AI & Digital Evidence: A Maryland Reference Guide

Maryland authorities. Apply under controlling law and the facts of the case.
Use with the NCSC AI-evidence bench cards. For AI-generated, AI-assisted, AI-altered, or contested digital evidence.

I CLASSIFY | II ASK | III DECIDE | IV RECORD

I CLASSIFY THE POSTURE

This is evidence subject to the ordinary rules. Start from the offered purpose and the objection, then name the posture and the disputed issue, and apply them.

FIRST, THE THRESHOLD: IS THE AI USE ACKNOWLEDGED?

■ **Acknowledged AI evidence**	The proponent discloses that AI generated or materially altered the item. *Issue: foundation for how the tool works and what it produced.*
■ **Unacknowledged AI evidence**	The item is offered as authentic; another party challenges it as AI-generated or altered. *Issue: authenticity, source, and whether the item is what it purports to be.*

THEN, THE SPECIFIC POSTURE

■ **AI-assisted evidence**	A person created the item with help from an AI tool. *Issue: what the tool did, and whether that affects reliability.*
■ **AI-generated demonstrative**	AI produced an illustration or explanatory aid, not offered as substantive proof. *Issue: factual fit, and whether it misleads more than it explains.*
■ **AI-derived analytical output**	AI processed data and produced a conclusion, score, or classification. *Issue: inputs, validation, error rate, and the limits of what a witness can explain.*

II ASK FROM THE BENCH

Ask for foundation before drawing technical conclusions.

- **Source.** What is the source of the file or data?
- **Creation.** Who created it, when, and on what system?
- **Custody.** What is the chain of custody from creation to court?
- **Alteration.** Has the file been altered, processed, or run through any tool?
- **Tool.** If a tool was used: which tool, what version, and what does the tool actually do?
- **Corroboration.** Is there independent data or another source that confirms it?
- **Human review.** Was the output reviewed by a person for accuracy, and by whom?
- **Personal knowledge.** What does the proponent's witness know firsthand, and what is hearsay or inference?
- **Acknowledgment.** For AI-generated or AI-derived material: is the use acknowledged or unacknowledged?

DISCLOSURE

If AI use is material to authenticity, reliability, or purpose, the proponent ordinarily lays foundation that addresses it. Undisclosed material AI use can raise an authentication or reliability question (Rule 5-901; Rule 5-702).

Decide and Make the Record

For an incomplete, disputed, or technically unclear record.

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III DECIDE

Available rulings and case-management steps.

- Admit it, keep it out, or hold the ruling until you have more
- Let the other side voir dire the witness on how the exhibit was made
- Appoint or request a neutral expert to examine the evidence
- Let it in for a limited purpose, or admit it conditionally and revisit
- Order the native file, device, or source records preserved now
- Send them back for foundation before you decide
- Take it up under 5-104 outside the jury before it comes in
- Tell the jury what the exhibit is and is not, on the record
- Set a disclosure or discovery deadline if you are still pretrial

MARYLAND TOUCHPOINTS

Rules and authorities to anchor the ruling.

Rule 5-901 / Mooney
Authentication: a reasonable factfinder could find the item genuine.

Rule 5-702 / Rochkind
Expert qualification, helpfulness, reliable method.

Rule 5-403
Unfair prejudice, confusion, or misleading the factfinder.

Rule 5-104
Preliminary questions: 5-104(a) court decides; 5-104(b) conditional relevance.

Rule 2-504.3 (civil)
Computer-generated evidence: notice of intent and pre-trial hearing.

Facial Recognition statute
Crim. Proc. Title 2, Subtitle 5 (in effect October 1, 2024). Disclose FRT use; a match alone is not identity.

NOT CURRENT AUTHORITY

Proposed AI rules. Proposed only; not authority unless adopted. **AI Evidence Clinic Pilot.** CJP § 13-101.2. Confirm operational availability before relying on it as a live resource.

IV MAKE THE RECORD

State the ruling so it holds on review.

I. Posture. *I find the offered exhibit is* acknowledged AI, unacknowledged AI, AI-assisted, an AI-generated demonstrative, or AI-derived analytical output.

II. Foundation. *Foundation is adequate or inadequate because of* source, creation, custody, alteration, tool, human oversight, or personal knowledge.

III. Ruling. *The court* admits, admits for a limited purpose, conditionally admits, defers, or excludes.

IV. Reason. *The ruling rests on* Rule 5-901, 5-702, 5-403, 5-104, 2-504.3, or the FRT statute, and the record.

V. Next step. *Counsel will* supplement foundation, produce the witness, disclose tool and inputs, brief Rochkind, or proceed under a limiting instruction, by a set date.

BENCH REMINDER

Do not decide authenticity by visual inspection or intuition. Require foundation adequate to the issue before you rule. Guard against both errors: admitting fabricated evidence and excluding genuine evidence.

Maryland Rules and authorities. Proposed federal rules are not adopted authority.

BACK
Decide & Record