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 Malicious Assault of a Child Within 1,000 Feet of a School. You may return one of two verdicts under this this Count of the indictment:

(1) guilty of Malicious Assault of a Child within 1,000 Feet of a School; or

(2) not guilty.

 Malicious Assault of a Child within 1,000 Feet of a School occurs when a person maliciously shoots, stabs, cuts, wounds or by some other means causes bodily injury to a child within one thousand feet of a school with the intent to kill or permanently maim, disfigure or disable the other person. Malice is a legal term of art. It is the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will infer an evil intent, a condition of the mind showing a heart regardless of social duty and fatally bent on mischief.

 For the purposes of this charge, a “child” is a person 16 years of age or under.

 The burden is on the State to prove the defendant’s guilt beyond a reasonable doubt and the defendant is not required to prove [himself] [herself] innocent. [He] [She] is presumed by the law to be innocent of this charge and this presumption remains with [him] [her] throughout the entire trial. Before the defendant can be convicted of Malicious Assault of a Child within 1,000 feet of a school, the State must overcome the presumption the defendant is innocent and prove beyond a reasonable doubt that:

1. the defendant

2. in [insert county] County, West Virginia,

3. on or about the \_\_day of [insert month], [insert year],

4. did unlawfully and maliciously (cut) (stab) (wound) (shoot) (or describe other means) cause bodily injury to

5. [insert name(s) of victim(s)], who was a child sixteen years of age or under,

6. within one thousand feet of a school,

7. with the intent to permanently maim, permanently disfigure, permanently disable, or kill [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 of Malicious Assault of a Child Within 1,000 Feet of a School 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