**IN THE CIRCUIT COURT OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY, WEST VIRGINIA
SITTING AS A JUVENILE COURT**

**THE STATE OF WEST VIRGINIA,**

 ***Petitioner,***

**v. Case No:**

**, *Child*,**

**, *Mother,***

**, *Father,***

 ***Respondents.***

**MOTION FOR AN EVALUATION TO DETERMINE COMPETENCY, AND**

**APPOINTMENT OF A GAL**

Comes now the Child’s Counsel, \_\_\_\_\_\_\_\_\_\_\_, Esq., of the Public Defender Corporation, requesting that this Court order a forensic evaluation of the Child, \_\_\_\_\_\_, by a psychiatrist to determine if he is competent to stand trial, pursuant to Rule 26 of the West Virginia Rules of Juvenile Procedure and West Virginia Code § 27-6A-2 and 4, with costs for this evaluation to be paid for by the West Virginia Department of Health and Human Resources. Counsel further asks for a Guardian ad Litem be appointed due to his age. In support of these motions, Counsel avers the following information:

1. \_\_\_\_\_\_\_\_\_\_ is thirteen (13) years old having turned 13 on October 3, 2021.
2. W. Va. Code § 49-4-727(c), creates a rebuttable presumption that a child under the age of 14 years is incompetent unless judicially determined otherwise pursuant to the procedures set forth in W. Va. Code §§ 49-4-728 through 734.
3. Under W. Va. Code § 49-4-727(e), this Court is also required to appoint a Guardian ad Litem for the child for the purpose of the competency matter.
4. Although W. Va. Code § 49-4-727(c) only addresses Juvenile delinquency matters, there seems to be a hole in the statute where Status Offense Children of the same age and maturity as their delinquency counterparts are left unprotected is significantly similar situations. Juvenile Status Offense matters address 99 % of the same legal and constitutional rights as delinquency offenses and in certain circumstances the Court can have Jurisdiction over them up until the same amount of time.
5. These parallel tracks of cases that end up treating children extremely different under the new statute even though they are the same age and the added protections are based upon age alone, seemingly open up issues under the US Constitution’s 14th Amendment’s Equal Protection Clause.

WHEREFORE Counsel for the Child respectfully requests this Honorable Court order a forensic evaluation of \_\_\_\_\_\_\_\_ by a psychiatrist to determine if he is competent to stand trial, pursuant to Rule 26 of the West Virginia Rules of Juvenile Procedure and West Virginia Code § 27-6A-2 and 4, with costs for this evaluation to be paid for by the West Virginia Department of Health and Human Resources. Counsel further asks that the Court appoint a Guardian ad Litem and continue the November 5, 2021 Hearing.

Respectfully Submitted,

/S/ \_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ESQUIRE

WV STATE BAR # \_\_\_\_\_\_\_\_\_