

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 1178 OF 1995
HOUSE BILL 1171

4 **By: Representatives Northcutt, M. Wilson, and Ferrell**

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For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED § 9-10-108 TO
9 AUTHORIZE TRIAL COURTS IN PATERNITY ACTIONS TO ORDER
10 SCIENTIFIC TESTING FOR PATERNITY WHEN A *PARENT* IS DECEASED
11 OR UNAVAILABLE; AND FOR OTHER PURPOSES."

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Subtitle

14 "TO AMEND A.C.A. § 9-10-108 TO AUTHORIZE
15 TRIAL COURTS IN PATERNITY ACTIONS TO
16 ORDER SCIENTIFIC TESTING FOR PATERNITY
17 WHEN A *PARENT* IS DECEASED OR
18 UNAVAILABLE."

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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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22 SECTION 1. Arkansas Code Annotated § 9-10-108 is hereby amended to read
23 as follows:

24 "9-10-108. Paternity test.

25 (a) (1) Upon motion of either party in a paternity action, the trial
26 court shall order that the putative father, mother, and child submit to
27 scientific testing for paternity, which may include deoxyribonucleic acid
28 (DNA) testing, to determine whether or not the putative father can be excluded
29 as being the biological father of the child and to establish the probability
30 of paternity if the testing does not exclude the putative father.

31 (2) Upon motion of either party in a paternity action, when the
32 mother is deceased or unavailable, the trial court shall order that the
33 putative father and child submit to scientific testing for paternity, which
34 may include deoxyribonucleic acid (DNA) typing, to determine whether or not
35 the putative father can be excluded as being the biological father of the
36 child and to establish the probability of paternity if the testing does not

1 exclude the putative father. If a maternal relative is available and willing
2 to participate in paternity testing, the trial court shall include such
3 maternal relative within its order for paternity testing.

4 (3) *Upon motion of either party in a paternity action, when the*
5 *father is deceased or unavailable, the trial court shall order that the mother*
6 *and child submit to scientific testing for paternity, which may include*
7 *deoxyribonucleic acid (DNA) typing, to determine whether or not the putative*
8 *father can be excluded as being the biological father of the child and to*
9 *establish the probability of paternity if the testing does not exclude the*
10 *putative father. If a paternal relative is available and willing to*
11 *participate in paternity testing, the trial court shall include such paternal*
12 *relative within its order for paternity testing.*

13 (4) The tests shall be made by a duly qualified expert or experts
14 to be appointed by the court.

15 (5) (A) A written report of the test results prepared by the duly
16 qualified expert conducting the test, or by a duly qualified expert under
17 whose supervision or direction the test and analysis have been performed,
18 certified by an affidavit duly subscribed and sworn to by him or her before a
19 notary public, may be introduced in evidence in paternity actions without
20 calling the expert as a witness unless a motion challenging the test
21 procedures or results has been filed within thirty (30) days of the trial on
22 the complaint and bond posted in an amount sufficient to cover the costs of
23 the duly qualified expert to appear and testify.

24 (B) (i) If contested, documentation of the chain of custody
25 of samples taken from test subjects in paternity testing shall be verified by
26 affidavit of one (1) person witnessing the procedure or extraction, packaging,
27 and mailing of said samples and by one (1) person signing for said samples at
28 the place where same are subject to the testing procedure.

29 (ii) Submission of the affidavits along with the
30 submission of the test results shall be competent evidence to establish the
31 chain of custody of these specimens.

32 (6) If the results of the paternity tests establish a ninety-five
33 percent (95%) or more probability of inclusion that the putative father is the
34 biological father of the child and, after corroborating testimony of the
35 mother in regard to access during the probable period of conception, such

1 shall constitute a prima facie case of establishment of paternity and the
2 burden of proof shall shift to the putative father to rebut such proof.

3 (7) *If the results of the paternity tests conducted pursuant to*
4 *subsection (a) (2) of this section establish a ninety-five percent (95%) or*
5 *more probability of inclusion that the putative father is the biological*
6 *father of the child, after corroborating testimony concerning the conception,*
7 *birth, and history of the child, such shall constitute a prima facie case of*
8 *establishment of paternity, and the burdon of proof shall shift to the*
9 *putative father to rebut such proof.*

10 (8) Whenever the court orders scientific testing for paternity and
11 one (1) of the parties refuses to submit to the testing, that fact shall be
12 disclosed upon the trial and may be considered civil contempt of court.

13 (9) The costs of the scientific testing for paternity and witness
14 fees shall be taxed by the court as other costs in the case.

15 (10) Whenever it shall be relevant to the prosecution or the
16 defense in a paternity action, scientific testing for paternity which excludes
17 third parties as the biological father of the child may be introduced under
18 the same requirements as set out in this section.

19 (b) The appearance of the name of the father, with his consent, on the
20 certificate of birth, the social security account number of the alleged father
21 filed, with his consent, with the Division of Vital Records of this state
22 pursuant to § 20-18-407, a certified copy of such certificate or records, on
23 which the name of the alleged father was entered with his consent, from the
24 vital records department of another state, or the registration of the father,
25 with his consent, in the putative father registry of this state pursuant to
26 § 20-18-702 shall constitute a prima facie case of establishment of paternity,
27 and the burden of proof shall shift to the putative father to rebut such in a
28 proceeding for paternity establishment."

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30 SECTION 2. All provisions of this act of a general and permanent nature
31 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
32 Revision Commission shall incorporate the same in the Code.

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34 SECTION 3. If any provision of this act or the application thereof to
35 any person or circumstance is held invalid, such invalidity shall not affect

1 other provisions or applications of the act which can be given effect without
2 the invalid provision or application, and to this end the provisions of this
3 act are declared to be severable.

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5 SECTION 4. All laws and parts of laws in conflict with this act are
6 hereby repealed.

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8 /s/Rep. Northcutt, et al

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10 APPROVED: 4-11-95

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