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. \_\_\_\_

 One of the essential elements of Third Degree Sexual Assault is that the act must have occurred while the alleged victim, [insert name(s) of victim(s)], was mentally defective or mentally incapacitated.

 “Mentally defective,” for purposes of this case, means the alleged victim was unable to understand the distinctively sexual nature of the conduct or was unable to understand or exercise the right to refuse to participate in the sex act because of a marked intellectual disability, or mental illness, incompetency, condition, or disease.

 “Mentally incapacitated”, for purposes of this case, means the alleged victim was unable to understand the distinctively sexual nature of the conduct or was unable to understand or exercise the right to refuse to participate in the sex act because of intoxication where the intoxicating substance was forcibly administered to that person in some manner.

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

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

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

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 JUDGE