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 Domestic Assault. You may return one of two verdicts under this Count of the indictment:

(1) guilty of Domestic Assault; or

(2) not guilty.

 Domestic Assault occurs when a person unlawfully attempts to commit a violent injury to another family or household member, or unlawfully commits an act which places the family or household member in reasonable apprehension of immediately receiving a violent injury.[[1]](#footnote-1)

 “Family member” or “Household member” means a current or former spouse, a current or former sexual or intimate partner, a person with whom the defendant has a child in common, a person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward, or a member of the defendant’s household at the time of the offense.[[2]](#footnote-2)

 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 Domestic Assault 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. unlawfully {attempted to commit a violent injury to [*insert* name(s) of victim(s)], who was a family or household member} {committed an act which placed [*insert* name(s) of victim(s)], a family or household member, in reasonable apprehension of immediately receiving a violent injury},

5. of which family or household the defendant was also a member.

 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 of Domestic Assault 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

1. W. Va. Code § 61–2–28(b) (LexisNexis Supp. 2017). [↑](#footnote-ref-1)
2. W. Va. Code §§ 61–2–28(e) (LexisNexis Supp. 2017) and 48–27–204 (2014). [↑](#footnote-ref-2)