

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

HOUSE BILL 1792

5 By: Representative Gazaway  
6 By: Senator B. Ballinger  
7

## For An Act To Be Entitled

9 AN ACT CONCERNING THE COMPETENCY OF A PERSON AWAITING  
10 EXECUTION FOR A CAPITAL OFFENSE; AND FOR OTHER  
11 PURPOSES.  
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## Subtitle

15 CONCERNING THE COMPETENCY OF A PERSON  
16 AWAITING EXECUTION FOR A CAPITAL OFFENSE.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code § 16-90-506(d), concerning the competency of  
22 a person awaiting an execution for a capital offense, is amended to read as  
23 follows:

24 (d)(1)(A)(i)(a) When an individual under sentence of death, whose  
25 execution date has been set by the Governor, believes that he or she is not  
26 competent to be executed, the individual or his or her attorney may inform  
27 the Director of the Department of Correction in writing and shall provide any  
28 supporting evidence he or she wishes to be considered.

29 (b) The Director of the Department of  
30 Correction shall consider any evidence offered by the individual or his or  
31 her attorney in making a determination of competency under subdivision  
32 (d)(1)(A)(ii) of this section.

33 (ii) When the Director of the Department of  
34 Correction is satisfied that there are reasonable grounds for believing that  
35 an individual under sentence of death is not competent, due to mental  
36 illness, to rationally understand the nature and reasons for that punishment,



1 the Director of the Department of Correction shall notify the Deputy Director  
2 of the Division of Aging, Adult, and Behavioral Health Services of the  
3 Department of Human Services.

4 ~~(ii)~~(iii) The Director of the Department of  
5 Correction shall also notify the Governor of this action.

6 ~~(iii)~~(iv) The Division of Aging, Adult, and  
7 Behavioral Health Services of the Department of Human Services shall cause an  
8 inquiry to be made into the mental condition of the individual within thirty  
9 (30) days of receipt of notification.

10 ~~(iv)~~(v) The attorney of record of the individual  
11 shall also be notified of this action, and reasonable allowance will be made  
12 for an independent mental health evaluation to be made.

13 ~~(v)~~(vi) A copy of the report of the evaluation by  
14 the Division of Aging, Adult, and Behavioral Health Services of the  
15 Department of Human Services shall be furnished to the Mental Health Services  
16 Section of the Division of Health Treatment Services of the Department of  
17 Correction, along with any recommendations for treatment of the individual.

18 ~~(vi)~~(vii) All responsibility for implementation of  
19 treatment remains with the Mental Health Services Section of the Division of  
20 Health Treatment Services of the Department of Correction.

21 (B)(i) If, after an evidentiary hearing that comports with  
22 the Due Process Clause of the Fourteenth Amendment to the United States  
23 Constitution, over which the Director of the Department of Correction shall  
24 preside, the individual is found competent by the Director of the Department  
25 of Correction to rationally understand the nature of and reason for the  
26 punishment, the Governor shall be so notified and shall order the execution  
27 to be carried out according to law.

28 (ii) If the individual is found incompetent due to  
29 mental illness, the Governor shall order that appropriate mental health  
30 treatment be provided. The Director of the Department of Correction may order  
31 a reevaluation of the competency of the individual as circumstances may  
32 warrant.

33 (2) When the Director of the Department of Correction is  
34 satisfied that there are reasonable grounds for believing that a female  
35 convict under sentence of death is pregnant, he or she shall suspend the  
36 execution until it appears that she is not pregnant or until she has

1 delivered the child.

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