IN THE CIRCUIT COURT OF [*county*] COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v. [*case number*]

Hon. [*name*]

[*name-all caps*],

 Defendant.

DEFENDANT’S INSTRUCTION NO. \_\_\_\_

 Count \_\_ of the indictment charges the defendant with Third Degree Sexual Assault.

Third Degree Sexual Assault occurs when a person engages in [sexual intercourse] [sexual intrusion] with another person who is mentally defective or mentally incapacitated.

 Therefore, for you to find the defendant guilty, you must be convinced that the State has overcome the defendant’s presumption of innocence and has proven the following beyond a reasonable doubt:

1. the defendant,

2. on or about the \_\_ day of [insert month], [insert year],

3. in [insert county] County, West Virginia;

4. engaged in

a. sexual intercourse

b. sexual intrusion

5. with [insert name(s) of victim(s)],

6. who was incapable of carefully evaluating the risk or of controlling [his] [her] conduct at the time the act occurred.

 If, after impartially considering, weighing and comparing all the evidence (that of both the State and the defendant), you are convinced beyond a reasonable doubt of the truth of the charge as to each of these elements, you may find the defendant guilty as charged in Count \_\_ of the indictment. If you have a reasonable doubt of the truth of the charge as to any one or more of these elements, you shall find the defendant not guilty.

GIVEN:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

REFUSED:\_\_\_\_\_\_\_\_\_\_\_\_\_

MODIFIED:\_\_\_\_\_\_\_\_\_\_\_\_

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 JUDGE