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 First Degree Sexual Abuse.

 First Degree Sexual Abuse occurs when a person subjects another person, who is physically helpless, to sexual contact.

 “Physically helpless” means that a person is unconscious or for any reason is physically unable to state his or her denial of consent.

 “Sexual contact,” for the purposes of this case, means any intentional touching, either directly or through clothing, of the breasts, buttocks, anus or any part of the sex organs of the alleged victim, or intentional touching of any part of the complainant's body by the actor's sex organs, where the alleged victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.

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

1. the defendant,

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

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

4. subjected [insert name(s) of victim(s)]

5. to sexual contact,

6. while [insert name(s) of victim(s)] was physically helpless.

 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