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 Unlawful Restraint. You may return one of two verdicts under this Count of the indictment:

(1) guilty of Unlawful Restraint; or

(2) not guilty.

Unlawful Restraint occurs when a person, without legal authority, intentionally restrains another with the intent that the other person not be allowed to leave the place of restraint, and who does so by physical force or by overt or implied threat of violence or by actual physical restraint, but without the intent to obtain any other concession or advantage.

For the purposes of this charge, “restrain” means to restrict a person’s movement without his or her consent.

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 Unlawful Restraint, the State must overcome the presumption that 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. without legal authority to do so,

5. intentionally restrained [insert name(s) of victim(s)]

6. by [use of physical force] [an overt or implied threat of violence] [actual physical restraint],

7. with the intent that [insert name(s) of victim(s)] not be allowed to leave the place of restraint,

8. but without the intent to obtain a concession or advantage of any sort.

{[Insert, if applicable]: The defendant has put forth a defense that [he] [she] acted to protect [insert name(s) of victim(s)] from imminent physical danger. The defendant must show that [his] [her] action was reasonable and in good faith, and was done to protect [insert name(s) of victim(s)] from imminent physical danger.}

{Insert, if applicable]: The defendant has put forth a defense that [he] [she] had the legal authority to exercise control over [insert name(s) of victim(s)]. The defendant must show that:

1. [insert name(s) of victim(s)] was less than 18 years old; and

2. [(the defendant was a parent or legal guardian)

3. (the defendant was acting under authority granted by a parent or legal guardian)

4. (the defendant was acting under authority granted by a teacher or other school personnel who were themselves legally authorized to exercise control over the minor child)]

5. and [his] [her] sole purpose was to assume control of the minor child.}

The evidence introduced by the defendant on this defense does not need to be “beyond a reasonable doubt;” it must only be sufficient to require the State to prove beyond a reasonable doubt that [the defendant did not act to protect the minor child from imminent danger] [the defendant had legal authority to exercise control over the minor child.]}

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 defendant guilty as charged. 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:\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

JUDGE