

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

IN THE MATTER OF: _____-JD-_____

Juvenile Respondent

**ORDER FOR JUVENILE COMPETENCY EVALUATION & APPOINTMENT OF
GUARDIAN AD LITEM**

On the ____ day of _____, 20__, came the Juvenile Respondent,
by and through his/her counsel, _____, and the Assistant
Prosecuting Attorney, by and through its counsel, _____, pursuant to the
motion of _____ for an order of this Court for a forensic
evaluation regarding the Juvenile Respondent’s competency before the Juvenile
Respondent can be adjudicated.

W. Va. Code §49-4-727 (c) provides:

In any delinquency proceeding pursuant to this article, if the juvenile is under
14 years of age, there exists a rebuttable presumption that he or she is
incompetent to proceed beyond the stage of the proceeding resolving the issue
of competency, unless judicially determined to be competent pursuant to the

procedures set forth in §49-4- 728 through §49-4-734 of this code. The state has the burden of proof to rebut this presumption by showing competency by a preponderance of the evidence.

W.Va. Code § 49-4-727(e) further provides:

If and when the issue of a juvenile's competency is raised under subsection (a) of this section or, a rebuttable presumption of incompetency exists under subsection (c) of this section, the court shall appoint a guardian ad litem for the juvenile.

The Court hereby **FINDS** that the Juvenile Respondent, who is _____ years of age, is statutorily entitled to undergo a forensic competency evaluation before being adjudicated.

The Court further **FINDS** that a qualified forensic evaluator as defined by W.Va. Code §49-4-728 should be appointed to perform a forensic competency evaluation of the Juvenile Respondent.

The Court further **FINDS** that a guardian *ad litem* should be appointed for the Juvenile Respondent.

Accordingly, the Court hereby **ORDERS** that the Juvenile Respondent shall undergo a forensic competency evaluation at _____, which is the least restrictive setting.

The Court further **ORDERS** that _____, a qualified forensic evaluator, shall perform the forensic competency evaluation of the Juvenile Respondent. The qualified forensic evaluator shall have access to all relevant confidential and public records related to the Juvenile Respondent, including competency evaluations and reports conducted in prior delinquent proceedings in accordance with W.Va. Code §49-4-729(c)(1).

The Court further **ORDERS** that within five judicial days after the entry of this Order, the prosecutor shall deliver to the qualified forensic evaluator copies of relevant police reports and other background information relevant to the Juvenile Respondent that are in the prosecutor's possession in accordance with W.Va. Code §49-4-729(c)(2).

The Court further **ORDERS** that within five judicial days after the entry of this Order, the Juvenile Respondent's attorney shall deliver to the qualified forensic evaluator copies of police reports and other records including, but not limited to, educational, medical, psychological, and neurological records that are relevant to the evaluation and that are in the attorney's possession in accordance with W.Va. Code §49-4-729(c)(3).

The Court further **ORDERS** that the qualified forensic evaluator shall file with the Court his/her written competency evaluation report of the Juvenile Respondent

within 30 days after the entry of this Order, absent good cause for an extension, in accordance with W.Va. Code §49-4-731(a).

The Court further **ORDERS** that the qualified forensic evaluator in his/her written competency evaluation report shall address (1) the evaluator's opinion as to whether or not the Juvenile Respondent, due to developmental disability, intellectual disability, or mental illness, has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and (2) whether the Juvenile Respondent has a rational as well as factual understanding of the proceedings against him or her. The report shall not include the evaluator's opinion as to whether the Juvenile Respondent committed the alleged offense or recite or reference any self-incriminating or inculpatory statements that may be reported by the Juvenile Respondent. *Id.*

Pursuant to W.Va. Code §49-4-731(b), the Court further **ORDERS** that the qualified forensic evaluator shall address the following regarding the Juvenile Respondent in his/her written competency evaluation report:

- (1) A statement of the procedures used, including psychometric tests administered, records reviewed, and the identity of persons interviewed;
- (2) Pertinent background information, including a history of educational performance, psychiatric or psychological history, developmental and family history;
- (3) Results of the mental status examination;

(4) A diagnosis, if one has been made, which shall address any psychological or psychiatric conditions or cognitive deficiencies determined to exist; and

(5) An opinion as to the Juvenile Respondent's developmental maturity or developmental immaturity as defined by W.Va. Code §49-4-728 as it would affect his or her ability to proceed.

Pursuant to W. Va. Code § 49-4-731(c), and if the qualified forensic evaluator determines that the Juvenile Respondent is not competent to participate in the proceedings, the Court further **ORDERS** the evaluator to address the following questions in his/her written competency evaluation report:

(1) Whether the Juvenile Respondent has a developmental disability, intellectual disability, or mental illness as defined by W.Va. Code §49-4-728;

(2) Whether the Juvenile Respondent has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding;

(3) Whether the Juvenile Respondent has a rational as well as factual understanding of the proceedings against him or her; and

(4) Whether the Juvenile Respondent can attain competency in the foreseeable future if provided with a course of treatment, therapy, or training.

Pursuant to W. Va. Code § 49-4-731(d), and if the qualified forensic evaluator determines that the Juvenile Respondent is incompetent but that there is a reasonable probability that the Juvenile Respondent can attain competency by his

19th birthday, the Court further **ORDERS** the qualified forensic evaluator to include in his/her written competency evaluation report the following recommendations:

- (1) A recommendation as to the treatment or therapy; and
- (2) The least restrictive setting for juvenile competency attainment services consistent with the Juvenile Respondent's ability to attain competency and the safety of both the juvenile and the public.

Pursuant to W.Va. Code §49-4-731(f), the Court further **ORDERS** that, upon receipt of an original invoice and a court order with a raised seal of the Clerk of this Court, the West Virginia Department of Health and Human Resources' Office of Health Facilities shall pay or cause to be paid pay the qualified forensic evaluator for all matters related to conducting the competency evaluation of the Juvenile Respondent consistent with the Department's rate schedule and that reasonably compensates the qualified forensic evaluator for the work performed by the evaluator in this case. The original invoice, a copy of the evaluation, and the court order shall be forwarded to William R. Sharpe, Jr. Hospital, Attn: Business Manager at 936 Sharpe Hospital Road, Weston, WV 26452.

The Court further **ORDERS** that the Clerk of the Court to forward copies of this Order to the counsel of record and the qualified forensic evaluator listed above.

Entered this _____ day of _____, 20__.

Judge

Assistant Prosecuting Attorney

Address

Telephone and Fax

WV State Bar ID #

Counsel for Juvenile Respondent

Address

Telephone and Fax

WV State Bar ID #