

## **IC 35-36-4**

### **Chapter 4. Notice of Alibi Defense**

#### **IC 35-36-4-1**

##### **Time of filing; requisite information**

Sec. 1. Whenever a defendant in a criminal case intends to offer in his defense evidence of alibi, the defendant shall, no later than:

(1) twenty (20) days prior to the omnibus date if the defendant is charged with a felony; or

(2) ten (10) days prior to the omnibus date if the defendant is charged only with one (1) or more misdemeanors;

file with the court and serve upon the prosecuting attorney a written statement of his intention to offer such a defense. The notice must include specific information concerning the exact place where the defendant claims to have been on the date stated in the indictment or information.

*As added by Acts 1981, P.L.298, SEC.5. Amended by Acts 1982, P.L.204, SEC.30.*

#### **IC 35-36-4-2**

##### **Reply by prosecutor; second statement by defendant; filing and service**

Sec. 2. (a) When a defendant files a notice of alibi, the prosecuting attorney shall file with the court and serve upon the defendant, or upon his counsel, a specific statement containing:

(1) the date the defendant was alleged to have committed the crime; and

(2) the exact place where the defendant was alleged to have committed the crime;

that he intends to present at trial. However, the prosecuting attorney need not comply with this requirement if he intends to present at trial the date and place listed in the indictment or information as the date and place of the crime.

(b) If a reply by the prosecuting attorney is required by subsection (a) of this section, the prosecuting attorney shall serve such a statement upon the defendant, or his counsel, within seven (7) days after the filing of the defendant's first notice of alibi.

(c) If the prosecuting attorney's statement to the defendant contains a date or place other than the date or place stated in the defendant's original statement, the defendant shall file a second statement of alibi if the defendant intends to produce at trial evidence of an alibi for the date or place contained in the prosecutor's statement. The defendant shall:

(1) file the second statement with the court; and

(2) serve the second statement upon the prosecuting attorney; within four (4) days after the filing of the prosecuting attorney's statement. The defendant's second statement must contain the same details required in the defendant's original statement.

*As added by Acts 1981, P.L.298, SEC.5.*

### **IC 35-36-4-3**

#### **Failure to file or serve statements; extension of time; exclusion of evidence**

Sec. 3. (a) If either the defendant or the prosecuting attorney fails to file or serve statements in accordance with section 2 of this chapter, the judge may extend the time for filing.

(b) If at the trial it appears that the defendant has failed to file and serve an original statement of alibi in accordance with section 1 of this chapter, and if the defendant does not show good cause for his failure, then the court shall exclude evidence offered by the defendant to establish an alibi.

(c) If at the trial it appears that the prosecuting attorney has failed to file and serve his statement in accordance with section 2(a) of this chapter, and if the prosecuting attorney does not show good cause for his failure, then the court shall exclude evidence offered by the prosecuting attorney to show:

- (1) that the defendant was at a place other than the place stated in the information or indictment; and
- (2) that the date was other than the date stated in the information or indictment.

(d) If at the trial it appears that the defendant has failed to file and serve a second statement in accordance with section 2(c) of this chapter, and if the defendant does not show good cause for his failure, then the court shall exclude evidence offered by the defendant to establish that:

- (1) he was at a place other than the place specified in the prosecuting attorney's statement; or
- (2) the date was other than the date stated in the prosecuting attorney's statement.

*As added by Acts 1981, P.L.298, SEC.5.*