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, being sixteen years old or more, engages in [sexual intercourse] [sexual intrusion] with another person who is: (1) both less than 16 years old and is at 4 years younger than the defendant, and (2) is not married to the defendant.

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

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

2. in [insert county] County, West Virginia,

3. the defendant,

4. who was sixteen years old or older,

5. engaged in

a. sexual intercourse

b. sexual intrusion

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

7. who was less than sixteen years of age,

8. and who was at least 4 years younger than the defendant,

9. and who was not married to the defendant.

 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