

380D DEFENDANT: ABSENCE FROM TRIAL: FORFEITURE BY CONDUCT¹**[During the Trial**

The defendant has the right to appear in this matter. However, (he) (she) may forfeit this right through conduct.² As a result, (name of defendant) is not present at this time and will be represented by (his) (her) attorney. The trial will proceed in (name of defendant)'s absence, which you should not take into consideration in any way, nor should it influence your verdict. Your decision must be based solely on the evidence presented during the trial.]

[Prior to Deliberation

The defendant had the right to appear in this matter. However, (he) (she) may forfeit this right through conduct. As a result, (name of defendant) did not appear in this action and was instead represented by (his) (her) attorney. Despite the trial proceeding in (name of defendant)'s absence, you should not consider this fact in your deliberations, nor should it influence your verdict. Your decision must be based solely on the evidence presented during the trial.]

COMMENT

This instruction was approved by the Committee in April 2024.

This instruction applies when a defendant has lost the right to be present at trial through forfeiture by conduct. Whether to use this instruction is up to the discretion of the trial court.

For situations where the defendant is not present at the trial and the court has excused the defendant's attendance, see Wis JI-Criminal 380A. 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.

When a defendant's conduct rises to the level of warranting their removal from the courtroom, the Committee recommends that the trial court conduct a formal, on-the-record admonition detailing the basis of the removal.

1. This instruction is designed specifically for cases in which the defendant has lost their right to be present at trial through forfeiture by misconduct. For instructions on other scenarios of a defendant's absence, see Wis JI-Criminal 380A-380C.

2. The Confrontation Clause and the Fourteenth Amendment grant an accused the right to be present in the courtroom at every stage of their trial. State v. Haynes, 118 Wis.2d 21, 25, 345 N.W.2d 892, (Ct.App.1984) citing Illinois v. Allen, 397 U.S. 337, 338, 90 S.Ct. 1057, (1970). Although an accused has the constitutional right to be present at trial, he or she may lose this right by misconduct or consent. Snyder v. Massachusetts, 291 U.S. 97, 106, 54 S.Ct. 330 (1934). A waiver occurs when there is "an intentional relinquishment or abandonment of a known right or privilege." Haynes, supra, at 25.