



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3420

Introduced 2/17/2023, by Rep. Justin Slaughter

SYNOPSIS AS INTRODUCED:

725 ILCS 5/115-7.5 new

Amends the Code of Criminal Procedure of 1963. Provides that evidence of a defendant's creative or artistic expression, whether original or derivative, may not be received into evidence against that defendant in a criminal proceeding unless the evidence is determined by the court to be relevant and admissible, after an offer of proof by the proponent of the evidence outside the hearing of the jury, or the hearing as the court may require, and an on-the-record statement by the court of the findings of fact essential to its determination. Provides that in order to overcome the presumption of inadmissibility of evidence of defendant's creative or artistic expression, the proffering party must affirmatively prove by clear and convincing evidence: (1) literal, rather than figurative or fictional, meaning and, where the work is derivative, that the defendant intended to adopt the literal meaning of the work as the defendant's own thought or statement; (2) a strong factual nexus indicating that the creative or artistic expression refers to the specific facts of the crime alleged; (3) relevance to an issue of fact that is disputed; and (4) distinct probative value not provided by other admissible evidence. Provides that if the court admits creative or artistic expression as criminal evidence, the court has a duty to apply careful redactions, provide limiting instructions, and consider the least prejudicial means of presenting the creative or artistic expression to the fact finder.

LRB103 30115 RLC 56539 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by adding Section 115-7.5 as follows:

6 (725 ILCS 5/115-7.5 new)

7 Sec. 115-7.5. Admissibility of evidence of defendant's
8 creative or artistic expression.

9 (a) In this Section, "creative or artistic expression"
10 means the expression or application of creativity or
11 imagination in the production or arrangement of forms, sounds,
12 words, movements, or symbols, including, but not limited to,
13 music, dance, performance art, visual art, poetry, literature,
14 film, and other such objects or media.

15 (b) Evidence of a defendant's creative or artistic
16 expression, whether original or derivative, may not be
17 received into evidence against that defendant in a criminal
18 proceeding unless the evidence is determined by the court to
19 be relevant and admissible, after an offer of proof by the
20 proponent of the evidence outside the hearing of the jury, or
21 the hearing as the court may require, and an on-the-record
22 statement by the court of the findings of fact essential to its
23 determination.

1 (c) In order to overcome the presumption of
2 inadmissibility of evidence of defendant's creative or
3 artistic expression, the proffering party must affirmatively
4 prove by clear and convincing evidence:

5 (1) literal, rather than figurative or fictional,
6 meaning and, where the work is derivative, that the
7 defendant intended to adopt the literal meaning of the
8 work as the defendant's own thought or statement;

9 (2) a strong factual nexus indicating that the
10 creative or artistic expression refers to the specific
11 facts of the crime alleged;

12 (3) relevance to an issue of fact that is disputed;
13 and

14 (4) distinct probative value not provided by other
15 admissible evidence.

16 (d) If the court admits creative or artistic expression as
17 criminal evidence, the court has a duty to apply careful
18 redactions, provide limiting instructions, and consider the
19 least prejudicial means of presenting the creative or artistic
20 expression to the fact finder.