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ADMISSIBILITY OF EXPERT TESTIMONY IN ALL 50 STATES

The use of expert witnesses has become an integral and indispensable aspect of American litigation, and it is often the side with the best expert who wins the day. The use of science in the courtroom to advise judges and juries on technical and scientific issues which bear on the arrival at a just and fair outcome was, and still is, a controversial subject. The earliest known use of an expert witness in English law came in 1782, when a court hearing litigation relating to the silting-up of Wells Harbor in East-Central England allowed evidence from a leading civil engineer named John Smeaton. The court's ruling allowing Smeaton's testimony is thought to be the genesis of the modern rules on expert evidence. The rise of the use of expert testimony and its perceived need in civil and criminal litigation went hand-in-hand with the culture of science which, along with the rise of the Industrial Revolution, became more and more confident in its ability to discern the hidden laws of nature, however subtle they were.

The use of expert testimony in American litigation has grown exponentially since it came into focus, and the use of experts is now frequently used to place into evidence opinions and circumstances related to opinion, which would not otherwise have been put into evidence. The sale of expert testimony began to grow during the mid-19th Century, adding fuel to the fire of a new litigation industry. In the early years of forensic history, there was great deference and importance placed on expert testimony. However, it didn't take long for this credibility to dissipate. By 1870, a study on expert testimony identified an "unmistakable tendency on the part of eminent judges and jurists to attach less and less importance to testimony of this nature." The new lucrative forensic cottage industry came hand-in-hand with abuses. The English and the American legal systems were all too aware of the need to protect the credulous jury from con men and quick-buck "experts" eager to make a profit at all costs. Compounded by the generally universal distrust of juries to be able to do its job properly, the need for the court to become the "gate-keeper" of credible expert testimony grew quickly. This need became even more critical in America, because the English legal system granted its judges the freedom to take part in the questioning of the witnesses, advise counsel in the framing of their questions, and comment fully on the weight of the evidence and the credibility of the witnesses in their charge to the jury. The American system lacked these tools and tended to recognize the jury as the final adjudicator on the facts of the case, with the judge prohibited from commenting or questioning witnesses. For this reason, the problem of expert testimony and how to control it reached its zenith in America rather than in England.

FRYE STANDARD

Throughout the 20th Century, American courts and legislatures made numerous efforts at reforming the business of selling forensic opinions which are truly not based in sound science, also known as "junk science." In the 1922 murder trial of an African American named James Frye in District of Columbia federal court, the court disallowed introduction of a lie detector test "proving" the innocence of the defendant. The defendant was found guilty and on appeal, the defendant claimed it was error not to allow the lie detector test. The logical relevance of the test and its potential helpfulness to the jury was obvious. So were the credentials of the test inventor, William Marston. In *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), the court shifted the focus of the admissibility of the expert's testimony from the expert's credentials to the particular scientific knowledge his testimony would contain. The resulting ***Frye* standard**, *Frye* test, or general acceptance test, as it became to be known, is a test to

determine the admissibility of scientific evidence. It provides that expert opinion based on a scientific technique is admissible only where the technique is generally accepted as reliable in the relevant scientific community. A court applying the *Frye* standard must determine whether or not the method by which that evidence was obtained was generally accepted by experts in the particular field in which it belongs. In many, but not all jurisdictions, the *Frye* standard has been superseded by the *Daubert* standard. States still following *Frye* include California, Illinois, Maryland, Minnesota, New Jersey, New York, Pennsylvania, and Washington.

DAUBERT **STANDARD**

In *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), the Supreme Court held that the Federal Rules of Evidence superseded *Frye* as the standard for admissibility of expert evidence in federal courts. Some states, however, still adhere to the *Frye* standard. This standard is used by a trial judge to make a preliminary assessment of whether an expert's scientific testimony is based on reasoning or methodology that is scientifically valid and can properly be applied to the facts at issue. Under this standard, the factors that may be considered in determining whether the methodology is valid are: (1) whether the theory or technique in question can be and has been tested; (2) whether it has been subjected to peer review and publication; (3) its known or potential error rate; (4) the existence and maintenance of standards controlling its operation; and (5) whether it has attracted widespread acceptance within a relevant scientific community. The *Daubert* standard is the test currently used in the federal courts and some state courts. In the federal courts, it replaced the *Frye* standard. It is widely believed that this standard gives judges greater authority to evaluate and reject unreliable expert testimony. Federal Rule of Evidence 702 provides:

> ***Rule 702. Testimony by Expert Witnesses.***
>
> *A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise <u>if the proponent demonstrates to the court that it is more likely than not that</u>:*
>
> *(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;*
>
> *(b) the testimony is based on sufficient facts or data;*
>
> *(c) the testimony is the product of reliable principles and methods; and*
>
> *(d) the <u>expert's opinion reflects a reliable application of</u> the principles and methods to the facts of the case.*

Rule 702 specifies, first, that the witness must be "qualified as an expert by knowledge, skill, experience, training, or education." If so qualified, the witness may testify in the form of an opinion provided, first, that his testimony is relevant, meaning that it will aid the jury, and second, that it is reliable, meaning it is grounded in sufficient data, reliable methods, and the facts of the case. *In re Scrap Metal Antitrust Litig.*, 527 F.3d 517 (6th Cir. 2008). The Supreme Court in *Daubert* provided a list of factors for trial courts to consider as they evaluate the reliability of scientific testimony. But that list is not exhaustive, nor any one factor dispositive. Rather, district courts have "considerable leeway" in determining whether expert testimony is admissible. *Meridia Prods. Liab. Litig. v. Abbot Labs*, 447 F.3d 861 (6th Cir. 2006) (<u>quoting</u> *Kumho Tire*, 526 U.S. at 152). But the burden remains on the proponent of the testimony to establish its admissibility by a preponderance of the evidence. *Pride v. Bic Corp.*, 218 F.3d 566 (6th Cir. 2000). Amendments to Rule 702 effective on December 1, 2023, underlined above, sought to clarify how a judge should view his or her gatekeeping role without substantively changing the rule. According to the rules committee, "[f]orensic experts should avoid assertions of absolute or one hundred percent certainty – or to a reasonable degree of scientific certainty – if the methodology is subjective and thus potentially subject to error." A judge should, where possible, receive an estimate of the known or potential error rate of the forensic expert's methodology based, where appropriate, on studies that reflect how often the expert's methodology produces accurate results. In addition, an expert's inferences must be limited to those that can reasonably be drawn from a reliable application of the expert's methodology. In short, experts should not assert a degree of confidence in their opinions that is not derived from sufficient facts or data and a reliable methodology.

Under normal circumstances, a district court may resolve a *Daubert* motion without holding a hearing. *Nelson v. Tenn. Gas Pipeline Co.*, 243 F.3d 244 (6th Cir. 2001). A hearing is required only if the record is inadequate to decide the motion. *Jahn v. Equine Servs., PSC*, 233 F.3d 382 (6th Cir. 2000). When the parties brief the admissibility of the experts' testimony and develop an extensive record that includes depositions, a hearing is unnecessary.

THE POLITICS OF FORENSIC TESTIMONY AND EVIDENCE

The push for the *Daubert* standard throughout the country is often political. Insurance companies and businesses that manufacture or sell products usually believe that the *Daubert* standard favors defendants in civil suits. For that reason, they lobby state legislatures and courts to adopt *Daubert*. On the other hand, plaintiffs' lawyers usually oppose the adoption of *Daubert* on the ground that it favors the interests of businesses over those of victims. As a result, there is a continuous tug-of-war over the issue. Missouri's governor recently vetoed the state's legislative adoption of *Daubert* because he felt the standard hurts injury victims by increasing the cost of litigation. The governor felt that Missouri already had "well-established" criteria to guide judges in admitting expert testimony and that the new legislation would replace that criteria with a "complicated and costly procedure." Some believe that, without *Daubert*, judges hold too much power in determining the admissibility of expert witnesses. On the other hand, some courts emphasize that *Daubert* and Federal Rule of Evidence 702 have greatly liberalized the admissibility of expert testimony, while *Daubert*'s detractors insist that the standard encourages judges to usurp the role of jurors in deciding whether expert opinions have merit.

The 2023 amendments to Rule 702 referenced above, apply only to the federal rules of evidence. However, state courts that follow the federal rules are likely to adopt changes to their rules to be consistent with the federal rules. When using experts in subrogation cases, it is important to: (1) confirm that an expert's methodology is used by other experts in the field and/or supported by publications; (2) evaluate the foundation of an expert's opinions to determine whether the expert's opinions are supported by sufficient case-specific facts or data; (3) evaluate the expert's report to determine whether the data and/or facts relied on are exhaustive and sufficient to support the expert's opinions; and (4) ensure that the expert can adequately articulate and explain his or her opinions to a jury.

NON-SCIENTIFIC EXPERT TESTIMONY

Up until 1999, the standards set forth in *Frye* and *Daubert* applied only to "scientific testimony." In *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999), the U.S. Supreme Court extended its *Daubert* reasoning to <u>all</u> expert testimony, not simply that which was considered "scientific." It applies *Daubert* to expert testimony from non-scientists. Prior to *Kumho*, some litigants argued that *Daubert* did not apply to testimony based on "non-scientific" knowledge, such as technical and other specialized knowledge.

STATE	ADMISSIBILITY STANDARDS	CASE/STATUTORY LAW	COMMENTS
ALABAMA	*Daubert** **Scientific Evidence only; does not apply to other technical or specialized knowledge.*	Ala. Code § 12-21-160 (1975)	The Alabama Legislature amended § 12-21-160, Ala. Code 1975, effective January 1, 2012, to adopt, with some exceptions, the standard for scientific expert testimony established in *Daubert.* The exceptions include non-scientific testimony or other technical or specialized knowledge areas, which do not have to meet the *Daubert* standard. Non-scientific evidence held to lesser standard requiring only that a party is qualified by knowledge, skill, experience, training, or education. Ala. R. Evid. 702(a); *Colbert County Northwest Ala. Health Care Auth. v. Regional Care Hosp. Partners, Inc.*, 195 So.3d 948, 960 (Ala. App. 2015).

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ALASKA	*Daubert*	*State v. Coon*, 974 P.2d 386 (Alaska 1999).	*Daubert* applies only to scientific evidence. A second category of expert opinion based on practical experience exists and is admissible when the witness has "substantial experience" and the testimony may be helpful to the jury's understanding. *Thompson v. Cooper*, 290 P.3d 393 (Alaska 2012); Alaska. R. Evid. 702.
ARIZONA	*Daubert*	A bill (2010 Legis. Bill Hist. AZ H.B. 2492) was introduced to adopt *Daubert* standard. It became § 12-2203, which requires expert opinions to be "the product of reliable principles and methods" and requires experts to have "reliably applied principles and methods to the facts of the case." It also requires courts to apply the *Daubert* standard. *Frye/Logerquist* is no longer the standard governing the admissibility of expert testimony in Arizona; the *Daubert/Kumho Tire* reliability test is.	In 2010, Arizona changed the standard from *Frye* to *Daubert*. In 2011, the Arizona Supreme Court adopted Rule 702 -identical to the Federal Rule 702 – effective 1/1/12, which says: A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.
ARKANSAS	*Daubert*	*Farm Bureau Mut. Ins. Co. of Ark., Inc. v. Foote*, 14 S.W.3d 512 (Ark. 2000); Ark. R. Evid. 702.	Court decisions appear to limit Daubert to "novel scientific evidence." Where other evidence is offered, an expert must merely be qualified by knowledge, skill, experience, training, or education and the testimony will assist the jury. *Dundee v. Horton*, 477 S.W.3d 558 (Ark. App. 2015); *Graftenreed v. Seabaugh*, 268 S.W.3d 905 (Ark. App. 2007).
CALIFORNIA	*Frye*	*People v. Leahy*, 882 P.2d 321 (Cal. 1994).	Leaning toward adopting *Daubert*. A 2012 Supreme Court decision uses some of the *Daubert* standard and says that courts may consider significantly more than the *Frye* "general acceptance" standard. That decision says that a court should exclude testimony that is based on matter of a type which an expert cannot reasonably rely or on reasons unsupported by the material on which the expert relies, or which is otherwise speculative. *Sargon Enters., Inc. v. Univ. of S. California*, 55 Cal.4th 747 (2012).

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COLORADO	*Daubert*	*People v. Shreck*, 22 P.3d 68 (Colo. 2001);	The trial court may consider *Daubert* for factors involving reliability (follow CRE 702). Testimony admissible if the scientific principles are reasonably reliable, the witness is qualified to give an opinion on them, and the testimony will aid the jury. *Estate of Ford v. Eicher*, 250 P.3d 262 (Colo. 2011).
CONNECTICUT	*Daubert*	*State v. Porter*, 698 A.2d 739 (Conn. 1997).	When it is non-scientific evidence, it will be allowed if, the witness has a special skill or knowledge directly applicable, the skill or knowledge is not common to the average person, and the testimony would aid the jury. *Kuehl v. Koskoff*, 190 A.3d 82 (Conn. App. 2018).
DELAWARE	*Daubert*	D.R.E. 702	*M.G. Bancorporation, Inc. v. LeBeau*, 737 A.2d 513 (Del. 1999).
DISTRICT OF COLUMBIA	*Daubert*	*Motorola Inc. v. Murray,* 147 A.3d 751 (D.C. 2016).	Switched to *Daubert* in 2016.
FLORIDA	*Daubert*	F.S.A. § 90.702 (adopted *Daubert* Standard but was held unconstitutional as infringing on the court's rulemaking authority in *DeLisle v. Crane Co*., 2018 WL 5075302 (Fla., Oct. 15, 2018). Then in *In re Amendments to Fla. Evidence Code*, 2019 WL 2219714 (Fla. 2019), the Supreme Court reversed itself and adopted the *Daubert* Standard set forth in § 90.702 and Federal Rule of Evidence 702. The *Daubert* amendments were carefully considered by the Florida Bar's Code and Rules of Evidence Committee.	The Florida Supreme Court, by a 4-2 vote on Feb. 16, 2017, declined to adopt as a rule the legislative changes "to the extent that they are procedural" due to "grave constitutional concerns" about the *Daubert* standard. *In re: Amendments to the Florida Evidence Code*, 210 So.3d 1231 (Fla. 2017). On October 15, 2018, the Florida Supreme Court announced that *Frye* is the governing standard when determining the admissibility of expert testimony. This decision clarifies longstanding confusion and uncertainty among the Florida courts and litigators regarding applicable standards. *DeLisle v. Crane Co*., 2018 WL 5075302 (Fla., Oct. 15, 2018). Seven months later, the Florida Supreme Court reversed itself and adopted the *Daubert* standard set forth in F.S.A. § 90.702. *In re Amendments to Fla. Evidence Code*, 2019 WL 2219714 (Fla. 2019).

STATE	ADMISSIBILITY STANDARDS	CASE/STATUTORY LAW	COMMENTS
GEORGIA	*Daubert*	O.C.G.A. § 24-7-702 In assessing admissibility of expert opinion, trial court may not exclude otherwise sufficient expert opinion simply because it believes that opinion is not—in its view—particularly strong or persuasive; weight to be given to admissible expert testimony is matter for jury. It is not the role of the trial court to make ultimate conclusions as to the persuasiveness of the proffered evidence, and a trial court's gatekeeper role under *Daubert* is not intended to supplant the adversary system or the role of the jury. *Fireman's Fund Ins. Co. v. Holder Constr. Group, LLC*, 2022 WL 223665 (Ga. App. 2022).	In *Moore v. Intuitive Surgical, Inc*., 995 F.3d 839 (11th Cir. 2021), the court found that surgeon/medical expert who had not used the specific surgical tool involved in the case was not automatically disqualified under the *Daubert* expert admissibility standard due to his lack of experience using the tool in prior surgeries. The "exacting analysis" which judges perform on the foundation of an expert's opinion, in determining admissibility of his testimony under *Daubert*, applies only to an experts' methodology in reaching his opinion and therefore is relevant to only the reliability prong of the analysis.
HAWAII	*Modified Approach*	*State v. Montalbo*, 828 P.2d 1274 (Haw. 1992).	Hawaii uses a modified. two-part test: 1. Does the evidence aid the jury? 2. Is it reliable? Does the expert have a reliable basis of knowledge and experience? *Ranches v. City and County of Honolulu*, 168 P.3d 592 (Haw. 2007); HI ST § 626-1; Rule 702.
IDAHO	*Modified Approach*	*State v. Merwin*, 962 P.2d 1026 (Idaho 1998).	Idaho has rejected *Frye* but has not yet accepted *Daubert*. The court may consider the *Daubert* factors in determining reliability, there is no specific test or set of prongs which must be considered in order to satisfy I.R.E. 702(b); the court finds *Daubert* helpful, but not controlling when analyzing testimony under Rule 702(b).
ILLINOIS	*Frye*	*N. Trust Co. v. Burandt & Armbrust, LLP*, 403 Ill. App.3d 260 (2010).	
INDIANA	*Modified Approach / No Specific Test*	*Alsheik v. Guerrero*, 956 N.E.2d 1115 (Ind. App. 2011).	Indiana has rejected *Frye* but has not yet accepted *Daubert*. The court may consider the *Daubert* factors in determining reliability, there is no specific test or set of prongs which must be considered in order to satisfy I.R.E. 702(b); the court finds *Daubert* helpful, but not controlling when analyzing testimony under Rule 702(b).

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IOWA	*Daubert or Frye*	*Ganrud v. Smith*, 206 N.W.2d 311 (Iowa 1973); *Mercer v. Pittway Corp.*, 616 N.W.2d 602, 628 (Iowa 2000).	Rule 702 requires evidence be (1) relevant, (2) scientific, technical, or requiring specialized knowledge, and (3) will aid jury. The witness must be qualified as an expert by knowledge, skill, experience, training, or education. *Daubert* factors may be used in novel or complex cases. *Frye* analysis used also.
KANSAS	*Daubert*	K.S.A. § 60-465(b); *Toyota Motor Corp. v. Gregory*, 136 S.W.3d 35 (Ky. 2004).	
KENTUCKY	*Daubert*	KY R. Evid. 702	Rule 702 does not mandate the use of all or any one of the factors suggested by the court. It allows the trial court to use those factors that are appropriate to the case at trial.
LOUISIANA	*Daubert*	*State v. Foret*, 628 So.2d 1116 (La. 1993); *Blair v. Coney,* 340 So.3d 775,780 (La. 2020); La. Code Evid. Ann. art. 702.	
MAINE	*Other* (similar to *Daubert*)	*State v. Williams*, 388 A.2d 500 (Me. 1978); Searles v. *Fleetwood Homes of Pennsylvania, Inc*., 878 A.2d 509 (Me. 2005).	Maine uses a test substantially similar to *Daubert* resulting in a fairly liberal standard for the admission of expert testimony: *If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a face in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.* Searles v. Fleetwood Homes of Pa., Inc., 878 A.2d 509 (Me. 2005); Me. R. Evid. 702. Court may consider: • Whether any studies offered in support of the testimony are based on facts similar to those at issue. • Whether the hypothesis of the testimony has been subject to peer review. • Whether an expert's conclusion has been tailored to the facts of the case. • Whether any other experts attest to the reliability of the testimony. • The nature of the expert's qualifications. • If a causal relationship is asserted, whether there is a scientific basis for determining that the relationship exists.

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MARYLAND	*Daubert*	Md. Rule 5-702	In August 2020, the Court of Appeals of Maryland adopted the standard for admitting expert testimony under *Daubert*. *Rochkind v. Stevenson*, 236 A.3d 630 (Md. 2020). Rule 5-702 (2021) remains applicable as has been adopted per a July 9, 2021 order adding a cross-reference to the *Rochkind* decision.
MASSACHUSETTS	*Daubert-Lanagan* (Emphasis on "general acceptance" factor used in *Frye)*	*Commonwealth v. Lanigan*, 641 N.E.2d 1342 (Mass. 1994); *Vermont Mutual Ins. Co. v. Canon U.S.A., Inc.*, Civil Action No. 1:24-cv-10940-ADB (D. Mass. Aug. 18, 2026); Mass. G. Evid. § 702).	Generally follows *Daubert*, although "general acceptance" remains an important consideration. In federal court, an expert's inability to identify the precise defect or mechanism of failure does not necessarily render otherwise reliable expert testimony inadmissible. Where experts reliably identify the fire origin or component failure and eliminate competing causes, the inability to explain precisely how or why the component failed may concern the weight or sufficiency of the evidence rather than admissibility. *Vermont Mutual Ins. Co. v. Canon U.S.A., Inc.*, Civil Action No. 1:24-cv-10940-ADB (D. Mass. Aug. 18, 2026). An expert may not, however, expand his opinions at deposition beyond those timely disclosed in his Rule 26 report; expert disclosures are evaluated on an expert-by-expert basis.
MICHIGAN	*Daubert*	MRE § 702; *Gilbert v. DaimlerChrysler Corp*., 685 N.W.2d 391 (Mich. 2004).	Court must consider eight (8) criteria before ruling upon the admissibility of expert testimony. A court must consider the following: (1) whether the expert's opinion has been previously tested, (2) whether the opinion has been subjected to peer review publication, (3) whether the opinion is consistent with generally accepted standards, (4) the known or potential error rate of the expert's opinion and its basis, (5) whether the opinion has been generally accepted within the relevant expert community, (6) whether the opinion is reliable and (7) whether experts in the same field would rely on the same basis to reach the type of opinion and (8) whether the opinion has been relied upon outside the context of litigation. These requirements make it more difficult to introduce expert testimony. MCL§ 600.2955(1)(a)-(g).
MINNESOTA	*Frye-Mack* Standard	*State v. Mack,* 292 N.W.2d 764 (Minn. 1980); *Goeb v. Tharaldson*, 615 N.W.2d 800 (Minn. 2000); Minn. R. Evid. 702; *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150 (Minn. 2012).	Hybrid standard using *State v. Mack* and *Frye v. United States.* To be admitted, testimony must (1) involve technique which has gained general acceptance in the scientific community, and (2) the testing must be done properly. An advisory committee is considering whether the Minnesota Supreme Court should replace the state's version of the *Frye* standard with the *Daubert* test.

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MISSISSIPPI	*Daubert*	*Miss. Transp. Comm'n v. McLemore*, 863 So.2d 31 (Miss. 2003); Miss R. Evid. 702.	
MISSOURI	*Daubert*	Mo. Rev. Stat. § 490.065.2(1)(a)-(d) (adopting FRE 702).	
MONTANA	*Daubert*	*State v. Moore*, 885 P.2d 457 (Mont. 1994); *McClue v. Safeco Ins. Co*., 354 P.3d 604 (Mont. 2015).	Daubert applies only to novel scientific evidence. Witness must be qualified by knowledge, skill, experience, training or education. Must aid jury.
NEBRASKA	*Daubert/Schaferman* Standard	*Schafersman v. Agland Coop.*, 631 N.W.2d 862 (Neb. 2001); *Hemsley v. Langdon*, 909 N.W.2d 59 (Neb. 2018).	*Daubert* applies only to scientific testimony which requires specialized knowledge.
NEVADA	Other	*Nevada Rev. Stat. § 50.275; Higgs v. State*, 222 P.3d 648 (Nev. 2010).	To the extent that *Daubert* promulgates a flexible approach to the admissibility of expert witness testimony, the Supreme Court of Nevada has held it is persuasive.
NEW HAMPSHIRE	*Daubert*	*Baker Valley Lumber, Inc. v. Ingersoll-Rand Co.*, 813 A.2d 409 (N.H. 2002); *Stachulski v. Apple New England, LLC*, 191 A.3d 1231 (N.H. 2018).	N.H.R.S.S.§ 516:29-a codifies *Daubert*.
NEW JERSEY	*Daubert*-type standard in civil cases.	N.J. R. Evid. 702; *In re Accutane Litigation*, 234 N.J. 340, 191 A.3d 560 (N.J. 2018).	In civil cases, New Jersey adopted a methodology-based reliability standard incorporating *Daubert* factors, while declining simply to incorporate the entire body of federal *Daubert* jurisprudence.
NEW MEXICO	*Partially Daubert*	N.M. R. Evid. 11-702	The differences between federal and New Mexico law in applying the *Daubert* requirements. See Rule 11-702 comm. cmt. 8. New Mexico has not adopted the changes made to the federal rule in 2000 to incorporate the requirements of *Daubert.*
NEW YORK	*Frye*	*People v. Wesley*, 633 N.E.2d 451 (N.Y. 1994).	
NORTH CAROLINA	*Daubert*	*State v. McGrady*, COA13-330, 2014 WL 211962 (N.C. Ct. App. Jan. 21, 2014); *State v. Goode*, 461 S.E.2d 631 (N.C. 1995).	*Daubert* rejected until 2014. In *Goode*, court held that the standard depends on reliability, qualifications of expert, and relevancy. However, in *McGrady*, the Supreme Court finally adopted *Daubert*.

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NORTH DAKOTA	N.D. R. Evid. 702	*State v. Hernandez*, 707 N.W.2d 449 (N.D. 2005).	N.D. R. Evid. 702 (more liberal than Federal Rule of Evidence 702). *Daubert* rejected. Court determines that method of proof is reliable as an area for expert testimony, then whether the witness is qualified as an expert to apply this method. It is not necessary that an expert be experienced with the identical subject matter at issue or be a specialist, licensed, or even engaged in a specific profession. *Hernandez* stated that North Dakota never has explicitly adopted *Daubert* or *Kumho Tire*; expert admissibility instead is governed by North Dakota Rule of Evidence 702.
OHIO	*Daubert*	*State v. Martens*, 629 N.E.2d 462 (3d Dist. Mercer County 1993).	
OKLAHOMA	*Daubert*	Okla. Stat. Tit. 12 § 2702	
OREGON	*Modified Daubert*	*Thoens v. Safeco Ins. Co. of Oregon*, 356 P.3d 91 106 (Or. App. 2015); Or. Rev. Stat. § 40.410; *State v. O'Key*, 899 P.2d 663 (Or. 1995); *Marcum v. Adventist Health Sys./West,* 193 P.3d 1 (Or. 2008).	Court can consider *Daubert* and pre-*Daubert* factors. *Marcum* case sets forth factors to be considered.
PENNSYLVANIA	*Frye*	Pa. R.E. 702(c); *Snizavich v. Rohm and Haas Co*., 2013 Pa. Super. 315 (Pa. Super. 2010).	Pa. R.E. 702(c) applies the "general acceptance" test for the admissibility of scientific, technical, or other specialized knowledge testimony. Note that Pa. R.E. 702(c) differs from F.R.E. 702 in that it reflects Pennsylvania's adoption of the standard in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). The rule applies the ''general acceptance'' test for the admissibility of scientific, technical, or other specialized knowledge testimony. This is consistent with prior Pennsylvania law. *Grady v. Frito-Lay, Inc*., 576 Pa. 546, 839 A.2d 1038 (2003). The rule rejects the federal test derived from *Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579 (1993).
RHODE ISLAND	*Daubert*-like Standard	RI R. Evid. Art. VII, Rule 702; *Morabit v. Hoag*, 80 A.3d 1 (R.I. 2013).	State has not officially adopted *Daubert,* but the Supreme Court has told the courts to consider the *Daubert* factors.

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SOUTH CAROLINA	Other (similar to *Daubert*)	*State v. Council*, 515 S.E.2d 508, *cert. denied*, 528 U.S. 1050 (1999); *Graves v. CAS Medical Systems, Inc*., 735 S.E.2d 650, 655 (S.C. 2012).	South Carolina Rules of Evidence provides the proper analysis to determine admissibility of scientific evidence. *Id*. at 20, 515 S.E.2d at 518. *(1) The subject matter is beyond the ordinary knowledge of the jury.* *(2) The expert must have acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter, although he need not be a specialist in the particular branch of the field.* *(3) The substance of the testimony must be reliable.* The final inquiry is the central feature of the analysis. Although *Daubert* never formally adopted, S.C. rules have always charged the court with performing a "gate keeping" function in limiting the presentation of expert testimony to situations where the testimony will assist the trier of fact in understanding evidence or determining a fact in issue. In federal court in South Carolina, however, Fed. R. Evid. 702 and *Daubert* control. A recent subrogation fire-loss decision illustrates that a district court may admit an origin expert while excluding portions of a causation expert's opinions that are not reliably tied to the specific component at issue, thereby allowing opinion-by-opinion gatekeeping rather than wholesale admission or exclusion. *Amerisure Ins. Co. v. Ox Bodies, Inc.*, 2026 WL 752247 (D.S.C. 2026).

STATE	ADMISSIBILITY STANDARDS	CASE/STATUTORY LAW	COMMENTS
SOUTH DAKOTA	Similar to *Daubert*	*State v. Hofer*, 512 N.W.2d 482 (S.D. 1994); *In re Estate of Dokken*, 604 N.W.2d 487 (S.D. 2000).	General acceptance no longer required; S.D.C.L. § 19-19-702.
TENNESSEE	Court can consider *Daubert* factors.	Tenn. R. Evid. 702; *McDaniel v. CSX Transp*., 955 S.W.2d 257 (Tenn. 1997).	

STATE	ADMISSIBILITY STANDARDS	CASE/STATUTORY LAW	COMMENTS
TEXAS	*Daubert-Robinson* Standard	*E.I. du Pont de Nemours & Co. V. Robinson*, 923 S.W.2d 549 (Tex. 1995); *Transcontinental Ins. Co. v. Crump*, 330 S.W.3d 211 (Tex. 2010).	Must demonstrate a "reliable foundation." Factors listed in *Robinson*. Court may consider: • The extent to which the theory has been or can be tested. • The extent to which the technique relies on the subjective interpretation of the expert. • Whether the theory has been subjected to peer review or publication, or both. • The technique's potential rate of error. • Whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community. • The non-judicial uses which have been made of the theory or technique.
UTAH	*Frye*-like Standard	*State v. Rinmasch*, 775 P.2d 388 (Utah 1989); *Eskelson ex rel. Eskelson v. Davis Hosp. and Med. Ctr.*, 242 P.3d 762 (Utah 2010); Utah R. Evid. 702.	Utah Rule of Evidence 702 controls. It does not mirror FRCP 702 like most other states. Testimony admissible if: • Reliable. • Based on sufficient facts or data. • Has been reliably applied to the facts. Utah employs a *Frye*-like standard which says the above 3 criteria are satisfied if there is a general acceptance of the methods and their application to the facts.
VERMONT	*Daubert*	*State v. Brooks*, 162 Vt. 26, 30, 643 A.2d 226, 229 (1993).	
VIRGINIA	Other	Va. Code Ann. § 8.01-401	Expert testimony generally admissible if it will assist trier of fact in understanding evidence. Admissibility is subject to basic requirements, including requirement that evidence be based on adequate foundation and be based in fact. *Toraish v. Lee*, 797 S.E.2d 760 (Va. 2017).
WASHINGTON	*Frye*	*State v. Riker*, 869 P.2d 43 (Wash. 1994); *Lakey v. Puget Sound Energy*, 296 P.3d 860 (Wash. 2013).	
WEST VIRGINIA	*Daubert/Wilt* Standard	*Wilt v. Buracker*, 443 S.E.2d 196 (W. Va. 1994); *San Francisco v. Wendy's Int'l, Inc.*, 656 S.E.2d 485 (W.Va. 2007).	

STATE	ADMISSIBILITY STANDARDS	CASE/STATUTORY LAW	COMMENTS
WISCONSIN	*Daubert*	Wis. Stat. § 907.02(1)	A court's admission of actuarial tests was proper because the tests were routinely published, had undergone widespread review and criticism, and were commonly used to predict recidivism rates of sex offenders. The court made the threshold determination of the reliability of the tests. *In re Commitment of Jones*, 911 N.W.2d 97 (Wis. 2018).
WYOMING	*Daubert*	*Bunting v. Jamison*, 984 P.2d 467 (Wyo. 1999); *BNSF Railway Co. v. Box Creek Mineral LP*, 420 P.3d 161 (Wy. 2018); Wyo. R. Evid. 702.	

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