

IN THE CIRCUIT COURT OF _____ COUNTY WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff

V

CASE NO.: _____

_____ ,

Defendant

ORDER FOR CHILD TESTIMONY

On a previous day came the defendant, by and through his counsel, _____, and moved this Court to Order directing the alleged victim, _____, to undergo an evaluation to determine the manner in which the child should testify, in light of Rules 601 and 611 of the Rules of evidence and pursuant to West Virginia Code 62-6B-1 et seq.

WHEREUPON, the Court accordingly **ORDERS, ADJUDGES, and DECREES** as follows:

1. An evaluation of the child, _____, shall be conducted to determine whether the witness would be able to testify in open court; in the Defendant's presence, and in the presence of a jury, or, in the alternative, whether the testimony of the child witness must be taken at trial through the use of live, closed-circuit television.
2. That the evaluation shall be conducted, as an advisor to the Court, by Dr. Edward Baker, a qualified forensic licensed psychologist, of Fremouw, Sigley & Baker Psychological Associates, as defined pursuant to W.Va. Code 62-6B-3, whose business address is 1445 Stewartstown Rd, Suite 200, Morgantown, WV 26505.
3. That Dr. Baker shall provide a written and signed report of the examination and recommendations to be filed in triplicate with the Clerk of the Circuit Court of _____ County, West Virginia, for distribution to the Court and the attorneys of record.

The evaluation shall recommend whether:

- a. The child is otherwise a competent witness in light of Rule 601 of the Rules of Evidence;

- b. That, absent the use of live, closed-circuit television the child witness will be unable to testify due solely to being required to be in the physical presence of the Defendant, while testifying;
 - c. The child witness can only testify if live, two-way closed-circuit television is used in the trial, and in regard to the issue of closed-circuit television testimony, W.Va. Code 62-6B states as follows:
 - i. (d) In determining whether to allow a child witness to testify through live, closed-circuit television the court shall appoint a psychiatrist or a licensed psychologist with at least five years clinical experience who shall serve as an advisor or friend of the Court to provide the Court with an expert opinion as to whether, to a reasonable degree of professional certainty, the child witness will suffer severe emotional harm, be unable to testify based solely on being in the physical presence of the Defendant while testifying and that the child witness does not evidence signs of being subjected to undue influence or coercion.
4. That the parties shall ensure that any information relevant to the evaluation shall be sent to Dr. Baker within ten (10) days of this order, including, but not limited to:
- a. A copy of the warrant or indictment;
 - b. Information pertaining to the alleged crime, including the statements by the witness made to police, investigative reports and transcripts of preliminary hearings, if any;
 - c. Any available psychiatric, psychological, medical, or social records that are considered relevant;
 - d. Any interviews of the child, even if subject to confidentiality requirements of West Virginia Code 61-6B-6. The doctor **SHALL NOT** be permitted to copy any of the materials or otherwise redisclose the interviews and related documents received in this manner.
5. That Dr. Baker may release this order to other mental health facilities and professionals for the purpose of obtaining witness' mental health records. This Court finds any mental health records requested by Dr. Baker are sufficiently relevant to the proceedings before the court to outweigh the importance of maintaining the confidentiality established by West Virginia Code 27-3-1. This Court finds that good cause exists such that the public interest and need for disclosure outweighs the injury

to the patient, to the patient-physician relationship and to the treatment services pursuant 42 U.S.C.A. Section 290dd-2 and 42 C.F.R. Part 2. Therefore, this Court **ORDERS** that all facilities presented with this Order release witness mental health records to Dr. Baker who shall use them specifically for completing the examination ordered herein.

6. That upon receipt of an original invoice and a court order with a raised seal of the Circuit Clerk of _____ County, the West Virginia Supreme Court of Appeals, Administrative Office shall pay for the evaluation pursuant to West Virginia Trial Court Rules, Rule 35.05(c), at a reasonable rate requested by the qualified psychologist. Said psychologist has set the fee for these evaluations as One Thousand Five Hundred Dollars (\$1500.00). The original invoice, a copy of the evaluation, and this Court Order shall be forwarded to the West Virginia Supreme Court of Appeals, Administrative Office at 1900 Kanawha Blvd., E, Building 1, Room E100, Charleston, WV 25305. The Court orders the Circuit Clerk to forward an attested copy of this Order to the counsel of record, the _____ County Department of Health and Human Resources and to Dr. Baker whose address is listed above, in addition to all parties of record.

It is so **ORDERED**.

ENTERED this _____ day of _____

JUDGE _____

Prepared by:

Approved by:
