

2.04

Failure Of Defendant To Testify

The fact that [(a) (the)] defendant[s] did not testify must not be considered by you in any way in arriving at your verdict.

Committee Note

This instruction should be given only at the defendant's request and, then, it must be given. See *People v. Greben*, 352 Ill. 582, 186 N.E. 162 (1933); *People v. Borneman*, 66 Ill.App.2d 251, 213 N.E.2d 52 (2d Dist.1966).

The Committee substituted the word “must” for the word “should” that appeared in the Second Edition's version of Instruction 2.04. It sought to give greater emphasis to the jury's obligation not to consider the defendant's failure to testify.

Do not give this instruction at a proceeding determining a defendant's fitness to stand trial. A fitness trial in the criminal court process is a civil proceeding. *People v. Rosochacki*, 41 Ill.2d 483, 489-490 (1969); *People v. Williams*, 205 Ill.App.3d 715, 721 (1990). Illinois law is unsettled as to whether a defendant has the right against self-incrimination at a fitness trial. For jury instructions for fitness proceedings, see Chapter 29.

For an example of the use of this instruction, see Sample Set 27.04A.