

House Bill 237

By: Representatives Carpenter of the 4th, Kelley of the 16th, Bell of the 75th, Smith of the 18th,
and Frye of the 122nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to
2 relevant evidence and its limits, so as to provide for the admissibility of creative or artistic
3 expression evidence at trial; to provide for a definition; to provide for the presumption of
4 inadmissibility; to provide for related matters; to repeal conflicting laws; and for other
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to relevant evidence
9 and its limits, is amended by adding a new Code section to read as follows:

10 "24-4-420.

11 (a) As used in this Code section, the term 'creative or artistic expression' means the
12 expression or application of creativity or imagination in the production or arrangement of
13 forms, sounds, words, movements, or symbols. Such term shall include music, dance,
14 performance art, visual art, poetry, literature, film, and other such activities or media, but
15 shall not include tattoos.

16 (b) Evidence of a defendant's creative or artistic expression, whether original or derivative,
17 shall not be received into evidence against such defendant in a criminal proceeding unless
18 such evidence is determined by the court to be relevant and admissible after an offer of
19 proof by the proponent of the evidence outside the hearing of a jury, or such hearing as the
20 court may require, and a statement by the court regarding the findings of fact essential to
21 its determination of admissibility is made part of the record. To overcome the presumption
22 of inadmissibility of evidence of the defendant's creative or artistic expression, the
23 proponent of the evidence shall affirmatively prove by clear and convincing evidence that:
24 (1) The defendant intended to adopt the literal meaning of the work as the defendant's
25 own thought or statement;
26 (2) There is a strong factual nexus indicating that the creative or artistic expression refers
27 to specific facts of the crime alleged;
28 (3) There exists relevance to an issue of fact that is disputed; and
29 (4) There is distinct probative value provided by other admissible evidence.
30 (c) Where the court admits creative or artistic expression as criminal evidence, the court
31 shall apply careful redactions, provide proper instructions, and consider the least prejudicial
32 means of presenting the creative or artistic expression."

33 **SECTION 2.**

34 All laws and parts of laws in conflict with this Act are repealed.