

50 State Survey of Applicability of *Daubert*

Andrew B. Flake, Esq.

Arnall, Golden & Gregory LLP
171 17th Street, NW
Suite 2100
Atlanta, GA 30363

Eric R. Harlan, Esq.

Shapiro, Sher, Guinot & Sandler PA
36 South Charles St. Suite 2000
Baltimore, MD 21201

James A. King, Esq.

Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, Ohio 43215-6194

Rules of Evidence and Tests Applied by States Summary Table

State	Rule of Evidence	Test Applied
Alabama	Ala. R. Evid. Rule 702	<i>Daubert</i> for DNA; <i>Frye</i> for all else
Alaska	Alaska R. Evid. 702	<i>Daubert</i>
Arizona	Ariz. R. Evid. R. 702	<i>Frye</i>
Arkansas	A.R.E. 702	<i>Daubert</i>
California	Cal. Evid. Code §720	<i>Kelly/Frye</i>
Colorado	C.R.E. 702	<i>Daubert</i>
Connecticut	Conn. Code Evid. §7-2	<i>Daubert</i>
D.C.	N/A	<i>Frye</i>
Delaware	Del. Uniform R. Evid. 702	<i>Daubert</i>
Florida	Fla. Stat. § 90.702	<i>Frye</i>
Georgia	O.C.G.A. § 24-9-67.1	<i>Daubert</i>
Hawaii	Haw. Rev. Stat. Ann. § 702	Some <i>Daubert</i> factors
Idaho	I.R.E. Rule 702	<i>Daubert</i>
Illinois	There is no substantial equivalent to Fed. R. Evid. 702	<i>Frye</i>
Indiana	Ind. R. Evid. 702	<i>Daubert</i>
Iowa	Iowa R. Evid. 702	<i>Daubert</i>
Kansas	K.S.A. § 60-456	<i>Frye</i>
Kentucky	Ky. R. Evid. 702	<i>Daubert</i>
Louisiana	La. C.E. Art. 702	<i>Daubert</i>
Maine	Me. R. Evid. 702	Some <i>Daubert</i> factors
Maryland	Md. R. Evid. 5-702	<i>Frye</i>

Massachusetts	N/A	<i>Daubert</i>
Michigan	Mich. R. Evid. 702	<i>Daubert</i>
Minnesota	Minn. R. Evid. 702	<i>Frye/Mack</i>
Mississippi	Miss. R. Evid. Rule 702	<i>Daubert</i>
Missouri	Mo. Rev. Stat. § 490.065(1)	Unique Test for Civil; <i>Frye</i> criminal
Montana	Mont. R. Evid. 702	<i>Daubert</i>
Nebraska	Neb. Rev. Stat. § 27-702	<i>Daubert</i>
Nevada	Nev. Rev. Stat. Ann. §50.275	<i>Daubert</i> “may provide persuasive authority”
New Hampshire	N.H. R. Evid. 702	<i>Daubert</i> (although NH cts. have applied <i>Frye</i> to DNA evidence)
New Jersey	N.J. R. Evid. 702	<i>Daubert</i> for toxic tort cases, certain medical causation cases, <i>Frye</i> other civil cases; <i>Frye</i> for criminal
New Mexico	N.M. R.E. 11-702	<i>Daubert</i>
New York	N.Y. C.P.L.R. §4515	<i>Frye</i>
North Carolina	N.C. Gen. Stat. § 8C-1	Some <i>Daubert</i> factors
North Dakota	N.D. R. Evid. 702	<i>Frye</i>
Ohio	Ohio R. Evid. 702	<i>Daubert</i>
Oklahoma	12 Okl. St. § 2702	<i>Daubert</i>
Oregon	Oregon R. Evid. 40.410	Applies a multi-factor test that includes the <i>Daubert</i> factors
Pennsylvania	Penn. R. Evid. 702	<i>Frye</i>
Rhode Island	RI R. Evid. 702	<i>Daubert</i>
South Carolina	Rule 702, SCRE	<i>Daubert</i> factors
South Dakota	S.D. R. Evid. 702 (SDCL § 19-15-2)	<i>Daubert</i>
Tennessee	Tenn. R. Evid. Rule 702	<i>Daubert</i> factors
Texas	Tex. Evid. R. 702	Some <i>Daubert</i> factors
Utah	Utah R. Evid. Rule 702	Unique Test
Vermont	Vermont R. of Evid. 702	<i>Daubert</i>
Virginia	Va. Code Ann. §8.02-401.1	Unique Test
Washington	Wash. R. Evid. 702	<i>Frye</i>
West Virginia	W. Va. R. Evid. 702	<i>Daubert</i>
Wisconsin	Wis. Stat. Ann. § 907.02	Unique test
Wyoming	Wyo. R. Evid. 702	<i>Daubert</i>