

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILLS NOS. 661 & 648

AN ACT

To amend chapter 490, RSMo, by adding thereto one new section relating to the admissibility of evidence of a defendant's creative or artistic expression.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 490, RSMo, is amended by adding thereto one new section, to be known as section 490.750, to read as follows:

490.750. 1. This section shall be known and may be cited as the "Restoring Artistic Protection Act".

2. As used in this section, the term "creative or artistic expression" means the expression or application of creativity or imagination in the production or arrangement of forms, sounds, words, movements, or symbols, including music, dance, performance art, visual art, poetry, literature, film, and other such objects or media.

3. Except as provided in subsection 4 of this section, evidence of a defendant's creative or artistic expression, whether original or derivative, is not admissible against such defendant in a criminal case.

4. A court may admit evidence of a defendant's creative or artistic expression, whether original or derivative, if the state proves by clear and convincing evidence in a hearing conducted in camera:

(1) (a) If the expression is original, that the defendant intended a literal meaning rather than a figurative or fictional meaning; or

(b) If the expression is derivative, that the defendant intended to adopt the literal meaning of the expression as the defendant's own thought or statement;

(2) That the creative expression refers to the specific facts of the crime alleged;

(3) That the expression is relevant to an issue of fact that is disputed; and

(4) That the expression has distinct probative value not provided by other admissible evidence.

5. In any hearing under subsection 4 of this section, the court shall make its ruling on the record and shall include its findings of fact essential to its ruling.

6. If the court admits any evidence of a defendant's creative or artistic expression, whether original or derivative, under the exception provided in subsection 4 of this section, the court shall:

(1) Ensure that the creative or artistic expression is redacted in a manner to limit the evidence presented to the jury to that which is specifically proven under subsection 4 of this section; and

(2) Provide appropriate limiting instructions to the jury.