

TRIAL IN ABSENTIA

725 Ill. Comp. Stat. Ann. 5/115-4.1

After the State has affirmatively proven through substantial evidence that the defendant is willfully avoiding trial, the court may commence trial in the absence of the defendant.

Trial in the defendant's absence shall be by jury unless the defendant had previously waived trial by jury.

The absent defendant must be represented by retained or appointed counsel. The court, at the conclusion of all of the proceedings, may order the clerk of the circuit court to pay counsel such sum as the court deems reasonable, from any bond monies which were posted by the defendant with the clerk, after the clerk has first deducted all court costs.

If trial had previously commenced in the presence of the defendant and the defendant willfully absents himself for two successive court days, the court shall proceed to trial.

State establishes prima facie case of willful absence, as prerequisite for trial in absentia, by proving that the defendant (1) was advised that her failure to appear could result in a trial in absentia, (2) was advised of her trial date, and (3) did not appear for her trial. *People v. Smith*, App. 2 Dist.1998, 233 Ill.Dec. 519, 298 Ill.App.3d 1067, 701 N.E.2d 162

Strict compliance with the certified mailing requirement in the rule governing notice of the trial date is a mandatory prerequisite to conducting a criminal trial in absentia where the defendant was not personally present in open court when the case was set for trial. *People v. Ramirez*, 2005, 291 Ill.Dec. 656, 214 Ill.2d 176, 824 N.E.2d 232.

Defendant was not entitled to appointment of counsel under statute governing the absence of a defendant at trial in prosecution because the defendant was in jail and had refused to come to court. Statutory language and legislative history of statute indicated that it did not apply to in-custody defendants, like defendant, who were present in the court building but simply refused to leave the holding cell. *People v. Gibson*, App. 1 Dist.2017, 418 Ill.Dec. 697, 91 N.E.3d 398.

This instruction was considered by the Fourth District. The trial court refused the instruction, but the Fourth District implied it was discretionary. “The fact that the defendant did not appear at the trial should not be considered by you in any way in arriving at your verdict.” *People v. Smith*, 544 N.E.2d 1162.

The Defendant will not be present during the course of this trial. You are not to speculate on the reasons for the defendant’s absence. You should not draw any inferences from the fact that the Defendant is not present.

People v. Alexander, 559 N.Y.S.2d 570.

The state may comment that defendant’s absence, like fleeing, shows consciousness of guilt.

People v. Garza, 180 Ill.App.3d 820, 826 (2d Dist. 1989); *McDonald*, 227 Ill.App.3d 92 at 98.
