

SENATE JOINT RESOLUTION

No. 102

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED OCTOBER 3, 2022

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

J.B.'s Law;" amends Rules of Evidence to exclude creative or artistic expression in audio or video format from jury consideration in criminal proceedings.

CURRENT VERSION OF TEXT

As introduced.



SJR102 SINGLETON

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1 A **JOINT RESOLUTION** pursuant to P.L.1960, c.52 proposing an
2 amendment to the Rules of Evidence and designated as “J.B.’s
3 Law.”

4
5 **WHEREAS**, As early as 2011, lyrics of rap music, as expressed in audio
6 and music videos, have been used as a basis for indictment and
7 prosecution of rap artists, specifically hip-hop and rap artists; and

8 **WHEREAS**, Edgar Jamal Gamory, whose stage name was “J.B.,” is a
9 contemporary example of an artist who has been convicted based in
10 part on evidence from his creative and artistic expressions,
11 specifically music lyrics and rap videos; and

12 **WHEREAS**, The admission of creative or artistic expressions as
13 evidence in a criminal proceeding in the form of musical lyrics and
14 musical videos is unfairly prejudicial and is further contrary to the
15 Confrontation Clause, Article I, paragraph 10 of the New Jersey
16 Constitution; and

17 **WHEREAS**, Musical expression is a form of free speech protected by
18 the First Amendment and should not be admissible into evidence or
19 used as impeachment evidence in any criminal; now, therefore,

20
21 **BE IT RESOLVED** *by the Senate and General Assembly of the*
22 *State of New Jersey:*

23
24 1. Pursuant to section 38 of P.L.1960, c.52 (C.2A:84A-38), the
25 Supreme Court of New Jersey may adopt the rules specified in this
26 section in the form set out, at any time after this joint resolution has
27 been delivered to and signed by the Governor of the State of New
28 Jersey, by entering an order that the rules are adopted and by
29 causing true copies of its order of adoption to be delivered to the
30 President of the Senate, the Speaker of the General Assembly and
31 the Governor, without again presenting the subject matter and a
32 tentative draft of rules at a Judicial Conference.

33
34 Rule 401 is amended to read as follows:

35 N.J.R.E. 401. Definition of “Relevant Evidence”

36 "Relevant evidence" means evidence having a tendency in reason
37 to prove or disprove any fact of consequence to the determination of
38 the action. Relevant evidence shall not include evidence of a
39 defendant's creative or artistic expression, whether original or
40 derivative, in audio or video format, and shall not be received into
41 evidence, or used as impeachment evidence against the defendant in
42 a criminal proceeding. For purposes of this section, a “creative or
43 artistic” expression means the expression or application of
44 creativity or imagination in the production or arrangement of forms,
45 sounds, words, movements, or symbols including, but not limited to

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 music, dance, performance art, visual art, poetry, literature, film,
2 and other such objects or media.

3

4 Rule 404 is amended to read as follows:

5 N.J.R.E. 404. Character Evidence Not Admissible to Prove
6 Conduct; Exceptions; Other Crimes Evidence

7 (a) Character Evidence. Evidence of a person's character or
8 character trait, including a trait of care or skill or lack thereof, is not
9 admissible to prove that on a particular occasion the person acted in
10 conformity with the character or trait except:

11 (1) Character of Defendant in a Criminal Proceeding. Evidence
12 of a pertinent trait of the defendant's character offered by the
13 defendant or by the prosecution to rebut it. Evidence of a pertinent
14 trait of the defendant's character offered by the defendant shall not
15 be excluded under Rule 403;

16 (2) Character of Victim. Evidence of a pertinent trait of character
17 of the victim of the crime offered by a defendant in a criminal
18 proceeding or by the prosecution to rebut it, or evidence of a
19 character trait of peacefulness of the victim offered by the
20 prosecution in a homicide case to rebut evidence that the victim was
21 the first aggressor;

22 (3) Character of Witness. Evidence of the character of a witness
23 as provided in Rule 608.

24 (b) Other Crimes, Wrongs, or Acts.

25 (1) Prohibited Uses. Except as otherwise provided by Rule
26 608(b), evidence of other crimes, wrongs, or acts is not admissible
27 to prove a person's disposition in order to show that on a particular
28 occasion the person acted in conformity with such disposition.

29 (2) Permitted Uses. This evidence may be admitted for other
30 purposes, such as proof of motive, opportunity, intent, preparation,
31 plan, knowledge, identity or absence of mistake or accident when
32 such matters are relevant to a material issue in dispute.

33 (3) Evidence of a defendant's creative or artistic expression,
34 whether original or derivative, in audio or video format, shall not be
35 received into evidence against the defendant in a criminal
36 proceeding. "Creative or artistic expression" means the expression
37 or application of creativity or imagination in the production or
38 arrangement of forms, sounds, words, movements, or symbols
39 including, but not limited to, dance, performance art, visual art,
40 poetry, literature, film, and other such objects or media.

41 (c) Character and Character Trait in Issue. Evidence of a person's
42 character or character trait is admissible when that character or trait
43 is an element of a claim or defense.

44

45 Rule 801 is amended to read as follows:

46 N.J.R.E. 801. Definitions (a) Statement. "Statement" means a
47 person's oral assertion, written assertion, or nonverbal conduct, if
48 the person intended it as an assertion. A creative or artistic

1 expression shall not constitute a statement, whether original or
2 duplicate, in audio or video format. A creative or artistic
3 expression shall not be received into evidence or used as
4 impeachment evidence against a defendant in a criminal
5 proceeding. "Creative or artistic" expression means the expression
6 or application of creativity or imagination in the production or
7 arrangement of forms, sounds, words, movements or symbols
8 including, but not limited to, music, dance, performance art, visual
9 art, poetry, literature, film, and other such objects or media.

10 (b) Declarant. "Declarant" means the person who made the
11 statement.

12 (c) Hearsay. "Hearsay" means a statement that:

13 (1) the declarant does not make while testifying at the current
14 trial or hearing; and

15 (2) a party offers in evidence to prove the truth of the matter
16 asserted in the statement.

17 (d) Business. A "business" includes every kind of business,
18 institution, association, profession, occupation, and calling, whether
19 or not conducted for profit, and also includes activities of
20 governmental agencies.

21 (e) Writing. A "writing" consists of letters, words, numbers, data
22 compilations, pictures, drawings, photographs, symbols, sounds, or
23 combinations thereof or their equivalent, set down or recorded by
24 handwriting, typewriting, printing, photostating, photographing,
25 magnetic impulse, mechanical or electronic recording, or by any
26 other means, and preserved in a perceptible form, and their
27 duplicates as defined by Rule 1001(d). A writing shall not
28 constitute a creative or artistic expression, whether original or
29 derivative, in audio or video format. A creative or artistic
30 expression shall not be received into evidence or used as
31 impeachment evidence against a defendant in a criminal
32 proceeding. "Creative or artistic" expression means the expression
33 or application of creativity or imagination in the production or
34 arrangement of forms, sounds, words, movements or symbols
35 including, but not limited to music, dance, performance art, visual
36 art, poetry, literature, film, and other such objects or media.

37 (f) Public Official. A "public official" includes an official of the
38 United States, its territories, the District of Columbia and states, as
39 well as political subdivisions, regional and other governmental
40 agencies thereof.

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42 2. The rules set forth in section 1 of this joint resolution, if
43 ordered adopted by the Supreme Court of New Jersey, shall take
44 effect on the date set forth in the order of adoption.

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46 3. This joint resolution shall take effect immediately upon
47 signature thereof by the Governor. Copies of this resolution, as
48 filed with the Secretary of State, shall be transmitted by the Clerk of

1 the General Assembly or the Secretary of the Senate to the Chief
2 Justice of the Supreme Court of New Jersey.

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STATEMENT

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7 This joint resolution would amend the New Jersey Rules of
8 Evidence to provide that evidence of a defendant's creative or
9 artistic expression, whether original or derivative, in audio or video
10 format, is not to be received into evidence against the defendant in a
11 criminal proceeding. Artistic expression evidence, especially when
12 of a graphic, violent, or disturbing nature can be inflammatory and
13 prejudicial to a defendant while having little value in establishing
14 evidence of motive or intent. Moreover, permitting the introduction
15 of this evidence in a criminal proceeding can have a chilling effect
16 on an entire genre of music.

17 N.J.R.E.401, N.J.R.E.404(b), and N.J.R.E801(a) and (e) are
18 substantive rules of evidence and it is the sponsor's view that this
19 resolution, by removing from jury consideration evidence of a
20 defendant's creative or artistic expression, the prosecution for a
21 criminal offense is redirected towards more compelling evidence.

22 This bill is named "J.B.'s Law" to highlight a 2011 instance in
23 which a federal appeals court acknowledged the erroneous
24 admission into evidence of a rap video at trial on the grounds that it
25 was prejudicial, and not probative of guilt.