

I'm Derek Stikeleather of the Goodell DeVries law firm in Baltimore. I'd like to briefly explain how Maryland came to have two standards for expert testimony and how these standards relate to the *Daubert* standard that is used in most American courts.

In Maryland, judges currently apply both a traditional indirect test and a modern direct test to assess the reliability and admissibility of expert testimony. The *Frye-Reed* test *indirectly* asks if an opinion is “generally accepted” in the relevant scientific community. Maryland Rule 5-702 *directly* asks if the opinion has a “sufficient factual basis.”

Traditionally, judges weighed reliability by considering whether those in the expert's relevant field accepted the expert or opinion.ⁱ This *Frye* test, which Maryland adopted in 1978,ⁱⁱ used general acceptance by other experts as a rough proxy for reliability.ⁱⁱⁱ

But in the last few decades, all federal and most state courts have stopped using indirect tests and now *directly* ask whether the expert testimony is based upon sufficient facts or data and the product of reliable principles and methods and whether the witness has applied the principles and methods reliably to the facts.^{iv}

This transition stems from the Supreme Court's 1993 *Daubert* opinion, which explained that Rule 702 does not require general acceptance and that a trial judge—acting as a “gatekeeper”—must directly assess the reliability of every opinion.^v In 2000, Rule 702 was revised to incorporate the holdings from the *Daubert* trilogy and that same language from revised Rule 702 is reflected in the bill before the committee today.

Maryland enacted its own version of Rule 702 in 1994.^{vi} Like the federal rule, Rule 5-702 instructs judges to directly assess reliability—most notably, by deciding whether a “sufficient factual basis exists to support” the expert testimony.” But the rule does not track the language in the federal rule, and Maryland has not expressly adopted *Daubert*. Doing so here would clarify the controlling standard and focus judges on what matter most: reliability.

ⁱ *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

ⁱⁱ *Reed v. State*, 283 Md. 374, 381, 391 A.2d 364 (1978).

ⁱⁱⁱ *See Frye*, 293 F. at 1807.

^{iv} F.R.E. 702.

^v *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, [509 U.S. 579](#), 589, 597 (1993).

^{vi} *Burrall v. State*, [352 Md. 707, 717, 724 A.2d 65](#) (1999).