

HOUSE BILL 863

E2, J3

2lr1586

By: **Delegate Terrasa**

Introduced and read first time: February 7, 2022

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Forensic Analysis – Letter of Exception – Criminal Proceedings**

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

7 BY repealing and reenacting, without amendments,
8 Article – Health – General
9 Section 17–2A–01
10 Annotated Code of Maryland
11 (2019 Replacement Volume and 2021 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article – Health – General
14 Section 17–2A–04
15 Annotated Code of Maryland
16 (2019 Replacement Volume and 2021 Supplement)

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

19 **Article – Health – General**

20 17–2A–01.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 (3) "Forensic analysis" does not include:

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

6 (ii) Forensic information technology;

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

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

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

16 (c) "Forensic information technology" means digital or electronic evidence that is
17 stored or transmitted electronically.

18 (d) (1) "Forensic laboratory" means a facility, entity, or site that offers or
19 performs forensic analysis.

20 (2) "Forensic laboratory" includes a laboratory owned or operated by the
21 State, a county or municipal corporation in the State, or another governmental entity.

22 (3) "Forensic laboratory" does not include:

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

24 (ii) A laboratory licensed or certified by the Department of
25 Agriculture.

26 (e) "License" means a permit, letter of exception, certificate, or other document
27 issued by the Secretary granting approval or authority to offer or perform forensic
28 laboratory tests, examinations, or analyses in the State.

29 (f) "Limited forensic analysis" means a forensic laboratory test or analysis
30 defined in regulations adopted by the Secretary.

31 (g) "Physical evidence" means any object, thing, or substance relating to a

1 criminal act.

2 17-2A-04.

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

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

7 (1) Performs only limited forensic analysis; and

8 (2) Meets the exception requirements in regulations adopted by the
9 Secretary.

10 **(C) THE SECRETARY MAY NOT REQUIRE A LETTER OF EXCEPTION FOR AN**
11 **INDIVIDUAL TO TESTIFY IN A CRIMINAL PROCEEDING WHO IS:**

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

14 **(2) NOT HANDLING ANY PHYSICAL EVIDENCE.**

15 **[(c)] (D)** The Secretary may grant an out-of-state forensic laboratory a waiver
16 from the licensure requirements of this subtitle with conditions.

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