

RULE 3.200 | NOTICE OF ALIBI

On the written demand of the prosecuting attorney, specifying as particularly as is known to the prosecuting attorney the place, date, and time of the commission of the crime charged, a defendant in a criminal case who intends to offer evidence of an alibi in defense shall, not less than 10 days before trial or such other time as the court may direct, file and serve on the prosecuting attorney a notice in writing of an intention to claim an alibi, which notice shall contain specific information as to the place at which the defendant claims to have been at the time of the alleged offense and, as particularly as is known to the defendant or the defendant's attorney, the names and addresses of the witnesses by whom the defendant proposes to establish the alibi. Not more than 5 days after receipt of defendant's witness list, or any other time as the court may direct, the prosecuting attorney shall file and serve on the defendant the names and addresses (as particularly as are known to the prosecuting attorney) of the witnesses the state proposes to offer in rebuttal to discredit the defendant's alibi at the trial of the cause. Both the defendant and the prosecuting attorney shall be under a continuing duty to promptly disclose the names and addresses of additional witnesses who come to the attention of either party subsequent to filing their respective witness lists as provided in this rule. If a defendant fails to file and serve a copy of the notice as herein required, the court may exclude evidence offered by the defendant for the purpose of providing an alibi, except the defendant's own testimony. If the notice is given by a defendant, the court may exclude the testimony of any witness offered by the defendant for the purpose of proving an alibi if the name and address of the witness as particularly as is known to the defendant or the defendant's attorney is not stated in the notice. If the prosecuting attorney fails to file and serve a copy on the defendant of a list of witnesses as herein provided, the court may exclude evidence offered by the state in rebuttal to the defendant's alibi evidence. If notice is given by the prosecuting attorney, the court may exclude the testimony of any witness offered by the prosecuting attorney for the purpose of rebutting the defense of alibi if the name and address of the witness as particularly as is known to the prosecuting attorney is not stated in the notice. For good cause shown the court may waive the requirements of this rule.



Committee Notes

1968 Adoption. The rule is completely new in Florida. Fourteen states have adopted notice of alibi statutes or rules: Arizona Supreme Court Rules of Criminal Procedure 192 (enacted in 1940); Ind. Ann. Stat. 9-1631, 9-1632, 9-1633 (1956) (enacted in 1935); Iowa Code Ann. 777 18 (1958) (enacted in 1941); Kan. Gen. Stat. Ann. 62-1341 (1949) (enacted in 1935); Mich. Stat. Ann. 630.14 (1947) (enacted in 1935); N.J. Superior and County Court Criminal Practice Rule 3:5-9 (1948) (enacted in 1934); N.Y. Code of Crim. Proc. 295-L (1935) (enacted in 1935); Ohio Rev. Code Ann. 2945.58 (1953) (enacted in 1929); Okla. Stat. Ann. 22-585 (1937) (enacted in 1935); S.D. Code 34.2801 (1939) (enacted in 1935); Utah Code Ann. 77-22-17 (1953) (enacted in 1935); Vt. Stat. Ann. 13-6561, 6562 (1958) (enacted in 1935); Wis. Stat. Ann. 955.07 (1958) (enacted in 1935).

The rule is modeled after the Ohio, New York, and New Jersey statutes:

(1) The requirement of notice in writing is taken from the Ohio statute.

(2) The requirement of an initial demand by the prosecuting attorney is based on the New York and New Jersey statutes.

(3) The requirement of a mutual exchange of witness lists is based on those statutes which require the defendant to disclose alibi witnesses. In the interest of mutuality, the requirement of a reciprocal exchange of witness lists has been added. The enforcement provision is based on the Ohio and New York statutes. In New York, a defendant who fails to give advance notice of alibi may still give alibi testimony himself. *People v. Rakiec*, 23 N.Y.S.2d 607, aff'd 45 N.E.2d 812 (1942).

For an excellent article on notice of alibi statutes, court decisions thereunder, and some empirical data on the practical effect of the rules, see David M. Epstein, "Advance Notice of Alibi," 55 J. Crim. L. & Criminology 29 (1964).

1972 Amendment. Same as prior rule.

1992 Amendment. The purpose of the amendments is to gender neutralize the wording of the rule.

