

HOUSE BILL 863

E2, J3

2lr1586

By: **Delegate Terrasa**

Introduced and read first time: February 7, 2022

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2022

CHAPTER _____

1 AN ACT concerning

2 ~~Forensic Analysis Courts – Expert Witnesses – Letter of Exception – Criminal~~
3 ~~Proceedings~~

4 FOR the purpose of prohibiting ~~the Secretary of Health~~ a court from requiring a letter of
5 exception for an individual to testify in a criminal proceeding ~~who is~~ as an expert
6 witness if the individual is reviewing certain data or a certain opinion,
7 interpretation, or conclusion and is not handling any physical evidence; and
8 generally relating to forensic analysis and letters of exception.

9 BY adding to

10 Article – Courts and Judicial Proceedings
11 Section 9–120.1
12 Annotated Code of Maryland
13 (2020 Replacement Volume and 2021 Supplement)

14 BY repealing and reenacting, without amendments,

15 Article – Health – General
16 Section 17–2A–01
17 Annotated Code of Maryland
18 (2019 Replacement Volume and 2021 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – Health – General
21 Section 17–2A–04
22 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(2019 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

9-120.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “FORENSIC LABORATORY” HAS THE MEANING STATED IN § 17-2A-01 OF THE HEALTH – GENERAL ARTICLE.

(3) “PHYSICAL EVIDENCE” HAS THE MEANING STATED IN § 17-2A-01 OF THE HEALTH – GENERAL ARTICLE.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT MAY NOT REQUIRE AN INDIVIDUAL TO RECEIVE A LETTER OF EXCEPTION FROM THE SECRETARY OF HEALTH UNDER § 17-2A-04(B) OF THE HEALTH – GENERAL ARTICLE TO TESTIFY AS AN EXPERT WITNESS IN A CRIMINAL PROCEEDING IF THE INDIVIDUAL IS:

(1) REVIEWING THE DATA, OPINION, INTERPRETATION, OR CONCLUSION OF ANOTHER EXPERT WITNESS OR FORENSIC LABORATORY; AND

(2) NOT HANDLING ANY PHYSICAL EVIDENCE.

Article – Health – General

17-2A-01.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) “Forensic analysis” means a medical, chemical, toxicologic, firearms, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal act.

(2) “Forensic analysis” includes an examination or test required by a law enforcement agency, prosecutor, criminal suspect or defendant, or court.

(3) “Forensic analysis” does not include:

(i) A test of a specimen of breath or blood to determine alcohol concentration or controlled dangerous substance content;

1 (ii) Forensic information technology;

2 (iii) A presumptive test performed at a crime scene;

3 (iv) A presumptive test performed for the purpose of determining
4 compliance with a term or condition of community supervision or parole and conducted by
5 or under contract with a county department of corrections or the State Department of
6 Public Safety and Correctional Services; or

7 (v) An expert examination or test conducted principally for the
8 purpose of scientific research, medical practice, civil or administrative litigation, or any
9 other purpose unrelated to determining the connection of physical evidence to a criminal
10 act.

11 (c) “Forensic information technology” means digital or electronic evidence that is
12 stored or transmitted electronically.

13 (d) (1) “Forensic laboratory” means a facility, entity, or site that offers or
14 performs forensic analysis.

15 (2) “Forensic laboratory” includes a laboratory owned or operated by the
16 State, a county or municipal corporation in the State, or another governmental entity.

17 (3) “Forensic laboratory” does not include:

18 (i) A forensic laboratory operated by the federal government; or

19 (ii) A laboratory licensed or certified by the Department of
20 Agriculture.

21 (e) “License” means a permit, letter of exception, certificate, or other document
22 issued by the Secretary granting approval or authority to offer or perform forensic
23 laboratory tests, examinations, or analyses in the State.

24 (f) “Limited forensic analysis” means a forensic laboratory test or analysis
25 defined in regulations adopted by the Secretary.

26 (g) “Physical evidence” means any object, thing, or substance relating to a
27 criminal act.

28 17–2A–04.

29 (a) [After December 31, 2011, a] **A** forensic laboratory shall hold a license issued
30 by the Secretary before the forensic laboratory may offer or perform forensic analysis in the
31 State.

1 (b) The Secretary shall issue a letter of exception to a laboratory that:

2 (1) Performs only limited forensic analysis; and

3 (2) Meets the exception requirements in regulations adopted by the
4 Secretary.

5 ~~(c) THE SECRETARY MAY NOT REQUIRE A LETTER OF EXCEPTION FOR AN~~
6 ~~INDIVIDUAL TO TESTIFY IN A CRIMINAL PROCEEDING WHO IS:~~

7 ~~(1) REVIEWING THE DATA, OPINION, INTERPRETATION, OR~~
8 ~~CONCLUSION OF ANOTHER EXPERT WITNESS OR FORENSIC LABORATORY; AND~~

9 ~~(2) NOT HANDLING ANY PHYSICAL EVIDENCE.~~

10 ~~(c)~~ (d) The Secretary may grant an out-of-state forensic laboratory a waiver
11 from the licensure requirements of this subtitle with conditions.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2022.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.