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. \_\_\_\_

 First Degree Sexual Assault may be based on the age difference between the parties. Specifically, when any person is 14 years old or older, and the other party is 11 years old or younger, and the two are not married, the age difference between the two parties is sufficient for First Degree Sexual Assault.

 The other elements of First Degree Sexual Assault also must be proven beyond a reasonable doubt. Specifically, the State must prove that the person 14 years or older engaged in either sexual intercourse or sexual intrusion with the person 11 years or younger.

 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 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. being fourteen 14 years of age or older;

5. engaged in

a. sexual intercourse or

b. sexual intrusion

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

7. who was 11 years old or less,

8. and the defendant was not married to [insert name(s) of victim(s)]

 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