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DEPUTY MAJORITY WHIP

Economic Matters Committee



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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

February 13, 2026

Chair Bartlett
Vice Chair Davis
House Judiciary Committee
100 Taylor House Office Building
Annapolis, Maryland 21401

FAV Written Testimony for HB687 Criminal Procedure - Evidence - Protecting Artists' Creative Expression (PACE Act)

Dear Chair Bartlett, Vice Chair Davis, and Members of the House Judiciary Committee,

Maryland has long been a hub for artistic and musical innovation. From legendary artists like Billie Holiday to current artists like Wale and Maggie Rogers, our legacy of poets, writers, and visual artists have consistently nurtured creative expression. As lawmakers, we have a responsibility to ensure that this creativity is protected, not punished. This legislation, known as the PACE Act, is a necessary step to safeguard artistic expression from being misused as criminal evidence without appropriate context or justification.

Across the country, creative works, including music lyrics, poetry, written narratives, visual art, and other forms of artistic expression, have increasingly been introduced improperly as evidence in criminal proceedings. While rap lyrics are the most frequently cited examples, these practices extend to a wide range of creative expression that is often fictional, metaphorical, or expressive rather than literal. Research conducted by Professor Erik Nielson of the University of Richmond found that rap lyrics alone were used as evidence in approximately 500 criminal cases between 2009 and 2019, underscoring a broader pattern in which artistic works are removed from their creative context and presented to juries as factual admissions of guilt.

Maryland is not immune from this trend. In *Montague v. State*, the Maryland Court of Appeals upheld the admission of a defendant's rap lyrics in a murder trial after concluding that the lyrics bore a sufficient connection to the alleged offense. While the court applied existing evidentiary standards under Maryland Rule 5-403, the case illustrates how, absent clear statutory guidance, artistic expression can be treated as factual evidence when courts believe it parallels criminal conduct. This approach places artists at risk of having fictional or expressive works interpreted literally, even when those works are rooted in storytelling, exaggeration, or cultural expression.

This legislation addresses that gap by establishing clear, reasonable guardrails for when creative expression may be admitted as evidence in criminal and juvenile proceedings. Under this bill, a defendant's artistic work may only be admitted if the court determines that:

- The defendant intended the creative work to be taken literally rather than as figurative or fictional expression;
- There is a strong and specific connection between the creative work and the alleged offense;
- The creative work is directly relevant to a disputed issue of fact

Importantly, this bill does not impose a blanket ban on the use of creative expression in court. Instead, it ensures that artistic works are admitted only when they genuinely serve the interests of justice and are not used to inflame jurors or reinforce harmful stereotypes. Without these protections, we risk criminalizing creativity and disproportionately impacting communities of color, whose artistic traditions, particularly in hip-hop, are more frequently scrutinized and misunderstood.

The music industry, civil liberties advocates, and arts organizations strongly support these protections, recognizing that this issue extends beyond individual defendants. At stake are fundamental principles of free expression, due process, and fairness in our criminal justice system.

Opponents of this legislation have expressed concern that the PACE Act would prevent prosecutors from introducing important evidence in serious cases involving domestic violence, child abuse, or other violent offenses. These concerns misunderstand both the intent and the operation of the bill.

The PACE Act does not exclude relevant evidence. It does not prevent prosecutors from presenting statements, writings, or recordings that directly describe a crime, identify a victim, or demonstrate intent connected to a specific offense. Courts would continue to admit such evidence when it meets the established standards of relevance and reliability. Judges retain full discretion under this legislation to determine admissibility on a case-by-case basis.

What the bill does prevent is the admission of creative expression that is speculative, fictional, or unrelated to the alleged conduct. Under current practice, artistic works can sometimes be introduced without a clear factual connection to the charged offense, creating a significant risk that juries may interpret metaphor, storytelling, or emotional expression as literal admissions of guilt. This risk is precisely what the PACE Act seeks to address.

For example, if an individual writes a fictional poem or journal entry exploring themes of violence, trauma, or anger without referencing specific facts, victims, or events tied to a criminal case, such writing should not be treated as proof of criminal conduct. This does not shield wrongdoing; rather, it ensures that imagination is not substituted for evidence.

Likewise, in cases involving serious crimes, any statement or writing that directly describes the offense itself, identifies participants, or demonstrates intent would remain admissible under this legislation. The PACE Act simply requires that there be a clear and specific connection between the creative work and the alleged crime before it can be presented to a jury.

In this way, the bill reinforces longstanding evidentiary principles by ensuring that guilt is determined based on factual conduct, not artistic interpretation. It protects due process while preserving the ability of courts to hold offenders fully accountable based on legitimate evidence.

While opponents argue that existing evidentiary rules already require courts to evaluate relevance and prejudice, the PACE Act does not replace those standards, it strengthens them. This legislation does not weaken prosecutors' ability to present relevant evidence in serious cases; rather, it ensures that creative expression is admitted only after it passes clear, consistent due process safeguards that prevent fiction, metaphor, or artistic storytelling from being misinterpreted as factual proof of guilt.

Maryland values both public safety and constitutional rights. It ensures that our courts rely on evidence of conduct, not creative imagination, when determining guilt or innocence. By adopting the PACE Act, we provide our judiciary with clear standards, protect artistic freedom, and uphold the integrity of Maryland's legal system.

In Maryland, we do not wait for injustice to be a pervasive problem in our state to act. Like we have done with ICE agreements, reproductive rights or voting rights, we act based on what we see as a potential or growing injustices. Passing the PACE Act is an opportunity for Maryland to stop and prevent injustice that occurs with the improper use of creative expression in court proceedings.

For these reasons, I respectfully urge a favorable report on **HB687**.

Sincerely,

A handwritten signature in black ink, appearing to read "Marlon Amprey". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Delegate Marlon Amprey
40th Legislative District of Maryland