

**380A DEFENDANT: PRESENCE NOT REQUIRED AT TRIAL<sup>1</sup>****[Before Trial**

The defendant has a right to appear in this matter. However, (name of defendant) is not appearing in this action at this time and has authorized (his) (her) attorney to act on (his) (her) behalf [with the permission of the court]<sup>2</sup>. (Name of defendant)'s absence should not be considered by you in any way and must not influence your verdict. You must base your decision solely on the evidence presented to you during the trial.]

**[Prior to Deliberation**

(Name of defendant) did not appear in this action. Instead, (name of defendant) was represented by (his) (her) attorney. Although this trial proceeded in (name of defendant)'s absence, (his) (her) absence should not be considered by you in any way, and it must not influence your verdict. You must base your decision solely on the evidence presented to you during the trial.]

**COMMENT**

This instruction was approved by the Committee in April 2024.

This instruction is designed for use when the defendant is not present at the trial, and the court has excused the defendant's attendance under § 971.04(2). Whether to use this instruction is up to the discretion of the trial court.

For situations where an in-custody defendant has not been granted leave of court and chooses not to attend the trial, see Wis JI-Criminal 380B. For situations where the defendant absconds during the trial, see Wis JI-Criminal 380C. For situations where a defendant has been removed from the courtroom due to forfeiture by conduct, see Wis JI-Criminal 380D.

In general, a defendant is required to be present. Section 971.04(1) specifies that the defendant “shall be present”:

- (a) at the arraignment;
- (b) at trial;
- (c) during voir dire of the trial jury;
- (d) at any evidentiary hearing;
- (e) at any view by the jury;
- (f) when the jury returns its verdict;
- (g) at the pronouncement of judgment and the imposition of sentence;
- (h) at any other proceeding when ordered by the court.

However, in misdemeanors, a defendant’s presence may be excused. Subsection (2) of sec. 971.04 provides:

A defendant charged with a misdemeanor may authorize his or her attorney in writing to act on his or her behalf in any manner, with leave of the court, and be excused from attendance at any or all proceedings.

1. This instruction is designed specifically for cases in which the defendant is not present at trial and their attendance has been excused under § 971.04(2). For instructions on other scenarios of a defendant’s absence, see Wis JI-Criminal 380B-380D.

2. The language “with the permission of the court,” enclosed in brackets, is optional, and its inclusion depends on the nature of the case. It is advisable to include this language in cases involving criminal misdemeanors, but it is not required for civil forfeiture cases.