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 Second Degree Sexual Abuse.

Second Degree Sexual Abuse occurs when a person subjects a person who is mentally defective or mentally incapacitated to sexual contact.

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

 “Mentally defective” 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 as a result of marked intellectual disability, or mental illness, incompetency, condition, or disease.

 “Mentally incapacitated” means the alleged victim was temporarily 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 as a result of intoxication where the intoxicating substance was forcibly administered to that person without his or her consent, or as a result of some other act committed upon that person without his or her consent.

 Additionally, the Court instructs you that consent means agreement, approval, or permission regarding some act or purpose.

 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 [mentally defective] [mentally incapacitated].

 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