



## HOUSE BILL 1143

### Public Health – Office of the Chief Medical Examiner – Perinatal Autopsies (Lung Float Test Ban)

**POSITION: UNFAVORABLE FOR HB 1143**

March 3, 2026

My name is Rich Gibson, I am the State's Attorney for Howard County and the Immediate Past President of the Maryland State's Attorneys' Association. I have been a prosecutor for approximately twenty years, and I am writing today to request an unfavorable report for House Bill 1143.

House Bill 1143 seeks to preclude the Chief Medical Examiner or their designee from utilizing the hydrostatic lung test while conducting a perinatal autopsy to determine whether the death of a neonate resulted from a stillbirth or occurred after live birth. I oppose this legislation.

The hydrostatic lung test is used by pathologists to determine whether a neonate, a child between the age of birth and 30 days old, was born alive. The test involves removing the lungs from the chest cavity and placing them in water. If the lungs float, they have been aerated. The test is but one of multiple tests performed by medical examiners in reaching a conclusion regarding live birth. It has been in use since the 17th century, and while not without its detractors, continues to be taught in medical schools and contained in pathology reference books. It has also withstood a challenge to its admissibility in Maryland courts as recently as 2024. See [\*Akers v. State\*, No. 0925, 2024 WL 338958 \(Md. App. Ct. Jan. 30, 2024\) rev'd on other grounds, \*Akers v. State\*, 490 Md. 1 \(2025\)](#).

In fact, the experts, The National Association of Medical Examiners (NAME) recently convened a panel to make recommendations regarding the investigation, autopsy, and certification of perinatal deaths. The results were published October 17, 2025, in a position paper titled “The National Association of Medical Examiners Position Paper on the Investigation and Certification of Fetal Demise, Stillborn, and Early Neonatal Deaths.” [www.amjforensicmedicine.com](http://www.amjforensicmedicine.com) (2025). In the paper, the expert panel included the hydrostatic lung test as one of the 12 factors to consider in determining live birth. After discussing the history, manner of performing the test, and studies related to the reliability of the test, the experts concluded “It is reasonable to conclude that the float test is not a test but an autopsy finding. It should, therefore, along with all other findings, be interpreted in the totality of the case and is not a diagnostic tool able to stand on its own as the sole determinant of whether an infant is liveborn or stillborn.” *Id.* at 7. Although the authors concluded that there was no reason to mandate the use of the test, they stopped short of prohibiting its use; instead cautioning pathologists to not interpret the results in isolation. *Id.* at 9.

House Bill 1143 would legislatively prohibit medical professionals from considering a historically recognized autopsy finding that national experts continue to regard as potentially relevant when properly contextualized. Decisions regarding which forensic techniques to employ in a particular autopsy should remain within the sound professional judgment of the Chief Medical Examiner and trained forensic pathologist, guided by evolving medical standards, not statutory prohibition. The courtroom is by design an adversarial forum, where the introduction of evidence, cross examination, and competing expert testimony allow the fact finder to conclude weight and reliability of the information presented.

It is my position that existing safeguards including professional standards, peer review, evidentiary rules, judicial oversight and an adversarial trial process are sufficient to ensure reliable forensic determinations.

For these reasons, I respectfully request an **unfavorable report for House Bill 1143.**