

ABSENT DEFENDANT ¹

Members of the jury, you will have noticed that the defendant is not present in the courtroom. A defendant has the right to be present in the courtroom and the right not to be present. Thus, you are not to speculate upon the reasons for the defendant's absence, nor are you to draw any inference, for or against the defendant, or for or against the People, from the defendant's absence.²

1. This charge is not applicable to the defendant who is excluded from the courtroom due to conduct which took place in the presence of the jury.

2. See CPL § 260.20. See also *People v. Johnson*, 37 N.Y.2d 778 (1975); *People v. Brisbane*, 205 A.D.2d 358 (1st Dept. 1994). But see *People v. Anglin*, 136 Misc.2d 987 (Sup. Ct., Kings Co., 1987).