

# Fact Sheet: The PACE Act (HB 1346/SB 1001)

## Ensuring Fair Legal Standards for the Use of Creative Expression in Criminal Proceedings

### Background & Legislative Intent

House Bill 1346 and Senate Bill 1001, known as the **Protecting Artistic and Creative Expression (PACE) Act**, establish clear guidelines on the admissibility of creative works—such as song lyrics, poetry, and other forms of artistic expression—as evidence in criminal trials.

The bill recognizes a growing concern among **legal scholars, civil rights advocates, and the music industry** that creative expression, particularly rap lyrics, is being disproportionately weaponized against artists, often without sufficient judicial scrutiny.

HB 1346/SB 1001 seeks to:

- Prevent **unfounded biases** from influencing judicial outcomes.
  - Align Maryland with **evolving national legal standards** on the evidentiary use of artistic works.
  - Uphold **First Amendment protections** while allowing creative expression to be considered only in **narrowly defined legal circumstances**.
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### Legal & Academic Justification for HB 1346/SB 1001

#### 1. Empirical Data on the Misuse of Artistic Expression in Court

- A study by **Professor Erik Nielson (University of Richmond)** and **Andrea Dennis (University of Georgia School of Law)** identified **over 500 cases** between 2009 and 2019 where rap lyrics were admitted as evidence in criminal trials. In these cases, **prosecutors often failed to establish a direct connection between the lyrics and the alleged crimes** (Nielson & Dennis, *Rap on Trial: Race, Lyrics, and Guilt in America*, 2019).
- Research published in the **Columbia Law Review** found that when mock jurors were presented with violent lyrics without identifying the genre, they were less likely to assume criminal intent. However, when jurors were told the lyrics were from a rap song, **perceptions of guilt increased significantly**, highlighting racial and genre-based biases (Kubrin, *Columbia Law Review*, 2018).

#### 2. Constitutional & Evidentiary Concerns

- **First Amendment Protections:** The Supreme Court has long held that artistic and literary works are **protected speech**, even when they depict violent or criminal behavior (*Miller v. California*, 1973). The PACE Act ensures that **mere artistic depiction does not serve as de facto evidence of criminal intent**.
- **Federal Rules of Evidence (Rule 403 & 404):** Under existing evidentiary rules, character evidence and prejudicial material must meet a **high threshold of probative value**. In *State v. Skinner* (New Jersey, 2014), the New Jersey Supreme Court ruled that **rap lyrics alone cannot be used to establish motive or intent** without direct factual corroboration. HB 1346/SB 1001 codifies similar protections into Maryland law.

### 3. National Legislative Trends

- **California's Decriminalizing Artistic Expression Act (AB 2799, 2022)** was the **first U.S. law** to place evidentiary restrictions on the use of rap lyrics in court. The PACE Act follows California's precedent, ensuring Maryland remains at the forefront of **fair trial protections**.
- **Congressional Action – The RAP Act (H.R. 8531, 2022)** seeks to impose similar evidentiary limits at the federal level, supported by major **civil rights organizations, the Recording Academy (Grammys), and First Amendment scholars**.

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## Key Provisions of HB 1346/SB 1001

Under the PACE Act, **artistic expression cannot be admitted as evidence in a criminal or juvenile proceeding unless:**

- ✓ The **defendant intended** the work to be interpreted as literal rather than figurative or fictional.
- ✓ The **work contains details that are factually specific** to the alleged offense.
- ✓ The **work is relevant** to a disputed fact in the case.
- ✓ The **probative value outweighs the risk of unfair prejudice** and is **not substitutable by other admissible evidence**.

**Importantly**, the PACE Act does not prevent the use of creative works in all circumstances; it simply **establishes a judicial standard** that aligns with best practices in **evidence law and constitutional protections**.