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

**IN RE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, *Child, et.al***

 **DELIQUENCY CASE NO.**

**Motion To Treat Child As Incompetent Pursuant to W. VA. Code 49-4-727**

On this 25th day of May, 2021, comes the Child’s Counsel, \_\_\_\_\_\_\_\_\_\_\_\_\_, Esq., of the Public Defender Corporation and hereby moves this Honorable Court to threat the child as presumed incompetent due to their age pursuant to W. Va. Code 49-4-727 and as such appoint a Guardian ad Litem and set a hearing to address the question of competency. Alternatively, if the State does wish to go forward with competency proceedings, the petition should be dismissed.

In support of this motion, the Child’s Counsel avers the following:

1. Juvenile code, 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.
2. The state has the burden to rebut this presumption by establishing the child’s competency by a preponderance of the evidence.
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. The child is 13 years old and falls under the language of W. Va. Code 49-4-727.
5. Alternatively, if the State does not wish to continue the case and move forward with competency proceedings and the appointment of a Guardian ad Litem, then the petition should be dismissed.

WHEREFORE, Counsel for the Child hereby respectfully requests that this Court treat the child as incompetent due to their age pursuant to W. Va. Code 49-4-727 and as such appoint a Guardian ad Litem and set a hearing to address the question of competency.

 Respectfully Submitted,

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

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

Public Defender Corporation

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