

The House Committee on Judiciary, Non-Civil offers the following substitute to HB 237:

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 hand signs used to indicate membership in a criminal street gang, as
16 defined in Code Section 16-15-3, and tattoos.

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17 (b) Evidence of a defendant's creative or artistic expression, whether original or derivative,
18 shall not be admitted into evidence against such defendant in a criminal proceeding unless
19 such evidence is determined by the court to be relevant and admissible after an offer of
20 proof by the proponent of the evidence outside the hearing of a jury, or such hearing as the
21 court may require, and a statement by the court regarding the findings of fact essential to
22 its determination of admissibility is made part of the record. To overcome the presumption
23 of inadmissibility of evidence of the defendant's creative or artistic expression, the
24 proponent of the evidence shall affirmatively prove by a preponderance of evidence that:
25 (1) The defendant adopted the literal meaning of the work as the defendant's own thought
26 or statement;
27 (2) There is a specific fact pattern indicating that the creative or artistic expression refers
28 to specific facts of the crime alleged; and
29 (3) There exists relevance to an issue of fact that is disputed.
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 (d) Evidence admitted pursuant to this Code section is still subject to other rules of
34 evidence under the Official Code of Georgia Annotated."

35 **SECTION 2.**

36 All laws and parts of laws in conflict with this Act are repealed.