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 introduced evidence that [he] [she] was under the influence of [alcohol] [drugs] at the time of the offense and was, therefore, unable to form the requisite mental state required as an element of the offense charged in Count \_\_ of the indictment.

 The Court instructs you that voluntary intoxication is generally not an excuse for a crime; however, where a certain state of mind is an essential element of the crime, the defendant is not guilty if, at the time [he] [she] commits the alleged offense, [he] [she] was so under the influence that [he] [she] was unable to form the requisite intent or mental status. Moreover, because the defendant is charged with having used a weapon in the commission of the offense charged, you must find that [he] [she] had no predisposition to commit the crime or to engage in aggressive anti-social conduct which the intoxication merely brought to the forefront.

 In this case, the defendant is charged with [insert offense]. One of the essential elements of this offense is [insert mental state required as an element of the offense]. The defendant contends that at the time of the alleged offense [he] [she] was unable to form the required [intent] [other mental state] required by law to be found guilty of the offense.

 If you find that the defendant was incapable of forming the required [intent] [other mental state], and that [he] [she] had no predisposition to commit the crime or to engage in aggressive anti-social conduct which the influence of the [alcohol] [drugs] simply brought to the forefront, then you must find [him] [her] not guilty of the offense charged in Count \_\_ of the indictment.

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

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

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

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 JUDGE