

HOUSE BILL 336

E2, J3
HB 863/22 – JUD

3lr1329

By: **Delegates Terrasa and Moon**

Introduced and read first time: January 25, 2023

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Expert Witnesses – Letter of Exception**

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

8 BY adding to

9 Article – Courts and Judicial Proceedings

10 Section 9–120.1

11 Annotated Code of Maryland

12 (2020 Replacement Volume and 2022 Supplement)

13 BY repealing and reenacting, without amendments,

14 Article – Health – General

15 Section 17–2A–01

16 Annotated Code of Maryland

17 (2019 Replacement Volume and 2022 Supplement)

18 BY repealing and reenacting, with amendments,

19 Article – Health – General

20 Section 17–2A–04

21 Annotated Code of Maryland

22 (2019 Replacement Volume and 2022 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

24 That the Laws of Maryland read as follows:

25 **Article – Courts and Judicial Proceedings**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **9-120.1.**

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

4 (2) "FORENSIC LABORATORY" HAS THE MEANING STATED IN §
5 17-2A-01 OF THE HEALTH - GENERAL ARTICLE.

6 (3) "PHYSICAL EVIDENCE" HAS THE MEANING STATED IN § 17-2A-01
7 OF THE HEALTH - GENERAL ARTICLE.

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

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

15 (2) NOT HANDLING ANY PHYSICAL EVIDENCE.

16 **Article - Health - General**

17 17-2A-01.

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

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

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

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

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

27 (ii) Forensic information technology;

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

29 (iv) A presumptive test performed for the purpose of determining
30 compliance with a term or condition of community supervision or parole and conducted by

1 or under contract with a county department of corrections or the State Department of
2 Public Safety and Correctional Services; or

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

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

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

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

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

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

15 (ii) A laboratory licensed or certified by the Department of
16 Agriculture.

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

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

22 (g) "Physical evidence" means any object, thing, or substance relating to a
23 criminal act.

24 17-2A-04.

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

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

29 (1) Performs only limited forensic analysis; and

30 (2) Meets the exception requirements in regulations adopted by the
31 Secretary.

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

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2023.