

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1792

By: Representative Gazaway
By: Senator B. Ballinger

For An Act To Be Entitled

AN ACT CONCERNING THE COMPETENCY OF A PERSON AWAITING
EXECUTION FOR A CAPITAL OFFENSE; AND FOR OTHER
PURPOSES.

Subtitle

CONCERNING THE COMPETENCY OF A PERSON
AWAITING EXECUTION FOR A CAPITAL OFFENSE.

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

SECTION 1. Arkansas Code § 16-90-506(d), concerning the competency of a person awaiting an execution for a capital offense, is amended to read as follows:

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

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

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



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

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

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

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

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

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

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

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

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

delivered the child.