



PAUL DeWOLFE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
DIRECTOR OF POLICY AND DEVELOPMENT

KRYSTAL WILLIAMS
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

ELIZABETH HILLIARD
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

POSITION ON PROPOSED LEGISLATION

BILL: HB 863 - Forensic Analysis – Letter of Exception – Criminal Proceedings

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 3/30/2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 863.

We would first like to express to thank and acknowledge Delegate Terrasa for her determination in addressing this important issue. By amending the language, this bill not only clarifies the original intention of this regulation, it also serves to ensure the proper functioning of our criminal justice system.

As the Chief Attorney of the Forensics Division, I am responsible for retaining all experts for criminal cases where the Office represents the defendant. The Letter of Exception was intended to safeguard the integrity of physical evidence while in the custody of a crime lab. However, in the vast majority of cases, experts retained by the defense don't enter the premises of the crime lab or handle the physical evidence. Instead, they simply review the reports and data produced by a crime lab and provide opinions about the reliability and validity of the lab's conclusions. Under those circumstances, there's no danger that the evidence itself will be contaminated or harmed in any way.

The requirement for a Letter of Exception, therefore, is not only unnecessary, it interferes with defendant's right to present a defense. The decision whether an expert is qualified to testify is a different matter than safeguarding evidence from incompetent handling. That decision must be left to the court's discretion - not to an administrator who is in no position to determine whether an expert meets the requirements of MD RULE 5-702 given the specific facts and circumstances of the case.

Unfortunately, this regulation has led some court's to prevent qualified defense experts from testifying simply because they either do not have or have been denied the Letter of Exception. Such a situation infringes on the defendant's right to choose an independent, competent, and qualified expert to testify on her/his behalf. This should never happen as it could lead to a miscarriage of justice by preventing a defendant from exercising his right to due process.

I'm certain that none of us want an administrative regulation to be an impediment to a defendant's right to present a defense. However, if the regulation is not amended, the integrity of our criminal justice system will be compromised. It's imperative that the language of the current regulation be modified to ensure that the decision whether an expert is qualified, her conclusions have a sufficient factual basis and her testimony will assist the jury be left in the hands of the proper party – the presiding judge.

Submitted By: Maryland Office of the Public Defender, Government Relations Division.

Authored by: Jeff Gilleran, Chief Attorney, Forensics Division, Office of the Public Defender, 410 804 7107, jeffrey.gilleran@maryland.gov.