

House Bill 1309

By: Representatives Clark of the 108<sup>th</sup>, Bell of the 75<sup>th</sup>, Willis of the 55<sup>th</sup>, and Barnes of the 86<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 24-9-923 of the Official Code of Georgia Annotated, relating to  
2 admissibility of photographs, motion pictures, video recordings, and audio recordings when  
3 witness unavailable, so as to provide that creative or artistic expression evidence is  
4 inadmissible at trial; to provide for a definition; to provide for the presumption of  
5 inadmissibility; to provide for related matters; to repeal conflicting laws; and for other  
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 24-9-923 of the Official Code of Georgia Annotated, relating to admissibility  
10 of photographs, motion pictures, video recordings, and audio recordings when witness  
11 unavailable, is amended by revising subsection (b) as follows:

12 "(b)(1) Subject to any other valid objection, photographs, motion pictures, video  
13 recordings, and audio recordings shall be admissible in evidence when necessitated by  
14 the unavailability of a witness who can provide personal authentication and when the  
15 court determines, based on competent evidence presented to the court, that such items  
16 tend to show reliably the fact or facts for which the items are offered.

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17 (2) As used in this subsection, the term 'creative or artistic expression' means the  
18 expression or application of creativity or imagination in the production or arrangement  
19 of forms, sounds, words, movements, or symbols. Such term shall include music, dance,  
20 performance art, visual art, poetry, literature, film, and other such objects or media.

21 (3) Evidence of a defendant's creative or artistic expression, whether original or  
22 derivative, shall not be received into evidence against such defendant in a criminal  
23 proceeding unless such evidence is determined by the court to be relevant and admissible  
24 after an offer of proof by the proponent of the evidence outside the hearing of a jury, or  
25 such hearing as the court may require, and a statement by the court regarding the findings  
26 of fact essential to its determination of admissibility is made part of the record. To  
27 overcome the presumption of inadmissibility of evidence of the defendant's creative or  
28 artistic expression, the proponent of the evidence shall affirmatively prove by clear and  
29 convincing evidence that:

30 (A) The defendant intended to adopt the literal meaning of the work as the defendant's  
31 own thought or statement;

32 (B) There is a strong factual nexus indicating that the creative or artistic expression  
33 refers to specific facts of the crime alleged;

34 (C) There exists relevance to an issue of fact that is disputed; and

35 (D) There is distinct probative value provided by other admissible evidence.

36 (4) Where the court admits creative or artistic expression as criminal evidence, the court  
37 shall apply careful redactions, provide proper instructions, and consider the least  
38 prejudicial means of presenting the creative or artistic expression to the finder of fact."

39 **SECTION 2.**

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