Maryland AI & Digital Evidence Bench Card

Use when: AI-generated, AI-enhanced, AI-altered, or digitally challenged evidence is offered.

1 STEP 01 Evidence Posture

PATHWAY	WHEN TO USE	PRIMARY JUDICIAL CONCERN
Acknowledged AI-generated evidence	Proponent discloses that AI was used to create, enhance, analyze, summarize, simulate, or visualize the item.	Reliability, validity, helpfulness, labeling, prejudice/confusion.
Unacknowledged or alleged AI-generated evidence	Evidence is offered as authentic, and another party alleges or suggests possible AI generation, alteration, or deepfake fabrication.	Authenticity, source, preservation, chain, corroboration, prejudice.
Shallow fake / altered real digital evidence	Real evidence may be clipped, edited, converted, compressed, decontextualized, or misleading without necessarily being AI-generated.	Completeness, context, alteration, prejudice/confusion.
Ordinary digital foundation issue	Digital evidence is offered without an AI claim, but authenticity or foundation is still contested.	Whether the item is what the proponent claims.
Mixed or unclear	AI use, alteration, authenticity, or evidentiary purpose is uncertain.	Use both reliability and authenticity pathways. Do not let labels substitute for foundation.

2 STEP 02 Orient the Ruling

What is it?

- ☐ Photo
- ☐ Video
- ☐ Audio
- ☐ Text
- ☐ Screenshot
- ☐ Transcript
- ☐ Report
- ☐ Simulation
- ☐ Visualization
- ☐ System output
- ☐ Other

Why is it offered?

- ☐ Substantive proof
- ☐ Demonstrative aid
- ☐ Impeachment
- ☐ Summary
- ☐ Foundation
- ☐ Investigative lead
- ☐ Other

What is the posture?

- ☐ Objection
- ☐ Motion in limine
- ☐ Rule 5-104 issue
- ☐ Expert voir dire
- ☐ Preservation issue
- ☐ Pro se / lay witness
- ☐ Other

SOURCE FRAMEWORK: *NCSC / AI Policy Consortium bench cards; Maryland evidence-law materials.*

Ask Threshold Questions

3 STEP 03 Ask from the Bench

QUESTION	ASK FROM THE BENCH	ASKED	MISSING	NOTES
Source	Who created, captured, obtained, or generated it? How, when, and where?	☐	☐	
Preservation	Is the original/native file, source device, platform record, or unprocessed version available?	☐	☐	
Access / chain	Who had access from creation or capture to courtroom? Any transfers, uploads, conversions, or gaps?	☐	☐	
Process / alteration	Was it edited, enhanced, compressed, clipped, transcribed, summarized, converted, or AI-processed?	☐	☐	
Corroboration	What independent source, corresponding thread, witness, platform data, other angle, or contemporaneous record supports it?	☐	☐	
Technical need	Does a qualified witness need to explain the tool, metadata, forensic method, detection claim, or limits?	☐	☐	
Prejudice / confusion	Could the factfinder give the item too much weight, be unable to unsee it, or be confused by AI/digital terminology?	☐	☐	

THE DEEPFAKE DILEMMA

Audiovisual evidence may have a powerful and lasting effect on the factfinder — the factfinder **cannot unsee it.** When authenticity is seriously disputed, consider whether threshold issues should be addressed before the factfinder sees or hears the evidence.

BENCH REMINDER. Red flags trigger inquiry, not findings. Do not diagnose authenticity from the bench without adequate foundation.

Apply the Pathway

A · PATHWAY
If AI use is acknowledged

- ☐ Is the item offered as substantive evidence, a demonstrative or illustrative aid, or expert support?
- ☐ What exactly is AI-generated, AI-assisted, or AI-enhanced?
- ☐ What source material, data, prompts, search terms, or instructions were used?
- ☐ Was the original source material preserved for comparison?
- ☐ Has the tool or process been validated for this specific use?
- ☐ Are validity, reliability, limitations, error rates, testing conditions, or standards explained — not loose claims of "accuracy"?
- ☐ Was there human review or expert oversight?
- ☐ Can a qualified witness explain the tool, inputs, validation, limitations, and human review?
- ☐ Should the exhibit be clearly labeled as AI-generated or AI-assisted for the factfinder?
- ☐ Is a limiting instruction or use limitation needed?
- ☐ Does this involve silent witness theory — an exhibit expected to speak for itself?
- ☐ Does probative value outweigh the risk of unfair prejudice, confusion, or over-weighting?

B · PATHWAY
If AI generation or alteration is alleged

- ☐ What is the original source and acquisition story?
- ☐ Is the original/native file or source device available? If not, why?
- ☐ Who had custody or access from creation/capture to courtroom?
- ☐ Were edits, conversions, clipping, compression, platform transfers, or metadata changes disclosed?
- ☐ Is metadata or other technical information available, and who can explain it?
- ☐ Is there independent corroboration or a corresponding thread, record, witness, or other angle?
- ☐ Is forensic analysis needed, and is the method reliable for this use?
- ☐ Should the issue be addressed before the factfinder sees or hears the evidence?
- ☐ What are the dual risks: accepting inauthentic evidence versus excluding authentic evidence?
- ☐ Is this a real authenticity issue or merely disagreement with interpretation?
- ☐ What judicial option best protects fairness and the record?

SOURCE-BASED CAUTIONS

- **Labels matter.** AI-generated or AI-assisted exhibits should be identified clearly for the factfinder.
- **Validity / reliability / bias.** Do not rely on "accuracy" alone. Ask what the tool was designed to do, whether it does that consistently, and what limitations or bias concerns are known.
- **Silent witness.** If the exhibit is expected to speak for itself, ask whether the process that created or modified it has been shown reliable.
- **Dual risk.** Guard against both accepting inauthentic evidence and excluding authentic evidence based on an unsupported allegation.

Select the Judicial Option and Make the Record

JUDICIAL OPTIONS

When the record is incomplete, disputed, or technically unclear.

- ☐ Request additional foundation
- ☐ Ask targeted questions from the bench
- ☐ Order preservation of the native file, source device, platform record, or current state
- ☐ Require production or explanation of source material
- ☐ Permit or require expert voir dire
- ☐ Consider a Rule 5-104 hearing
- ☐ Set briefing, discovery, or disclosure deadlines if pretrial
- ☐ Seek corroboration or additional source evidence
- ☐ Consider expert assistance if available
- ☐ Limit use — demonstrative only or conditional admission
- ☐ Consider labeling or a limiting instruction
- ☐ Admit · Exclude · Reserve ruling
- ☐ State the rationale on the record

Maryland Law Quick Touchpoints

Md. Rule 5-901 / Mooney	Md. Rule 5-702 / Rochkind	Md. Rule 5-403	Md. Rule 5-104
Authentication threshold	*Expert reliability*	*Prejudice / confusion*	*Preliminary questions / hearing tool*

Full explanation appears in the Maryland Law Insert.

BEFORE YOU RULE

Confirm the record identifies each of the following.

- ☐ The evidence posture is identified.
- ☐ The purpose for which the evidence is offered is identified.
- ☐ The foundation relied on — or missing — is identified.
- ☐ Source, preservation, access/chain, process/alteration, corroboration, and technical need were addressed.
- ☐ Expert reliability under Md. Rule 5-702 and Rochkind is addressed if implicated.
- ☐ Unfair prejudice or confusion under Md. Rule 5-403 is considered.
- ☐ Whether a Rule 5-104 issue should be addressed outside the jury's presence is considered.
- ☐ The judicial option selected is stated.
- ☐ The rationale for admitting, excluding, reserving, limiting, requiring more foundation, or ordering preservation is stated on the record.