

Date of Meeting: October 23-24, 1959

Date of Memo: October 15, 1959

Memorandum No. 5

Subject: Study No. 40 - Notice of Alibi

Attached is a rough draft of a statute relating to notice of alibi. This statute has been drafted to reflect the general policy decisions made by the Commission at its September meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

10/15/59

Rough Draft - Notice of Alibi Statute

(1) If a defendant in a criminal action is to rely in any way on an alibi, he shall serve on the prosecuting attorney a written notice of his intention to rely upon an alibi. The notice shall be signed by the defendant and shall state (a) the specific place or places at which the defendant claims to have been at the time stated in the accusatory pleading as the time of the alleged offense and (b) the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi. A copy of the notice of alibi and proof of service shall be filed in the same place as the accusatory pleading is filed. A notice of alibi shall be served not later than 10 days before the trial, except that the court in which the action is pending may, in its discretion, extend the time for filing if the court finds that the defendant exercised reasonable diligence and could not obtain the information required to be included in the notice within the time provided in this paragraph. A notice of alibi is required only for the day or days specified in the accusatory pleading, notwithstanding that the time specified in the accusatory pleading is preceded by the words "on or about" or is otherwise accompanied by words of extension.

(2) Within five days after receiving a notice meeting the requirements of paragraph (1) of this section, the prosecuting attorney shall serve on the defendant or his attorney a written notice stating the

names and addresses of the witnesses upon whom the state intends to rely to establish the defendant's presence at the scene of the alleged offense. A copy of the notice and proof of service shall be filed in the same place as the accusatory pleading is filed. The court in which the action is pending may, in its discretion, extend the time for the filing of the notice required by this paragraph if the court finds that the prosecution has exercised reasonable diligence and could not obtain the information required to be included in the notice within the time provided in this paragraph.

(3) Subject to paragraph (4) of this section, if the notice required by paragraph (1) or (2) of this section is not served as required, the party in default may, in the discretion of the court, be excluded from presenting any evidence at the trial as to the defendant's absence from, or presence at, respectively, the scene of the alleged offense, or the court may impose such conditions and grant such continuance as the ends of justice may require.

(4) Notwithstanding paragraphs (1) and (3) of this section, the defendant may testify in his own behalf as to his alibi without complying with the provisions of paragraph (1) of this section.

(5) If during the trial the prosecuting attorney seeks to establish that the offense was committed at a time or place other than as set forth in the accusatory pleading, the provisions of this section do not apply.