



Maryland State's Attorneys' Association

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BILL NUMBER: **SB 1001**

POSITION: **Unfavorable**

The Maryland State's Attorneys' Association (MSAA) opposes Senate Bill 1001 and urges this Committee to issue an unfavorable report.

Animated by the perception that irrelevant rap lyrics penned by criminal defendants are routinely admitted against them in criminal proceedings, SB 1001 restricts the admissibility of relevant evidence if it qualifies as “creative expression.” The restrictions in the bill, however, are unnecessary, given the guardrails already established by the Supreme Court of Maryland in *Montague v. State*, 471 Md. 657 (2020), to prevent precisely the type of abuses that the bill’s proponents are concerned about. The State is already required to prove that the creative expression bears a “close nexus” to the offense – in essence, rapping about the specific crime – in order to overcome the danger of unfair prejudice. This is a significant burden, given what the Supreme Court of Maryland, in these cases, calls the “inherent prejudicial effect” of rap lyrics. *Id.* at 687.

Concerns that prosecutors are either regularly seeking introduction, or are able to easily introduce, unrelated rap lyrics to establish that the defendant has a propensity to commit violence (based on a misunderstanding of the creative and cultural history of the genre) simply aren’t grounded in the actual reality of criminal practice in Maryland. The Supreme Court of Maryland has already prohibited that – “rap lyrics that include ‘only general references glorifying violence’ . . . should be excluded because their ‘minimal probative value . . . is far outweighed by [their] unfair prejudicial impact’ as propensity evidence.” *Id.* at 687 (quoting *State v. Cheesboro*, 346 S.C. 526, 552 S.E.2d 300 (2001)).

MSAA urges this Committee to consider whether the evidence SB 1001 excludes is something that should be kept from judges and juries – in *Montague*, the defendant rapped specific details about his crime, and included a warning to potential witnesses who might be inclined to testify against him. *Id.* at 692-94. Had he said these words to someone else instead of rapping them, they would have been admissible – there is no reason to treat these two statements differently, as the Supreme Court of Maryland found after a thorough analysis.



Importantly, however, SB 1001 goes further than simply codifying the admissibility analysis from *Montague*. The language of the bill directly impairs the truth-seeking function of our adjudicatory process by withholding relevant and otherwise admissible evidence from the consideration of the finder of fact if there is any other evidence that goes to the same point. By requiring that “creative expression” has unique probative value prior to its admission, the bill creates a functionally insurmountable evidentiary threshold that applies to significantly more evidence than appears at first glance.

Imagine a “selfie” taken by a defendant, holding the murder weapon and standing over the victim. The defendant adds a filter and uploads the photo to their Instagram account. According to SB 1001, there is now a “creative expression” – the defendant used creativity or imagination in choosing the filter (arguably, the filter isn’t even necessary – the defendant used creativity and imagination in choosing the framing and angle of their photograph) – so, assuming the other requirements in the bill are met, the State must prove that the expression “has probative value that cannot be provided by other admissible evidence.” If there is other admissible evidence that is probative, and relevant to the point for which the State is seeking admission of this evidence (regardless of how tenuous or unpersuasive that other evidence is), then the photograph – compelling and probative evidence – is not coming in.

SB 1001 will apply in more routine contexts, as well, including routine police interviews. Arranging words, using creativity, could arguably constitute “creative expression” within the meaning of the statute. Does the bill exclude a confession simply because it includes a rhetorical device? Can a defendant sing their confession in the interrogation room to ensure its inadmissibility in court? This bill says that, potentially, the answer is yes, so long as there is any other evidence that would, or could, establish the same point, regardless of how compelling or believable that other evidence is on that point.

The defendant in *Montague* was already under the impression that rapping his confession would shield it from admissibility – at the end of the phone call where he raps the lyrics, an individual on the other end of the phone call warns him about including such details, and he says “I’m Gucci. It’s a rap. F—k they can do for—about a rap?” *Montague*, 471 Md. at 671. SB 1001 would make Mr. Montague’s misapprehension a reality in Maryland courts, a reality which should not come to pass. MSAA urges an unfavorable report.