

States Following the *Daubert/Kumho* Doctrine

This chart addresses whether the standards for the admissibility of expert opinion established by the U.S. Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), and incorporated into Fed. R. Evid. 702, superseding the older standard of “general acceptance” set by *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), have been adopted by the states for cases governed by state evidence law. Certain exceptions may apply and law is subject to change. Contact White and Williams LLP for additional information.

■ **ALABAMA**

With respect to scientific evidence, follows *Daubert* in civil cases (other than domestic relations, child support, juvenile and probate cases), effective Jan. 2012. Ala. Code § 12-21-160; Ala. R. Evid. 702(b). With respect to technical, non-scientific evidence, still follows *Frye*. Ala. R. Evid. 702(a); *Swanstrom v. Teledyne Continental Motors, Inc.*, 43 So.3d 564 (Ala. 2009); but cf. *Mazda Motor Corp. v. Hurst*, 2017 Ala. LEXIS 66 (2017) (suggesting that the trial court has discretion to admit the testimony of an expert qualified based on his knowledge and experience).

■ **ALASKA**

Daubert partially followed. Expert testimony based strictly on scientific knowledge is generally subject to *Daubert*'s reliability and relevance requirements, but experience-based expert testimony does not need to meet *Daubert*'s requirements. Instead it is admissible when the expert witness has substantial experience in the relevant field and the testimony might help the jury. *Thompson v. Cooper*, 290 P.3d 393 (Alaska 2012); see Alaska R. Evid. 702(a); see also Alaska Stat. § 09.20.185 (expert qualifications in professional negligence cases).

■ **ARIZONA**

Follows *Daubert* and *Kumho Tire*. See Ariz. R. Evid. R. 702; see Ariz. Rev. Stat. § 12-2203; *State v. Salazar-Mercado*, 325 P.3d 996 (2014).

■ **ARKANSAS**

Follows *Daubert* and *Kumho Tire*. Ark. R. Evid. 702; *Farm Bureau Mut. Ins. Co. v. Foote*, 14 S.W.3d 512 (Ark. 2000); *Dundee v. Horton*, 477 S.W.3d 558 (Ark. Ct. App. 2015); but cf. *Dundee* (suggesting that courts need not engage in a *Daubert* reliability analysis in all cases).

■ **CALIFORNIA**

Rejects *Daubert* and follows *Frye*. *People v. Leahy*, 882 P.2d 321 (Cal. 1994); *People v. Kelly*, 549 P.2d 1240 (Cal. 1976); Cal. Evid. Code § 801.

■ **COLORADO**

Follows a *Daubert*-like analysis. Colo. R. Evid. 702; *People v. Rector*, 248 P.3d 1196 (Colo. 2011) (stating that under the test set forth in *People v. Shreck*, 22 P.3d 68 (Colo. 2001), a court may, but is not required to, consider the factors mentioned in *Daubert*).

■ **CONNECTICUT**

Follows *Daubert*. Conn. Code of Evid. § 7-2; *State v. Porter*, 698 A.2d 739 (Conn. 1997).

■ **DELAWARE**

Follows *Daubert* and *Kumho Tire*. Del. R. Evid. 702; *M.G. Bancorporation, Inc. v. LeBeau*, 737 A.2d 513 (Del. 1999).

■ **DISTRICT OF COLUMBIA**

Follows *Daubert*. *Motorola Inc. v. Murray*, 147 A.3d 751 (D.C. 2016) (adopting Fed. R. Evid. 702).

■ **FLORIDA**

Follows *Daubert*. *In re Amendments to the Fla. Evidence Code*, 278 So. 3d 551 (Fla. 2019) (the Supreme Court of Florida adopted the “*Daubert* Amendments” outlined in Fla. Stat. § 90.702).

■ **GEORGIA**

Follows *Daubert* and *Kumho Tire*. Ga. Code § 24-7-702; *Cash v. LG Electronics, Inc.*, 804 S.E.2d 713 (Ga. Ct. App. 2017).

■ **HAWAII**

Daubert not expressly adopted, but instructive in interpreting Haw. Rev. Stat. § Rule 702, which is patterned on Federal Rule 702. *State v. Vliet*, 19 P.3d 42 (Haw. 2001).

■ **IDAHO**

Idaho has not adopted the *Daubert* standard for admissibility of expert testimony but has used some of *Daubert*'s standards in assessing whether the basis of an expert's opinion is scientifically valid. *Weeks v. E. Idaho Health Services*, 153 P.3d 1180 (Idaho 2007); Idaho R. Evid. 702.

■ **ILLINOIS**

Follows *Frye*. *In re Commitment of Simons*, 821 N.E.2d 1184 (Ill. 2004); see Ill. R. Evid. 702; see also *People v. Safford*, 910 N.E.2d 143 (Ill. App. Ct. 2009) (expressly refusing to adopt the *Daubert* standard).

■ **INDIANA**

Daubert is helpful, but not binding. There is no specific test or set of prongs which must be considered in order to satisfy Indiana Evidence Rule 702(b). *Turner v. State*, 953 N.E.2d 1039 (Ind. 2011).

■ **IOWA**

Rejects *Frye* but *Daubert* not adopted, either. When scientific evidence is particularly novel or complex, courts should consider the relevant *Daubert* factors to assess whether the testimony is reliable. In cases involving technical or other specialized knowledge, the application of *Daubert* considerations is not appropriate. *Ranes v. Adams Laboratories, Inc.*, 778 N.W.2d 677 (Iowa 2010); *State v. Hall*, 297 N.W.2d 80 (Iowa 1980); Iowa R. Evid. 5.702.

■ **KANSAS**

Follows *Daubert* and *Kumho Tire*. K.S. § 60-456(b); *City of Topeka v. Lauck*, 401 P.3d 1064 (Kan. Ct. App. 2017); *Lundeen v. Lentell*, 397 P.3d 453 (Kan. Ct. App. 2017).

■ **KENTUCKY**

Follows *Daubert* and *Kumho Tire* pursuant to Ky. R. Evid. 702 and *Toyota Motor Corp. v. Gregory*, 136 S.W.3d 35 (Ky. 2004).

■ **LOUISIANA**

Follows *Daubert*. La. Code Evid. § art. 702; *State v. Foret*, 628 So. 2d 1116 (La. 1993); *Independent Fire Ins. Co. v. Sunbeam Corp.*, 755 So. 2d 226 (La. 2000).

■ **MAINE**

Daubert not adopted. *Searles v. Fleetwood Homes of Pennsylvania, Inc.*, 878 A.2d 509 (Me. 2005). Evidence is admissible if shown to be sufficiently reliable, even if it is not generally accepted in the scientific community. *State v. Williams*, 388 A.2d 500 (Me. 1978); Me. R. Evid. 702.

■ **MARYLAND**

Follows *Daubert* by relying on the *Daubert* factors to interpret Md. Rule 5-702 and determine the admissibility of expert testimony. *Rochkind v. Stevenson*, 236 A.3d 630 (Md. 2020). All of the *Daubert* factors are relevant to the analysis and no single factor is dispositive. *Id.*

■ **MASSACHUSETTS**

Follows *Daubert*. Expert testimony must be reliable, as shown by *Frye*'s general acceptance standard or, alternatively, under *Daubert* and *Kumho Tire*. *Com. v. Lanigan*, 641 N.E.2d 1342 (Mass. 1994); *Commonwealth v. Powell*, 877 N.E.2d 589 (Mass. 2007); *Commonwealth v. Caruso*, 67 N.E.3d 1203 (Mass. 2017).

■ **MICHIGAN**

Follows *Daubert* and *Kumho Tire*. Mich. R. Evid. 702; *Gilbert v. Daimler Chrysler Corp.*, 685 N.W.2d 391 (Mich. 2004).

■ **MINNESOTA**

Expert testimony is admissible if: 1) the witness is qualified; 2) the expert's opinion has foundational reliability; and 3) the expert's testimony is helpful. Minn. R. Evid. 702; *Doe v. Archdiocese of St. Paul & Minneapolis*, 817 N.S.2d 150 (Minn. 2012). In addition, if the testimony involves a novel scientific theory, the *Frye-Mack* standard applies. The *Frye-Mack* standard requires that the proponent of novel scientific evidence prove that the science is generally accepted in the relevant scientific community and that the particular scientific evidence at issue has foundational reliability. Minn. R. Evid. 702; *Doe*; *Goeb v. Tharaldson*, 615 N.W.2d 800 (Minn. 2000).

■ **MISSISSIPPI**

Follows *Daubert*. Miss. R. Evid. 702; *Janssen Pharm., Inc. v. Bailey*, 878 So.2d 31 (Miss. 2004).

■ MISSOURI

With the exception of certain domestic-relations actions such as divorce, adoption and support, to which the older, Frye-related standard continues to apply, Missouri generally follows Daubert factors. See Mo. Rev. Stat. § 490.065; State v. Marshall, 596 S.W.3d 156 (Mo. Ct. App. 2020)

■ MONTANA

Follows Daubert only partially. An expert may offer opinion testimony if the testimony will assist the trier of fact and is reliable. M.R.E. 702; Cleveland v. Ward, 364 P.3d 1250 (Mont. 2016). When the introduction of novel scientific evidence is sought, Daubert applies. State v. Price, 171 P.3d 293 (Mont. 2007).

■ NEBRASKA

Follows Daubert and Kumho Tire. Schafersman v. Agland Coöb, 631 N.W.2d 862 (Neb. 2001); Neb. Rev. Stat. Ann. § 27-702.

■ NEVADA

Follows neither Daubert nor Frye. See Nev. Rev. Stat. § 50.275; Higgs v. State of Nevada, 222 P.3d 648 (Nev. 2010). Daubert factors may be examined but not mechanically applied. Id.

■ NEW HAMPSHIRE

Follows Daubert and Kumho Tire. N.H. R. Evid. 702; Baker Valley Lumber, Inc. v. Ingersoll-Rand Co., 813 A.2d 409 (N.H. 2002).

■ NEW JERSEY

Has not adopted expressly Daubert. Kemp ex rel. Wright v. State, 809 A.2d 77 (N.J. 2002). To be admissible as expert testimony: (1) the intended testimony must concern a subject matter that is beyond the ken of the average juror; (2) the field testified to 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 intended testimony. Hisenaj v. Kuehner, 942 A.2d 769 (N.J. 2008) (applying N.J.R.E. 702). The Daubert factors are helpful, but not necessary or definitive, in guiding courts. In re Accutane Litigation, 191 A.3d 560 (N.J. 2018). In criminal cases, courts apply Frye. State v. Cassidy, 197 A.3d 86 (N.J. 2018).

■ NEW MEXICO

Daubert followed with respect to scientific evidence. State v. Alberico, 861 P.2d 192 (N.M. 1993); 11-702 NMRA. Kumho Tire not followed; Daubert factors do not apply to non-scientific testimony. Acosta v. Shell W. Exploration & Prod., 370 P.3d 761 (N.M. 2016).

■ NEW YORK

Follows Frye. Kelly v. Metro-North Commuter R.R., 902 N.Y.S.2d 78 (N.Y. App. Div. 2010); People v. Wesley, 633 N.E.2d 451 (N.Y. 1994).

■ NORTH CAROLINA

Follows Daubert and Kumho Tire. N.C. Gen. Stat. § 8C-1, Rule 702; State v. McGrady, 787 S.E.2d 1 (N.C. 2016).

■ NORTH DAKOTA

Does not follow Daubert or Kumho Tire. N.D.R.E. 702 envisions generous allowance of the use of expert testimony if the witness is shown to have some degree of expertise in the field in which the witness is to testify. An expert need not be a specialist in a highly particularized field if the expert's knowledge, training, education, and experience will assist the trier of fact. A trial court has broad discretion to determine whether a witness is qualified as an expert and whether the witness' testimony will assist the trier of fact. State v. Hernandez, 707 N.W.2d 449 (N.D. 2005).

■ OHIO

Follows Daubert. Miller v. Bike Athletic Co., 687 N.E.2d 735 (Ohio 1998); Ohio Evid. R. 702.

■ OKLAHOMA

Follows Daubert and Kumho Tire. Christian v. Gray, 65 P.3d 591 (Okla. 2003); 12 Okl. Stat. § 2702.

■ OREGON

Applies a Daubert-like test, first articulated in State v. Brown, 687 P.2d 751 (Or. 1984), to analyze the admissibility of expert scientific evidence. State v. O'Key, 899 P.2d 663 (Or. 1995); Or. Rev. Stat. § 40.410 (Rule 702).

■ PENNSYLVANIA

Follows Frye. The Frye test, which is premised on the rule of "general acceptance," is more likely to yield uniform, objective, and predictable results among the courts, than is the application of the Daubert standard, which calls for a balancing of several factors. Grady v. Frito-Lay, Inc., 839 A.2d 1038 (Pa. 2003); Pa. R.E. 702.

■ RHODE ISLAND

Follows Daubert and Kumho Tire pursuant to R.I. R. Evid. Art. VII, Rule 702 and Raimbeault v. Takeuchi Mfg. (U.S.), Ltd., 772 A.2d 1056 (R.I. 2001).

■ SOUTH CAROLINA

Does not follow Daubert or Frye but the analysis that the court uses is very similar to the Daubert test. Factors for the admission of scientific expert testimony are: (1) the publication and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. State v. Council, 515 S.E.2d 508 (S.C. 1999); Rule 702, SCRE. Non-scientific expert testimony is not subject to the Council factors. State v. White, 676 S.E.2d 684 (S.C. 2009). However, the expertise, reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony, and generally, a witness's expert status will be determined prior to determining the reliability of the testimony. State v. Tapp, 728 S.E.2d 468 (S.C. 2012); Graves v. CAS Med. Sys., 735 S.E.2d 650 (S.C. 2012).

■ SOUTH DAKOTA

Follows Daubert. S.D. Codified Laws § 19-19-702 (eff. Jan. 1, 2016); see State v. Johnson, 860 N.W.2d 235 (S.D. 2015).

■ TENNESSEE

Daubert not adopted, but Daubert factors are helpful in applying Tenn. R. Evid. 702. McDaniel v. CSX Transp., Inc., 955 S.W.2d 257 (Tenn. 1997). Rule 702's requirement that that the witness's knowledge must "substantially" assist the trier of fact sets a higher admissibility standard than Federal Rule 702. State v. Scott, 275 S.W.3d 395 (Tenn. 2009); Tenn. R. Evid. 702.

■ TEXAS

Follows Daubert. Tex. Evid. R. 702; Merrell Dow Pharm. v. Havner, 953 S.W.2d 706 (Tex. 1997); see Ashby v. State, 527 S.W.3d 356 (Tex. Ct. App. 2017) (citing Daubert).

■ UTAH

Daubert is helpful but not followed. Gunn Hill Dairy Properties, LLC v. Los Angeles Dept. of Water & Power, 269 P.3d 980 (Utah Ct. App. 2012). Utah follows its own test for admissibility. Expert testimony is admissible if there is a threshold showing that the principles or methods underlying in the testimony: 1) are reliable; 2) are based upon sufficient facts or data; and 3) have been reliably applied to the facts. The required threshold showing is satisfied if the underlying principles or methods, including the sufficiency of facts or data and the manner of their application to the facts of the case, are generally accepted by the relevant scientific community. Utah R. Evid. 702; Brewer v. Denver & Rio Grande Western R.R., 31 P.3d 557 (Utah 2001).

■ VERMONT

Follows Daubert. V.R.E. Rule 702; 985 Associates, Ltd. v. Daewoo Electronics America, Inc., 945 A.2d 381 (Vt. 2008).

■ VIRGINIA

Does not follow either Frye or Daubert. Instead, Virginia follows its own set of rules and precedent. John v. Im, 559 S.E.2d 694 (Va. 2002); Va. Code Ann. § 8.01-401.3. Expert testimony is inadmissible if it is speculative or founded on assumptions that have an insufficient factual basis. Such testimony is also inadmissible when an expert has failed to consider all variables bearing on the inferences to be drawn from the facts observed. John.

■ WASHINGTON

Follows Frye and rejects Daubert. State v. Copeland, 922 P.2d 1304 (Wash. 1996); Wash. ER 702.

■ WEST VIRGINIA

Follows Daubert to assess scientific evidence. Anstey v. Ballard, 787 S.E.2d 864 (W.Va. 2016); Wilt v. Buracker, 443 S.E.2d 196 (W.Va. 1993); W.V.R.E. 702. Non-scientific testimony is assessed under W.V.R.E. 702. Anstey.

■ WISCONSIN

Follows Daubert. State v. Jones (In re Jones), 911 N.W.2d 97 (Wis. 2018); Wis. Stat. Ann. § 907.02.

■ WYOMING

Follows Daubert and Kumho Tire. Bunting v. Jamieson, 984 P.2d 467 (Wyo. 1999); W.R.E. Rule 702.

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