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. \_\_\_\_

 The defendant has presented expert testimony that, at the time of the offense, [he] [she] was suffering from a mental disease or defect which rendered [him] [her] incapable of forming the mental state that is set forth as an element of the offense.

 The Court instructs you that a defendant who, because of a mental disease or defect, is unable to formulate a state of mind such as [insert applicable state of mind] required by law, then [he] [she] may be said to be suffering from “diminished capacity.” Such a finding means that the defendant is not guilty of the offense charged because this finding negates an essential element of the offense.

 In other words, the State has alleged in this case that the defendant, at the time of the offense, acted with [insert applicable mental state—premeditation, specific intent, malice, etc.]. You may consider, in light of all the evidence presented in the case, whether the defendant was, at the time of the alleged offense, incapable of forming the mental state required as an element of the offense charged in the indictment. If the defendant was not capable of forming the mental state required, you must find [him] [her] not guilty of the offense charged in the indictment [.] [insert, if applicable: and consider whether the [he] [she] is guilty of the offense of [insert lesser included offense that does not require such element].

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

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

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

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 JUDGE