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Maryland's S.B. 475 and H.B. 687 Would Protect Free Expression and Artistic Freedom

Freedom of expression and due process of law are essential elements of a free society. The use of artistic expression, such as song lyrics, as evidence in criminal proceedings threatens these core American values and undermines the rule of law. Maryland's Senate Bill 475 and House Bill 687 would create fair and uniform standards for the admission of song lyrics and other forms of artistic expression into evidence by a prosecutor seeking to use them against a defendant.

Song Lyrics Are Improperly Being Used as Evidence Against Defendants.

- Literal confessions of criminal guilt should not be treated as free speech protected under the First Amendment. However, song lyrics are often not intended to be taken literally, and their admission as evidence of a crime should be scrutinized.
- Currently, courts rely on shifting constitutional principles, precedent, and evidentiary rules, leaving defendants with little certainty about whether and how their creative work could be used against them in court.
- Nationwide, researchers have identified more than 680 cases where song lyrics have been introduced as evidence since the 1980s. This practice presents a serious affront to the principles of free expression and artistic freedom because artists may censor themselves out of fear that their creative work could be used against them in criminal prosecutions.

S.B. 475 and H.B. 687 Establish Reasonable Standards for the Admission of Artistic Expression as Evidence in a Criminal Trial.

- By default, artistic expression would be inadmissible. However, a court could admit evidence of a defendant's artistic expression if they can prove by clear and convincing evidence that:
 1. (A) If the expression is original, the defendant intended a literal meaning; or
(B) If the expression is derivative (borrowed from someone else), the defendant intended to adopt the statement as their own thought or statement.
 2. The expression refers to specific facts of the crime alleged.
 3. The expression is relevant to an issue of fact in dispute.

Bottom line: *The state should be required to meet fair standards before using song lyrics or other forms of artistic expression as evidence to deprive a criminal defendant of their life, liberty, or property.*

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