOR HB 0940**

February 24, 2023

My name is Rich Gibson, I am the State's Attorney for Howard County and the President of the Maryland State's Attorneys' Association (hereinafter MSA). I have been a prosecutor for nineteen years and I am writing today to request an unfavorable report for House Bill 0940.

There is nothing wrong with holding people who engage in criminal acts accountable for their choices. Our society is less safe when we erect artificial barriers to prevent wrongdoers from the consequences of their actions. House Bill 0940 seeks to make it more difficult to use evidence created by an alleged perpetrator against them in court. Prosecutors have no desire to stifle creative expression; we just have a desire to hold those who violate our laws accountable for their actions. I.e., be as creative as you want--just don't commit a crime. Currently, our rules of evidence allow the State to use any statements made by the defendant, which are counter to their own penal interest, against them in court. For the statement to be admissible at trial, the trial judge must find that:

- 1) The statement is relevant to the case before the court
- 2) The statement was made by the defendant
- 3) The statement is against the criminal interest of the declarant/  
defendant

Furthermore, even if the statement is deemed admissible by the presiding judge, the trier of fact (whether judge or jury) still must decide what weight, if any, to give this evidence. They can believe all, part, or none of it. In Howard County, we had a case recently, where a defendant was accused of shooting at two individuals and killing one of those victims. That defendant made a rap while

incarcerated pending trial about the incident. The lyrics of the rap, which described the crime in detail, stood in stark contrast to his statement to police, where he denied ever handling a gun, let alone shooting at the victims. Part of the reason we were able to prevail and hold this murderer accountable was the ability to use the song he created describing the events against him without unnecessary encumbrances.

What injustice does this bill seek to cure? What injustices will be created by the passage of this bill? Do we want to create a society where criminals can more easily evade responsibility for their actions? If a criminal is inclined to create evidence that is probative of their wrongful conduct and would give society a clearer picture of the truth of their actions, why would we want to create barriers to that information being brought forth in the determination of their guilt or innocence?

For these reasons, **the members of the Maryland State's Attorneys' Association respectfully request an unfavorable report for House Bill 0940.**