

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

# A Bill

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

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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  
23 read as follows:

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"9-10-108. Paternity test.

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

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

1 child and to establish the probability of paternity if the testing does not  
2 exclude the putative father. If a maternal relative is available and willing  
3 to participate in paternity testing, the trial court shall include such  
4 maternal relative within its order for paternity testing.

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

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

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

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

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

33           (6) If the results of the paternity tests establish a ninety-five  
34 percent (95%) or more probability of inclusion that the putative father is  
35 the biological father of the child and, after corroborating testimony of the

1 mother in regard to access during the probable period of conception, such  
2 shall constitute a prima facie case of establishment of paternity and the  
3 burden of proof shall shift to the putative father to rebut such proof.

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

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

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

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

20           (b) The appearance of the name of the father, with his consent, on the  
21 certificate of birth, the social security account number of the alleged  
22 father filed, with his consent, with the Division of Vital Records of this  
23 state pursuant to § 20-18-407, a certified copy of such certificate or  
24 records, on which the name of the alleged father was entered with his  
25 consent, from the vital records department of another state, or the  
26 registration of the father, with his consent, in the putative father registry  
27 of this state pursuant to § 20-18-702 shall constitute a prima facie case of  
28 establishment of paternity, and the burden of proof shall shift to the  
29 putative father to rebut such in a proceeding for paternity establishment."  
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31           SECTION 2. All provisions of this act of a general and permanent  
32 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
33 Code Revision Commission shall incorporate the same in the Code.

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35           SECTION 3. If any provision of this act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect  
2 other provisions or applications of the act which can be given effect without  
3 the invalid provision or application, and to this end the provisions of this  
4 act are declared to be severable.

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

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*/s/Rep. Northcutt, et al*

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