



## **State-by-State Compendium Standards of Evidence**

*(as of July 11, 2023)*

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### **ALABAMA (Daubert)**

Adopted via Court rule (Ala. R. Evid. 702) and statute (§ 12-21-160, Ala. Code 1975).

A *Daubert*-based standard applies when considering the admissibility of most expert "scientific" testimony. Exceptions apply where the expert scientific testimony is offered in a domestic relations case, a child support case, a juvenile case, a probate case, or a criminal case involving an adult charged with a non-felony. The old standard set out in *Frye* most likely still applies to such scientific expert testimony.

When considering non-scientific expert testimony, however, courts only have to conclude that the expert is qualified and that the testimony will "assist the trier of fact to understand the evidence or to determine a fact in issue." The admissibility of all DNA evidence is governed by the *Daubert* standard, even if not considered "scientific." § 36-18-30, Ala. Code 1975.

### **ALASKA (Daubert)**

Adopted via Court rule (Alaska R. Evid. 702) and Court decision in *State v. Coon*, 974 P.2d 386 (Alaska 1999), where the Court adopted *Daubert* and held that the Alaska Rules of Evidence supersede the *Frye* test. The Court has noted, however, that "other factors than those discussed [in *Daubert*] may be relevant in some cases," such as the financial interests of the expert. *State v. Sharpe*, 435 P.3d 887, 908 (Alaska 2019). In *Marron v. Stromstad*, 123 P.3d 992 (Alaska 2005), the Court applied the *Daubert* test in a civil case, thereby crystallizing that the *Daubert* test as good law for the civil and criminal jurisdictions.

The Court appears also to have introduced some limits to the *Daubert* test. In *Marron*, the Court declined to adopt the *Kumho Tire Company v. Carmichael*, 526 U.S. 137 (1999), enlargements to *Daubert*.

The standard for review for a trial court's determination of the reliability of the technique or theory used by an expert in their testimony is *de novo*. See *Sharpe*, 435 P.3d at 900. In overruling *Coon*, which had adopted the abuse of discretion standard of review, "the court imposed a new hybrid standard: appellate courts must apply a clear error standard to preliminary factual determinations but exercise *de novo* review when evaluating whether the underlying scientific theories or techniques are scientifically valid under *Daubert*." Laws & Kuchinski, Note, *The Need for a Sharpe Appellate*

*Record: Why a Clear and Complete Record an Expert Qualifications Is More Important Than Ever*, 37 ALASKA L. REV. 119, 123 (2020), <https://core.ac.uk/download/pdf/343947119.pdf>.

### ARIZONA (Daubert/ARE 702)

Adopted via Court rule in Arizona Rule of Evidence 702. Ariz. Sup. Ct. Order R–10–0035 (Sept. 7, 2011).

After following the *Frye* standard for nearly 40 years, the Court made a “notable departure from Arizona's former test for the admissibility of expert testimony detailed in *Logerquist v. McVey*, 196 Ariz. 470, 1 P.3d 113 (2000)” and adopted the *Daubert* standard by amending the Arizona Rule of Evidence 702, effective January 1, 2012. *State v. Buelna*, No. 2 CA-CR 2013-0018, 2013 WL 5436710, at \*3 (Ariz. Ct. App. Sept. 26, 2013); *accord* Ariz. Sup. Ct. Order R–10–0035 (Sept. 7, 2011).

### ARKANSAS (Daubert)

Adopted via Court decision in *Farm Bureau Mut. Ins. Co. of Arkansas, Inc. v. Foote*, 14 S.W.3d 512, 518–19 (Ark. 2000). *See also* Ark. R. Evid. 702.

The guidelines set forth in Arkansas Rule of Evidence 702 “apply equally to all types of expert testimony and not simply to scientific expert testimony.” *Coca-Cola Bottling Co. of Memphis, Tennessee v. Gill*, 100 S.W.3d 715, 729 (Ark. 2003) (citing *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999)).

There are dozens of cases since 2000 that cite *Daubert* in Arkansas.

### CALIFORNIA (Kelly/Frye)

Adopted via Court decision in *People v. Kelly*, 549 P.2d 1240 (1976).

According to the Court, “when faced with a novel method of proof, [courts] have required a preliminary showing of general acceptance of the new technique in the relevant scientific community.” *Id.* at 1244. After making a preliminary showing, the Court stated that “admissibility of expert testimony based upon the application of a new scientific technique traditionally involves a two-step process: (1) the *reliability of the method* must be established, usually by expert testimony, and (2) the witness furnishing such testimony must be properly *qualified as an expert to give an opinion* on the subject.” *Id.* (citations omitted) (emphasis in original). In addition, “the proponent of the evidence must demonstrate that correct scientific procedures were used in the particular case.” *Id.*

According to the Court, “[g]eneral acceptance’ under *Kelly* means a consensus drawn from a typical cross-section of the relevant, qualified scientific community.” *People v. Leahy*, 882 P.2d 321, 337 (1994) (en banc).

### COLORADO (CRE 702)

Adopted via statute in C.R.E. 702. *See also* *People v. Shreck*, 22 P.3d 68, 70 (Colo. 2001) (directing trial courts to apply C.R.E. 702 and focus on the reliability and relevance of the evidence).

But the Colorado Supreme Court has “decline[d] to mandate that a trial court consider any particular set of factors when making its determination of reliability.” *Shreck*, 22 P.3d at 77. Rather, “a trial court

making a CRE 702 reliability determination may, but need not consider any or all of these factors, depending on the totality of the circumstances of a given case,” and “may also consider other factors . . . , to the extent that it finds them helpful in determining the reliability of the proffered evidence.” *Id.* at 78.

#### CONNECTICUT (Daubert)

Adopted via Court decision in *State v. Porter*, 698 A.2d 739, 746 (Conn. 1997), where the Court explicitly adopted the *Daubert* approach for the admissibility of scientific evidence in Connecticut. *But see Mulroy v. Becton Dickinson Company*, 712 A.2d 436 (Conn. App. Ct. 1998) (determining that *Daubert* is not suitable for workers' compensation cases, as these cases follow equity rules rather than ordinary common law or statutory rules of evidence or procedure). It has also been adopted via statute. See Conn. Code Evid. Sec. 7-2 (enacting rule that is essentially the same as the pre-amendment version of Federal Rule of Evidence 702 before December 1, 2000).

However, the Court has not disregarded the *Frye* test and still considers it an important factor in assessing the reliability of evidence. See *Porter*, 698 A.2d at 754 (“Although ‘general acceptance’ is no longer an absolute prerequisite to the admission of scientific evidence, it should, in fact, be an important factor in a trial judge's assessment.”). If a scientific methodology passes the *Frye* “general acceptance” test, the *Daubert* inquiry usually concludes, and the conclusions derived from that methodology are generally admissible.

The Court has not decided whether to incorporate the *Kumho* extension of *Daubert*. *Daubert* has only been applied in criminal cases in Connecticut, and the standard of review for admitting expert testimony by a trial court is “abuse of discretion.”

#### DELAWARE (Daubert)

Adopted via Court rule in D.R.E. 702, which was amended effective December 10, 2001 to track Federal Rule of Evidence 702.. See also *Nelson v. State*, 628 A.2d 69, 74 (Del. 1993) (“[I]n Delaware, scientific evidence, rather than being governed by *Frye*, must satisfy the pertinent Delaware Rules of Evidence concerning the admission of scientific testimony or evidence.”)

In addition, the Delaware Supreme Court adopted the Supreme Court’s decision in *Kumho. M.G. Bancorporation, Inc. v. Le Beau*, 737 A.2d 513, 522 (Del. 1999) (“[W]e hereby adopt the holdings of *Daubert* and *Carmichael [Kumho]* as the correct interpretation of Delaware Rule of Evidence 702.”).

#### DISTRICT OF COLUMBIA (Daubert)

Adopted via Court decision in *Motorola Inc. v. Murray*, 147 A.3d 751 (D.C. 2016) (“We conclude that [Fed. R. Evid.] 702, with its expanded focus on whether reliable principles and methods have been reliably applied, states a rule that is preferable to the *Dyas/Frye* test.”).

#### FLORIDA (Daubert)

Adopted via Court decision in *In re Amendments to Florida Evidence Code*, 278 So.3d 551 (Fla. 2019) (per curiam), where the Court adopted Sections 90.702 and 90.704 of the Florida Evidence Code, which were amended to replace the *Frye* standard with the *Daubert* standard.

#### GEORGIA (Daubert)

Adopted via statute: Ga. Code Ann. § 24-7-702..

The *Daubert* test was adopted for civil cases in 2005, but the *Frye* test was used in criminal cases until 2022. See H.B. 743, 2021-2022 Reg. Sess. (Ga. 2022)(amending Ga. Code Ann. § 24-7-702).

#### **HAWAII (Daubert-Montalbo Inquiry)**

Adopted via Court decision in *State v. Montalbo*, 73 Haw. 130, 140, 828 P.2d 1274, 1280 (1992), which sets forth the factors courts use to evaluate the admissibility of expert evidence. *Id.* (“We hold that a court should weigh general acceptance along with the other factors listed below in order to determine, under Hawaii Rules of Evidence (HRE) Rules 702 and 703, whether scientific evidence should be admitted at trial.”). Expert evidence is admissible if it is grounded in a scientific technique generally accepted (vs. “widespread”) as reliable within the scientific community. In *Montalbo*, the Court adopted *Frye* as part of the reliability analysis, retaining general acceptance as “highly probative” indicator of reliability. *Id.* at 1280.

The Hawaii Supreme Court has “neither expressly approved nor rejected” *Daubert*, *Acoba v. Gen. Tire, Inc.*, 92 Haw. 1, 13 n.6, 986 P.2d 288, 300 (Haw. 1999), but finds the *Daubert* factors “instructive,” *State v. Vliet*, 95 Haw. 94, 105, 19 P.3d 42, 53 (Haw. 2001).

#### **IDAHO (Daubert)**

Adopted via the Idaho Rule of Evidence 702 (same as the pre-amendment version of Federal Rule of Evidence 702 before December 1, 2000) and Court interpretation in *State v. Parkinson*, 909 P.2d 647, 652 (Idaho Ct. App. 1996), where the Court referred to *Daubert* for guidance when applying Idaho Rule of Evidence 702. See also *Walker v. Am. Cyanamid Co.*, 130 Idaho 824, 832, 948 P.2d 1123, 1131 (1997) (“[T]he appropriate test for measuring reliability of evidence in this state is I.R.E. 702.” (citing *State v. Gleason*, 123 Idaho 62, 65, 844 P.2d 691, 694 (1992))).

This decision has been followed by other courts in the state. See, e.g., *State v. Siegel*, 50 P.3d 1033 (Idaho Ct. App. 2002) (analyzing the *Daubert* factors highlighted in *Parkinson*, such as testability, peer review, error rate, existence of standards, and acceptance within the scientific community).

*Daubert* has only been applied in criminal cases in Idaho, and this position has not changed in recent cases.

#### **ILLINOIS (Frye)**

Adopted via Court decision in *People v. Baynes*, 88 Ill. 2d 225, 430 N.E.2d 1070 (Ill. 1981), confirmed by Illinois Evid. Rule 702, adopted September 27, 2010, eff. January 1, 2011.

#### **INDIANA (Daubert (Non-binding))**

Adopted via Subsection (b) of the Indiana Rule of Evidence 702, which states that expert scientific testimony is admissible only if the court determines that the scientific principles it relies upon are reliable. See also *Steward v. State*, 652 N.E.2d 490, 498 (Ind. 1995) (acknowledging that the concerns addressed in *Daubert* align with the explicit requirement of Indiana Rule of Evidence 702(b) regarding the court's satisfaction with the reliability of scientific principles); *Hottinger v. Trugreen Corp.*, 665 N.E.2d 593 (Ind. App. 1996) (emphasizing the requirement of reliability in I.R.E. 702 and finding *Daubert* to be consistent with it); *Weinberg v. Geary*, 686 N.E.2d 1298 (Ind. App. 1997) (same).

Although Indiana courts routinely apply *Daubert*, it is a non-binding guide for examining expert evidence. See *Malinski v. State*, 794 N.E.2d 1071, 1084 (Ind. 2003) (stating that *Daubert* is helpful but not controlling); *Smith v. Yang*, 829 N.E.2d 624, 626 (Ind. App. 2005) (considering *Daubert* as a satisfactory but non-binding standard and stating that Indiana courts may consider the five factors outlined in *Daubert*). While not binding, the federal evidence law of *Daubert* and its subsequent rulings are considered helpful in applying Indiana Rule of Evidence 702(b).

*Daubert* has been cited in both civil and criminal cases in Indiana.

#### **IOWA (IRE 702 (Iowa R. Civ. P. 5.702))**

Adopted via Iowa R. Civ. P. 5.702. See *Hutchison v. Am. Fam. Mut. Ins. Co.*, 514 N.W.2d 882, 885 (Iowa 1994) (stating that I.R.E. 702, which “codified Iowa’s existing ‘liberal rule on the admission of opinion testimony,’” was reaffirmed by the Supreme Court’s decision in *Daubert* (citing *Ganrud v. Smith*, 206 N.W.2d 311, 314 (Iowa 1973))).

The Iowa Supreme Court has incorporated *Daubert* to a limited extent, but has stated that *Daubert* is not controlling in Iowa. See, e.g., *Leaf v. Goodyear Tire & Rubber Co.*, 590 N.W.2d 525, 532 (Iowa 1999) (“Rule 702 and our cases applying it have served us well, and we see no need to replace them in favor of a mandatory application of the *Daubert* test, whether the evidence is scientific or technical in nature. Nevertheless, we believe the ‘observations’ in *Daubert* will be helpful to a court in assessing reliability of evidence in complex cases.”); *Ranes v. Adams Laboratories, Inc.*, 778 N.W.2d 677, 686 (Iowa 2010) (“When the scientific evidence is particularly novel or complex, however, we have suggested that courts consider the relevant factors identified by the United States Supreme Court in *Daubert* . . . .”); *Mercer v. Pittway Corp.*, 616 N.W.2d 602, 628 (Iowa 2000) (stating that “trial courts may find it helpful in complex cases to use one or more of the relevant *Daubert* ‘considerations’ in assessing the reliability of expert testimony”).

#### **KANSAS (Daubert)**

Adopted via statute: K.S.A.2014 Supp. 60–456(b). See also *Smart v. BNSF Ry. Co.*, 52 Kan. App. 2d 486, 492, 369 P.3d 966, 971–72 (2016) (“[T]he Kansas Legislature amended K.S.A. 60–456 through K.S.A. 60–458, effectively abrogating Kansas courts’ long-held reliance on the Frye test for scientific evidence, and adopting the test found in *Daubert* . . . .”).

#### **KENTUCKY (Daubert)**

Adopted via Court decision in *Mitchell v. Commonwealth*, 908 S.W.2d. 100, 101 (Ky. 1995), *overruled on other grounds*, *Fugate v. Commonwealth*, 993 S.W.2d 931, 937 (Ky. 1999) (overruling portion of *Mitchell* that retained the case-by-case basis for admissibility of DNA evidence derived from PCR and RFLP methods of analysis, but still allowing for a reverse-*Daubert* hearing to exclude such evidence). See also *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 578-79 (Ky. 2000).

#### **LOUISIANA (Daubert)**

Adopted via statute (La. C.E. Art. 702) and Court decision in *State v. Foret*, 628 So.2d 1116 (La. 1993). See also La Code Civ. Proc. Art. 1425 (F)(1); *Clement v. Griffin*, 634 So.2d 412 (La. 4th Cir. 1994). A trial court’s ruling to qualify an expert to testify at trial will not be disturbed on appeal absent a clear abuse of discretion. *Succession of Olsen*, 19-348 (La. App. 5 Cir. 1/29/20), 290 So.3d 727, 735, writ denied, 20-362 (La. 6/3/20), 296 So.3d 1067.

### MAINE (Daubert)

Adopted via Me. R. Evid. 702. *See also Green v. Cessna Aircraft Co.*, 673 A.2d 216, 218 (ME 1996) (“In addition to M.R.Evid. 702 . . . an expert’s opinion must also be sufficiently tied to the facts of the case that it will aid.”).

### MARYLAND (Daubert)

Adopted via Court decision in *Rochkind v. Stevenson*, 236 A.3d 630, 649 (2020) (“As delayed as Maryland is in joining the supermajority of states and federal courts to adopt the *Daubert* standard, we do so now with the added benefit of hindsight.”). *See also* Md. Rule 5-702.

### MASSACHUSETTS (Daubert)

Adopted via Court decision in *Commonwealth v. Thomas J. Lanigan*, 641 N.E.2d 1342 (1994).

### MICHIGAN (Daubert)

Adopted via statute (MCL 600.2955) and Court’s interpretation of M.R.E. 702 in *Gilbert v. DaimlerChrysler Corp*, 685 N.W.2d 391 (Mich. 2004).

### MINNESOTA (Frye-Mack Test)

Adopted via Court decision in *State v. Mack*, 292 N.W.2d 764 (Minn. 1980). *See also State v. Kolander*, 52 N.W.2d 458 (Minn. 1952); *Goeb v. Tharaldson*, 615 N.W.2d 800 (Minn. 2000).

### MISSISSIPPI (Daubert)

Adopted via Court decision in *Mississippi Transp. Com’n v. McLemore*, 863 So.2d 31 (Miss. 2003).

### MISSOURI (Daubert)

Adopted via statute in Mo. Ann. Stat. § 490.065.. *See also State Bd. of Registration for Healing Arts v. McDonagh*, 123 S.W.3d 146, 153 (Mo. banc 2003) (“To clarify, . . . this Court expressly holds that to the extent that cases since *Lasky* have suggested that the standard of admissibility of expert testimony in civil cases is that set forth in *Frye* or some other standard, they are no longer to be followed. The relevant standard is that set out in section 490.065.”).

### MONTANA (State-Specific Standard)

Adopted via Court decision in *Hulse v. State*, 1998 MT 108, 961 P.2d 75 (1998).

### NEBRASKA (Daubert)

Adopted via Court decision in *Shafersman v. Agland Coop.*, 262 Neb. 215, 232 (Neb. 2001) (holding that the *Daubert* standard applies for trials commencing on or after October 1, 2001).

### NEW HAMPSHIRE (Daubert)

Adopted via Court decision in *Baker Valley Lumber, Inc. v. Ingersoll-Rand*, 148 N.H. 609, 813 A.2d 409 (N.H. 2002).

### NEW JERSEY (Civil Toxic Tort: Rubanick, Other Civil: NJRE 702/Daubert, Criminal: Daubert)

For toxic tort cases, New Jersey does not adopt *Daubert*. *See Kemp ex rel. Wright v. State*, 174 N.J. 412, 425, 809 A.2d 77 (N.J. 2002) (explaining that the Court “relaxed the standard for admissibility of scientific evidence due to the extraordinary and unique burdens plaintiffs faced when they sought to prove medical causation in toxic torts”).

Instead, the *Rubanick* standard is used in toxic torts cases, which was adopted via Court decision in *Rubanick v. Witco Chemical Corp.*, 593 A.2d 733, 747-48 (N.J. 1991). The *Rubanick* Court held “that in toxic-tort litigation, a scientific theory of causation that has not yet reached general acceptance may be found to be sufficiently reliable if it is based on a sound, adequately founded scientific methodology involving data and information of the type reasonably relied on by experts in the scientific field.” The *Rubanick* standard “changed the emphasis for the admission of expert testimony from general acceptance in the scientific community to the methodology and reasoning supporting the testimony.” *Landrigan v. Celotex Corp.*, 605 A.2d 1079, 1084 (N.J. 1992).

The Superior Court stated that New Jersey had previously followed the *Frye* standard “but never adopted *Daubert*.” *In re Phenylpropanolamine (PPA)*, 2003 WL 22417238, at \*22 (N.J. Super. Ct. Law Div. July 21, 2003) (stating that New Jersey’s “extensive industrial legacy and the plethora of toxic-tort litigation that grew out of that history caused New Jersey courts to create such a ‘middle ground’ with equity and practicality for admissibility of scientific evidence”).

In other civil cases, “N.J.R.E. 702 governs the admission of expert testimony,” which states that “[i]f scientific ... knowledge will assist the trier of fact to understand the evidence or to determine a fact 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.” *State v. J.L.G.*, 234 N.J. 265, 279-80, 190 A.3d 442, 450 (2018). To satisfy the rule, “the proponent of expert evidence must establish three things: (1) the subject matter of the testimony must be beyond the ken of the average juror; (2) the field of inquiry must be at a state of the art such that an expert’s testimony could be sufficiently reliable; and (3) the witness must have sufficient expertise to offer the testimony.” *Id.* at 280, 450 (quoting *State v. Kelly*, 478 A.2d 364 (N.J. 1984)) (internal marks omitted). The “key to admission in civil cases now is the validity of the expert’s reasoning and methodology.” *State v. Olenowski*, 289 A.3d 456, 459 (N.J. 2023) (quoting *Landrigan*, 605 A.2d at 1084) (internal marks omitted).

The New Jersey Supreme Court considers the *Daubert* factors useful in determining the admissibility of expert testimony, but does not embrace the full body of *Daubert* case law as applied by state and federal courts. *In re Accutane Litig.*, 191 A.3d 560, 594 (N.J. 2018). The Court stated:

Our view of proper gatekeeping in a methodology-based approach to reliability for expert scientific testimony requires the proponent to demonstrate that the expert applies his or her scientifically recognized methodology in the way that others in the field practice the methodology. When a proponent does not demonstrate the soundness of a methodology, both in terms of its approach to reasoning and to its use of data, from the perspective of others within the relevant scientific community, the gatekeeper should exclude the proposed expert testimony on the basis that it is unreliable.

*Id.* at 595.

In criminal and quasi-criminal cases, the New Jersey Supreme Court recently adopted the *Daubert* standard. *Olenowski*, 289 A.3d at 459 (“[G]oing forward, we adopt principles similar to the standard outlined in *Daubert* to examine the admissibility of expert evidence in criminal and quasi-criminal cases.”).

### NEW MEXICO (State-Specific Standard)

Adopted via Court rule (N.M. R. Evid. Rule 11-702) and decision in *State v. Alberico*, 116 N.M. 156, 861 P.2d 192 (N.M. 1993).

### NEW YORK (Frye)

Adopted via Court decision in *People v. Wesley*, 83 N.Y.2d 417, 633 N.E.2d 451 (N.Y. 1994).

### NORTH CAROLINA (Daubert)

Adopted via statute, codified at N.C. Gen. Stat. Ann. 8C-1, 702.

### NORTH DAKOTA (Frye)

Recognized by Court decision in *City of Fargo v. McLaughlin*, 512 N.W.2d 700 (N.D. 1994). *See also State v. Hernandez*, 707 N.W. 2d 449, 453 (N.D. 2005) (stating that “this Court has never explicitly adopted *Daubert*”).

### OHIO (Daubert/ORE 702)

Adopted via Court rule (O.R.E. 702) and decision in *Miller v. Bike Athletic Co.*, 80 Ohio St.3d 607, 687 N.E.2d 735 (Ohio 1998). *See also* 1994 Staff Note, Evid.R. 702; *Terry v. Caputo*, 115 Ohio St.3d 351, 875 N.E.2d 72 (Ohio 2007); *State v. Grate*, 164 Ohio St.3d 9, 172 N.E.3d 8, ¶ 97 (Ohio 2020).

### OKLAHOMA (Daubert)

Adopted via Court decision in *Christian v. Gray*, 65 P.3d 591 (Okla. 2003). *See also Taylor v. State*, 889 P2d 319 (Okla. Crim. App. 1995).

### OREGON (State-Specific Standard)

Adopted via Court decision in *State v. Brown*, 297 Or. 404, 687 P.2d 751 (Or. 1984). *See also State v. O’Key*, 321 Or. 285, 899 P.2d 663 (Or. 1995).

### PENNSYLVANIA (Frye)

Adopted via Court decision in *Commonwealth v. Topa*, 471 Pa. 223, 369 A.2d 1277 (Pa. 1977). *See also Commonwealth v. Blasioli*, 552 Pa. 149, 713 A.2d 1117, 1119 (1998); *Walsh v. BASF Corp.*, 660 Pa. 313, 234 A.3d 446 (Pa. 2020); *Roverano v. John Crane, Inc.*, 657 Pa. 484, 226 A.3d 526 (Pa. 2020).

### RHODE ISLAND (Daubert)

Adopted via Court decision in *In re Odell*, 672 A.2d 457, 459 (R.I. 1996). *But see DiPetrillo v. Dow Chemical Co.*, 729 A.2d 677, 686 (R.I. 1999) (“Though we declined to adopt the *Daubert* standard, our previous cases have endorsed its principles.”).

### SOUTH CAROLINA (State-Specific Standard)

Adopted via Court decision in *State v. Council*, 335 S.C. 1, 20-21, 515 S.E.2d 508, 518 (S.C. 1999):

“While this Court does not adopt *Daubert*, we find the proper analysis for determining admissibility of scientific evidence is now under the SCRE. . . . [under which] the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable. The trial judge should apply the *Jones* factors to determine reliability. Further, if the evidence is admissible under Rule 702, SCRE, the trial judge should determine if its probative value is outweighed by its prejudicial effect. Rule 403, SCRE.”



*Accord State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (S.C. 1979) (setting out for factors courts must consider in determining the admissibility of novel scientific evidence—namely, (1) publications and peer review; (2) prior application of the method to the type of evidence in the case; (3) quality control procedures utilized; and (4) consistency of the method with recognized scientific law and procedures); *see also State v. White*, 372 S.C. 364, 642 S.E.2d 607 (S.C. 2007).

#### SOUTH DAKOTA (Daubert)

Adopted via Court decision in *State v. Hofer*, 512 N.W.2d 482 (S.D. 1994); *see also State v. Corey*, 623 N.W.2d 841 (S.D. 2001) (reaffirming that general acceptance in the scientific community is no longer required for the admissibility of expert testimony); *In re T.A.*, 663 N.W.2d 225 (S.D. 2003) (same); *Post-Daubert Standards for Admissibility of Scientific and Other Expert Evidence in State Courts*, 90 A.L.R. 5th 453 (2001).

The test is flexible in South Dakota. Even if some *Daubert* factors are missing, state courts should consider all factors present, focusing on the “principles and methodology” employed by the expert rather than the expert’s conclusions, and admit evidence they feel is relevant and reliable. *State v. Lemler*, 774 N.W.2d 272 (S.D. 2009).

#### TENNESSEE (State-Specific Standard)

Adopted via Court decision in *McDaniel v CSX Transp. Inc.*, 955 S.W.2d 257, 264-65 (Tenn. 1997) (declining to expressly adopt *Daubert*, but finding the *Daubert* factors useful in applying Tennessee Rules of Evidence 702 and 703).

The Court has identified other non-exclusive factors that a trial court may consider in assessing the reliability of an expert's methodology. *See Brown v. Crown Equipment Corp.*, 181 S.W.3d 268, 273-75 (Tenn. 2005); *State v. Stevens*, 78 S.W.3d 817, 832-35 (Tenn. 2002).

#### TEXAS (Daubert)

Adopted via Court decision in *E.I. du Pont de Nemours & Co., Inc. v. Robinson*, 923 S.W.2d 549, 557 (Tex. 1995); *see also Merrell Dow Pharmaceuticals v. Havner*, 953 S.W.2d 706 (Tex. 1997).

#### UTAH (URE 702)

Adopted via Utah Rule of Evidence 702.

Utah’s standard has a lower threshold than other states and the federal system. U.R.E. 702 departs from F.R.E. 702 in subsections (b) and (c), which identify the standard of reliability as requiring only a “threshold” showing (a standard lower than that of other states and the federal system).

#### VERMONT (Daubert)

Adopted via Court decision in *State v. Brooks*, 162 Vt. 26, 30, 643 A.2d 226 (Vt. 1993) (adopting the *Daubert* test because Vermont evidentiary Rule 702 is identical to Federal Rule of Evidence 702); *see also State v. Sarkisian-Kennedy*, 211 Vt. 390, 227 A.3d 1007 (Vt. 2020); *State v. Sullivan*, 204 Vt. 328, 167 A.3d 876 (Vt. 2017).

However, the test is not exhaustive. Instead, courts utilize the *Daubert* factors to assess the expert’s testimony and then determine whether it is admissible. *USGen New England, Inc. v. Town of Rockingham*, 177 Vt. 193, 862 A.2d 269 (Vt. 2004).

### VIRGINIA (State-Specific Standard)

Adopted via Court decision in *Spencer v. Commonwealth*, 240 Va. 78, 393 S.E.2d 609 (Va. 1990) (declining to adopt the *Frye* test and instead holding that "when scientific evidence is offered, the court must make a threshold finding of fact with respect to the reliability of the scientific method offered . . . [unless the method] is of a kind so familiar and accepted as to require no foundation to establish the fundamental reliability of the system . . . or unless it is so unreliable that the considerations requiring its exclusion have ripened into rules of law")

In *John v. Im*, 263 Va. 315, 322, 559 S.E.2d 694 (Va. 2002), the Virginia Supreme Court declined to reach whether the *Daubert* standard applied and noted that "we have not previously considered the question whether the *Daubert* analysis employed by the federal courts should be applied in our trial courts to determine the scientific reliability of expert testimony."

### WASHINGTON (Frye)

Adopted via Court decision: *E.g., Lakey v. Puget Sound Energy, Inc.*, 176 Wash. 2d 909, 918, 296 P.3d 860 (Wash. 2013) (en banc).

Washington also uses Evidence Rule 702, which tracks Fed. R. Evid. 702, but does not expressly incorporate *Daubert*. Wash. R. Evid. 702.

### WEST VIRGINIA (Daubert)

Adopted via Court decision in *Wilt v. Buracker*, 443 S.E.3d 196 (W. Va. 1994).

The *Daubert* test is more stringently applied in West Virginia than in other states. West Virginia Evidence Rule 702(b) states that "expert testimony based on a novel scientific theory . . ." is only admissible if the *Daubert* factors are met. W. Va. R. Evid. 702. West Virginia only requires the Court to exercise the "gatekeeper" function when novel scientific testimony is being presented. *Harris v. CSX Transp., Inc.*, 735 S.E.2d 275 (W. Va. 2013).

### WISCONSIN (Daubert)

Adopted via statute: Wis. Stat. § 907.02(1). The Wisconsin legislature amended the rules of evidence to apply the *Daubert* standard to all actions, civil and criminal. 2011 Wis. Act 2.

Prior to 2011, Wisconsin had its own test for the admissibility of scientific and expert evidence. Under this three-part test, the court would consider (1) whether the evidence is relevant (2) whether the witness qualifies as an expert (3) and whether the evidence would assist the trier of fact.

### WYOMING (Daubert)

Adopted via Court decision in *Bunting v. Jamieson*, 984 P.2d 427 (Wyo. 1999). But in 2015 the Court held that if the expert witness "did not correctly follow the methodology of differential diagnosis, that could affect the weight and persuasiveness of her opinions, but does not render that evidence inadmissible under *Daubert*." *Wise v. Ludlow*, 346 P.3d 1, 15 (Wyo. 2015).