

Model Criminal Continuance

Policy and Implementation Guide

May 2024

from the Pandemic Rapid Response Team

This model criminal continuance policy and implementation guide is intended to be used to aid courts in managing criminal dockets, keep cases within time standards, and ensure due process and procedural fairness for defendants, victims, and their families.

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Executive Summary

In October 2023, the National Center for State Courts (NCSC) initiated a series of collaborative learning sessions that were specifically designed to aid courts in addressing key aspects of successful backlog reduction in criminal cases, including controlling court continuances. Courts from across the country were invited to participate in structured conversations and learn from NCSC staff and each other about innovative strategies. The participating courts in the Continuance Policy Learning Collaborative met virtually with NCSC staff over a six-month period to discuss current court processes, criminal caseflow management successes and challenges, and best practices in caseflow management.

As a result of the collaborative efforts, this document includes a model criminal continuance policy and a model motion for continuance. These resources were developed by the Learning Collaborative and are intended to be shared with the larger court community. Additionally, the Learning Collaborative created an implementation guide to explain the policy provisions, which courts could use when crafting their own continuance policy specific to their jurisdiction.

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Shelley Bacon, Deputy Court Administrator, Coconino County Superior Court (AZ)

Mary Burnell, Deputy Director of Operations, Alaska Administrative Office of the Courts

Judge Jeffrey Coker, Superior Court Judge (Ret.), Coconino County (AZ)

Amanda Doherty, Criminal Court Process & Specialty Dockets Manager, Maine Administrative Office of the Courts

Samantha Dowell, Trial Court Administrator, Grant and Harney Counties (OR)

Judge Timothy Fennessy, Presiding Judge, Spokane County Superior Court (WA)

Judge Toria Finch, Presiding Judge, Harris County Criminal Court at Law No. 9 (TX)

Fred Hendrickson, Senior Administrative Manager – Criminal Division, Hennepin County (MN)

Michael Hsu, Senior Assistant General Counsel, Oregon Judicial Department

Stacey Marz, Alaska State Court Administrator

Crystal Reeves, Former Trial Court Administrator, Columbia County (OR)

Fona Sugg, Court Administrator, Chelan County Superior Court (WA)

Sharon Yates, Court Administrator, Coconino County Superior Court (AZ)

The boxed notes seen below and throughout this guide after the policy excerpts are intended to offer guidance to courts implementing a criminal continuance policy. The model policy template and accompanying motion for continuance form template can be found in the **Appendix**.

Introductory notes. This model policy is intended to apply to criminal proceedings scheduled before a judicial officer including pretrial, trial, and motion events. It is to be adapted as each court deems appropriate in consultation with judges, court staff, and justice partners. It is best practice to apply this policy in conjunction with other caseload management practices as detailed in this implementation guide.

In the context of this policy, a continuance can be described as the postponement of a hearing, trial, or other court event that was scheduled to occur during a court date to a future court date. The Effective Criminal Case Management Project (ECCM) describes continuances as, “a court hearing that was continued to another date due to lack of time to fully resolve a case issue in one hearing, or a court hearing that was postponed due to lack of preparation or appearance.” A court implementing this policy may want to adapt these definitions or descriptions of a continuance for inclusion in its continuance policy. For information and resources about the Effective Criminal Case Management initiative, see <https://www.ncsc.org/consulting-and-research/areas-of-expertise/court-management-and-performance/caseload-management/effective-criminal-case-management>.

This policy can be used as a template for a local policy or statewide policy. It is important to tailor the policy to comply with your jurisdiction’s Supreme Court Rules, policies, and statutes. Throughout the policy, there are segments in shaded brackets (i.e., **[bold]**). This denotes where a court may select from the options in the brackets or insert language that is relevant to their court (e.g., court-specific time standards, the titles of judicial officers, or staff). The development of this policy should be based on average cases and not outlier cases that will be more complex.

Before a policy is adopted and even as it is being developed (as the court leadership deems appropriate), the court should consult with its justice partners on policy provisions. Providing a space to obtain court stakeholder feedback can result in greater buy-in and ultimately, greater policy compliance from attorneys, clerks, and justice partners. This can be done over the course of several meetings where a structured forum will allow the court stakeholders to offer their perspectives while also giving the court an opportunity to explain the rationale of the policy and criminal case management strategies. This topic would be an excellent discussion item for a court’s criminal justice collaborative council, if such a group exists. A court may first want to identify who should be involved in such discussions; for example, prosecuting attorney/district attorney/solicitor, public defender, private defense counsel, clerks, treatment court staff, probation officers, and jail administration may be involved in these discussions.

Continuance Policy of [insert name] Court

Purpose. It is the policy of this Court to provide equal justice for all without unnecessary delay while efficiently using the resources of the Court. Such delay erodes public trust and confidence in the Court. To avoid delays, the Court must control the pace of criminal case progress and limit continuances. Research shows that continuances are the most significant contributor to case delay. While some continuances may be outside of the Court's control, managing the number of continuances in a case will allow the Court to reduce delay while ensuring due process and procedural fairness.

Implementation note: *It is understood that some continuances may be necessary during the life of a criminal case. This policy or any policy will not eliminate all continuances. However, the goal is to eliminate excessive continuances and to limit continuances that result in unnecessary delay. Delay is any amount of time beyond what is reasonably needed to resolve a case. Delays in court, due to avoidable continuances, result in inefficient use of court resources as the matter that was to be held must now be rescheduled, which requires a variety of tasks outside of court, parties (including witnesses, victims) to reappear, and additional court time to be set aside to hear the case on a future date. There are greater financial costs to the system if the defendant is in pretrial custody in a county or state detention facility as this lengthens the amount of time the person is in the facility, thus resulting in greater taxpayer costs. See the Cost of Delay Calculator at https://www.ncsc.org/_data/assets/pdf_file/0017/53234/ECCM-Cost-of-Delay-Calculator.pdf.*

If continuances become a part of court culture, the public begins to lose trust that the court system will resolve legal disputes fairly and expeditiously and use court resources efficiently. Further, unnecessary delays in criminal cases can have detrimental effects on the case itself. As cases are delayed, witness memories fade, arresting officers retire or transfer to other agencies, and victims may perceive justice as not being served. Meanwhile, the defendant may have to appear for multiple court dates that do not occur, potentially causing time away from employment or lengthening their time in pretrial custody.

The ECCM project found that continuances are the most significant contributor to case delay. Adopting a policy to limit continuances and applying the policy in a reasonable, consistent, and firm manner is key to successful caseflow management. Adopting other caseflow management strategies in conjunction with a continuance policy will have more positive effects on criminal cases than the policy alone.

Limiting the opportunity for continuance requests to occur through active case management is a first step. Employing active case management involves the court controlling the pace of litigation rather than attorneys. This includes judicial monitoring of case status and intermediate time standards (e.g., from arrest to first appearance, from filing to arraignment), ensuring actions by the parties meet the court's expectations, court-controlled calendaring, and predictable and productive court events.

Court control also means that as each case passes a “milestone” (e.g., arraignment), the next hearing or event will be scheduled to prevent a case from being overlooked and creating further case delays. A predictable event is one where the parties and attorneys have a general understanding that hearings/trials will occur as scheduled and continuances are not an expectation. A court that has a reputation for holding predictable events results in attorneys being prepared for matters when they are scheduled and reduces the number of unnecessary continuances. Productive events are hearings or events that are meaningful in that they progress the case to disposition. Having productive events can reduce court appearances for all involved, increase court efficiency as the time spent in court is meaningful, and reduce judicial and attorney burnout that can occur with excessive, often ineffective court appearances. Continuance policies improve the likelihood that a trial (and hearings) will occur as scheduled. Another tool that courts can use to increase predictability and productivity is a scheduling order that clearly establishes deadlines for case events. Documenting how court events should be scheduled over the life of a criminal case and implementing a scheduling order that establishes deadlines to exchange discovery, extend plea offers, and hold pretrial conferences sets expectations for the parties and encourages preparation early in the case. Together with a continuance policy, these practices would result in more effective case management.

Active court case management has additional significant benefits. In a criminal matter, the state represents the interests of its jurisdiction and the victim while the defense advocates for the best interests of the defendant. Both have a vested interest in advancing the case or potentially delaying the case, as one or the other may be advantageous to the state or defense. When prosecutors or defense counsel control when cases are scheduled and continuances are an expectation, the public, witnesses, victims, and court partners lose confidence in the court and the criminal justice system as impartial institutions. However, the court is a neutral party and does not advocate for either side as the arbiter of justice. Thus, it is logical that the court would control the flow of cases.

A continuance policy is a best practice and will assist a court in limiting continuances if it is applied consistently by all judges and clearly sets out expectations. For maximum effectiveness, the court should also assess its court culture and the court processes that are creating the continuances. From that assessment, the court can identify various caseflow management strategies to reduce the opportunity for continuances to occur, such as active case management, court control, and ensuring predictable and productive events.

It is noteworthy that state courts use varying terminology in the context of continuances. For example, some courts distinguish between “continuances” and what may be referred to as “resets.” The definition of a “continuance” or a “reset” may vary by state. As courts elect to implement a criminal continuance policy, the court’s rules and terminology should be incorporated into its policy to ensure compliance and consistency with the court’s culture, policies, and practices. The ultimate goal of the policy is to reduce unnecessary delays. Courts should take steps to eliminate delays regardless of the local terminology used. This policy should be adapted with that outcome in mind.

This policy sets forth what the Court will consider good cause to request a continuance, the process to request continuances, the data the Court will collect in furtherance of efforts to reduce continuances, and how the data will be used. The [district/county] judges are committed to effective criminal case management which includes the consistent application of this continuance policy by all judges. For all criminal case types and dockets and in all [divisions] courtrooms, the Court looks with strong disfavor on motions or requests to continue court events, both hearings and trials, without good cause. To protect the credibility of scheduled trial dates, trial date continuances are especially disfavored. Parties should be prepared to proceed on the scheduled hearing or trial date.

Implementation note: *This policy may be adopted by a specific county, district, or jurisdiction depending on the court structure. For example, a court may choose to implement the policy specifically in district or superior court or in both divisions. Regardless, it is important that all judges and staff in the court(s) where the policy is implemented consistently follow and promote the policy so it becomes institutionalized in the court culture. Failure to do so can result in judge “shopping”, judicial disqualifications, and general impotence of the policy.*

Trial date certainty is closely connected to controlling continuances. Trial date certainty is a court measure that assesses the number of times cases that are disposed by trial are actually scheduled for trial. It is improved when the court holds predictable court events. Trial date certainty is important because the inability of a court to hold trials as scheduled can impact a defendant’s constitutional right to a speedy trial. As a result, courts may control trial date continuances more strictly. This may be reflected in some courts through the practice that only judicial officers or only the assigned judicial officer is permitted to grant a trial date continuance. For more information about trial date certainty measures and other court performance measures, see CourTools at www.ncsc.org/courtools.

Time Standards. Time standards assist the Court in monitoring case timeliness and represent a goal for achieving the final disposition in criminal cases. This policy is designed to ensure case progress to disposition within the time standards adopted by this Court as set forth below. The time standards reflect the disposition goal for cases from the [initial filing of the criminal case, date of arrest, indictment] to the disposition of the case (e.g., dismissal, sentencing). Note: Time associated with failures to appear or bench warrants does not count toward the time standard goal. [Insert state-specific or local time standards to replace the National Model Time Standards.]

Felony	Misdemeanor	Traffic/Local Ordinance
75% within 90 days	75% within 60 days	75% within 30 days
90% within 180 days	90% within 90 days	90% within 60 days
98% within 365 days	98% within 180 days	98% within 90 days

Implementation note: Time standards provide a “yardstick” for measuring the effectiveness of court management and performance. Including court time standards in the continuance policy informs court partners and users of the goals and expectations for case resolution and serves as a reminder of the optimal time frames, which are impacted by unnecessary continuances. This is not to suggest that all cases will be able to be disposed within time standards, but they are targets for which the court and attorneys should strive.

For the purpose of this policy, the National Model Time Standards are referenced in the model policy. The model time standards recognize that cases are unique and that creating a standard that all cases will meet (i.e., a 100% standard) is unrealistic. The 98% benchmark (rather than 100%) that recommends the resolution of all felony cases within 365 days reflects that there will be a small number of cases that will take longer to resolve due to various factors. A court may and should replace the national standards with the time standards for its state or jurisdiction. If a court does not have established time standards, this may be a topic for discussion at future collaborative meetings with court partners.

In considering the time to disposition, the starting point may vary by state depending on how and when criminal cases are initiated. The National Model Time Standards run from the filing of the initial complaint through disposition, which could be dismissal of the case or sentencing. The non-exhaustive examples in the model policy include the following: the initial filing of the criminal case, the date of arrest, and date of indictment. A court should modify the initial starting point to reflect how its time standards are measured.

In monitoring the effectiveness of the policy, the Court will consider if the time to disposition is reduced, if the time standards are being met, and if the continuance rate is reduced by [20%] within the first [6 months] of implementation. The Court, Court Administrator, and justice partners will annually review this policy to ensure it is achieving its intended goal to reduce delay and improve case processing times.

Implementation note: It is important to identify the anticipated results of implementing any new practice or policy before implementation. The same is true for implementing a continuance policy so a court can measure its effectiveness and determine if any changes are needed after the initial implementation of the policy. Prior to implementation, a court should clearly set out the intended outcome of the policy and then examine the change to determine if that outcome is being met. In the model policy above, an example of a 20% continuance rate reduction is referenced which can be modified by the court as needed. The court may need to determine how this outcome will be measured if no report exists in the case management system. Manually tracking cases continued on a calendar or docket compared to the total number of cases calendared may be an option if the court cannot generate a continuance report from the case management system.

During the development of its policy, a court should identify a performance measure, such as time to disposition and/or pending median case age, that will help assess effectiveness and identify if the court is achieving the goal. This initial performance measure should be taken before implementation and months after implementation for comparison purposes. A court may opt to use the disposition time standard as a measure. For example, has the time to disposition improved since the implementation of the policy? Have continuance rates dropped and if so, by what percentage? Reviewing performance measures over time can show trends and help courts make more data-driven decisions regarding court operations.

Six months is recommended as an interim status check. This should allow enough time for a court to see a measurable difference, however a court may determine more or less time is needed to see impact. At the interim “check-in”, the court should determine if modifications are necessary to achieve the intended outcome. The time standard data may be used in conjunction with continuance reports referenced in the Case Management and Continuance Data section of the policy.

After the interim “check-in” and the policy is fully implemented, each court should review the policy on an annual basis. As part of the review process, the court should consider the data gathered as recommended in the Case Management and Continuance Data section of the policy and how well the court is meeting the time standards.

Continuance Request Process. Absent good cause, a motion or request for continuance filed pursuant to [insert court rule, if applicable] shall be filed as soon as the party is aware of the need for a continuance but no later than [24 hours] before the scheduled hearing or trial. The motion shall:

- i. Be in writing (email or fax may be permitted by the Court);
- ii. state the good cause reasons for the request;
- iii. be signed by the attorney making the request (or the defendant if they are not represented by counsel) and the defendant, if possible;
- iv. state whether the defendant consents to the continuance, if requested by defense counsel;
- v. state the number of prior continuances granted and upon whose motion those continuances were granted, if known;
- vi. state whether or not the defendant is currently in custody, the date the defendant was arrested, and the total days in custody in the matter in which the continuance is requested;
- vii. state whether the opposing counsel or party consents or objects to the continuance; and
- viii. propose the next court date.

Implementation note: *The time frame within which the policy will require parties to submit their motions or requests for continuance (e.g., 24 hours before the scheduled hearing or trial) should be sufficient for the court to decide in advance of the scheduled court event. A court may opt to have different time frames for requesting a continuance for a trial or hearing although it is generally considered best practice that requests be submitted in writing in the form of a motion and contain specific information to allow the court to determine good cause.*

Good cause may be described as a legally sufficient reason or sufficient grounds or a substantial reason or legal justification. A court may want to provide a general definition of good cause in the policy. If applicable, the court may also elect to adapt the terminology to account for the distinctions between resets and continuances.

The attorney must sign the request/motion for continuance. When possible, it is recommended the defendant also sign the motion. This ensures that they are aware of the reason and request for the continuance. However, if the defendant is in custody in a remote location, obtaining their signature may not be practical. If a defendant is not represented by counsel, the defendant should sign the motion. Although consent by the opposing counsel does not constitute good cause, the requesting party should indicate opposing counsel's position and indicate when the hearing should be recalendared if the court grants the continuance. This should be a reasonable period of time to allow the attorney to address the issue that necessitated the continuance request, which will depend on the reason the continuance was requested. In short, the next court date should be tailored to the reason for the continuance.

Parties are encouraged but not required to use the continuance form that accompanies this policy. Continuance requests will be accepted by means other than writing (e.g., phone, text, in person) only in the following circumstances: if the request is not for a trial setting AND [no previous continuances have been granted in the case, the case type is not a felony, all parties agree, the disposition time standards will not be delayed, there is an emergency situation]. If continuances are granted in chambers or off the record, the information required in the motion stated above will be documented by the court official granting the continuance.

Implementation note: *Courts should develop a continuance motion and order form to encourage compliance with this policy. A sample form is included with this model policy and can be adapted to conform to a court's continuance policy. If a jurisdiction or court division accepts continuance requests that are not in writing, the options in the paragraph above offer guidance as to when it may be appropriate. These options serve as examples and are not an exhaustive list. Additionally, if non-written continuance requests are permitted, an adopted motion and order form will enable the court official (e.g., judge, clerk, court staff) to capture the majority of the information that the written request would have contained.*

The Court, in its discretion, will determine good cause to grant a continuance based on individual case circumstances. The following reasons, though not exhaustive, will generally be considered good cause to grant a continuance.

- i. Hearing commitment or conflict in another court.
- ii. Sudden medical emergency (not elective medical care) or death of a party, counsel, or subpoenaed material witness.
- iii. A party did not receive notice of the setting of the trial date through no fault of the party or the party's counsel.
- iv. A competency evaluation of the defendant is pending.
- v. A treatment or diversion court assessment/evaluation of the defendant is pending.
- vi. Unanticipated absence of a subpoenaed material witness.
- vii. Facts or circumstances arising or becoming apparent too late in the proceedings to be fully corrected and which, in the view of the Court, would likely cause undue hardship or possible miscarriage of justice if the trial is required to proceed as scheduled.

The Court will determine if good cause does not exist to grant a continuance. The following reasons, though not exhaustive, will generally not be considered good cause to grant a continuance.

- i. A police officer or other witness is either in training or is scheduled to be on vacation unless the Court is advised of the conflict soon after the case is scheduled and sufficiently in advance of the trial date.¹
- i. A party or counsel is unprepared to try the case for reasons including, but not limited to, the party's failure to maintain necessary contact with counsel.
- ii. Unanticipated absence of a witness who has not been subpoenaed.
- iii. Discovery is ongoing and has not been completed.
- iv. The parties are discussing a settlement or plea.
- v. New counsel has entered an appearance in the case or a party wants to retain new counsel.
- vi. Counsel or parties agree to the continuance.
- vii. The case has not previously been continued.

¹ A motion for continuance based on a conflict with a previously scheduled vacation shall state the date the vacation was set.

Implementation note: Including examples of what the court will consider good cause and also what will not be considered good cause provides guidance to all judges and attorneys and conveys the court's expectations. For example, many courts may allow continuances based solely on the fact that opposing counsel consents regardless of the reason. On its face, this alone should not be considered sufficient cause to grant a continuance.

The examples are NOT intended to replace judicial discretion. Further, including examples does not remove a judge's ability to deviate from the policy although consistency is best practice. The judge will always retain their authority to decide motions on an individual basis. As stated earlier, developing the continuance in collaboration with court partners is recommended. When identifying examples of good cause, obtaining, and considering court partner perspectives can improve the policy and compliance with the policy. It is important that the court partners understand that the reasons listed in the policy provide guidance, are not exhaustive, and that requests will be considered on a case-by-case basis.

The following factors will be considered, in addition to the totality of the circumstances of the case, to determine if good cause exists to grant a continuance.

- i. Weather or travel delays.
- i. Inability to transfer a defendant from where they are incarcerated.
- ii. Change in representation for the state or defense (e.g., District Attorney, Public Defender).
- iii. Due process issues (e.g., new evidence, delay of lab results).
- iv. Age of the case or the point in the court process.

In determining what constitutes good cause, the Court shall consider the age of the case, number of prior continuances, reason for continuance, due process concerns for the defendant, the pre-trial custodial status of the defendant, and speedy trial motions. The granting or denying of written continuance motions shall be made on the record, with an indication of who requested the continuance, the reasons for granting or denying the motion, and the next hearing date.

Implementation note: The factors listed above are special circumstances that are likely to add more weight to a continuance request but are not necessarily considered good cause or the absence of good cause on their own. These can be tailored by the court in the development of the policy.

While it is important for courts to control their dockets and reduce delays to ensure the just, expeditious and efficient resolution of cases, they should be mindful of when a continuance should be granted to protect against manifest injustice. **It is important for judges to know the controlling case law for their jurisdiction if such case law exists.** Courts are encouraged to identify the relevant rules and case law for their jurisdiction and reference it as appropriate in the court continuance policy to lend it credence.

Non-judicial officers such as [court administrators, court managers, clerks, case managers, judicial assistants, etc.] may grant continuances only if the [presiding judge, chief judge] grants such authority and only under the following conditions: if the request is not for a trial setting and [no previous continuances have been granted in the case, the case type is not a felony, AND all parties agree].

Implementation note: *If a jurisdiction or court division allows non-judicial officers to grant continuances, the paragraph above provides guidance as to when it may be appropriate for non-judicial officers to determine if good cause exists for a continuance. This serves as an example and is not an exhaustive list. If non-judicial officers are not permitted to grant continuance requests, the paragraph above may be deleted.*

When granting the continuance for good cause that is consistent with this policy, the Court shall schedule the next court date and the date shall be set with certainty. The Court shall consult with the state, defense attorney, or defendant if they have not been appointed counsel or are not eligible for court-appointed counsel and have not retained counsel. The next hearing date should be based on and tailored to the reason the continuance was requested to reduce the impact of the delay and to meet court time standards, if possible. For example, the Court may ask:

- i. Is discovery complete? If not, what is missing and when will it be complete?
- ii. Has the state made a plea offer?
- iii. Has the defense made a counteroffer?
- iv. Are the parties likely to settle and when?
- v. Are there any barriers to settlement?
- vi. Are there any pretrial motions or evidentiary issues pending?

Whenever possible, the Court shall hold the rescheduled court matter within a reasonable time frame as determined by the event but not later than [Insert time frame, e.g., 7 days] after the date from which it was continued, unless the Court determines a later date is needed after conferring with counsel (e.g., the reason for the continuance will not be resolved within the designated time frame).

Implementation note: *When the court grants a continuance, determining a future court date is best practice to ensure the case does not lose traction. The court should consider the date that is proposed in the motion as well as other factors, such as those examples shown above, when considering the next court date. This should be a reasonable period of time to allow the attorney to address the issue that necessitated the continuance request. The time frame will depend on the reason the continuance was requested and not necessarily be the next court session or an automatic granting of a 30-day continuance. The date selected should not be arbitrary. It should allow for the next hearing date to be meaningful and productive in order to progress the case to disposition.*

Case Management and Continuance Data. To ensure time standard goals are being met, the Court will monitor and review time standard performance and will discuss performance and goals at regular bench meetings and justice partner meetings. Additionally, continuance data elements will also be documented in the case management system to allow for the generation of continuance reports that will determine continuance trends and adherence to the policy.

Implementation note: *There is a management axiom that says, “What gets measured, gets managed.” This also applies to effective court management since a court should use court data to measure case progress, activity, and general court performance to understand if court processes are operating at optimal levels. As it relates to continuances, it is important for the court to maintain data sufficient to monitor continuance rates, continuance reasons, and to generate reports in these areas. However, not all court case management systems may be able to track the level of data that is described below. Courts should be prepared to adapt to track the data and generate reports based on the capabilities of its case management system, which may not mirror what is recommended below.*

Continuance data elements that should be entered in the case management system, include but are not limited to:

- *Date of request and date the matter was scheduled for hearing/trial*
- *How the request was made (motion, oral, phone, email)*
- *Party requesting the continuance (name of attorney and state or defense)*
- *The name of the judicial officer or staff (if applicable) who granted the continuance*
- *Reason for the request*
- *Date of the next hearing and the time between the continued hearing and the next hearing date*
- *Number of continuances for each hearing type*
- *Type of hearing continued (e.g., arraignment, motion)*
- *Case type continued (e.g., homicide, burglary)*
- *Whether the opposing party agreed to the continuance*

Developing a continuance motion form, such as the model form included with this policy, that includes each of these elements can help ensure this information is provided by the requesting party. For more information about court data definitions and how they are described and recorded and the importance of data governance, see the National Open Data Standards at <https://www.ncsc.org/consulting-and-research/areas-of-expertise/data/national-open-court-data-standards-nods>.

A court may issue an administrative policy related to the entry and maintenance of court data in general and continuance data in the court's case management system. Such a policy, or data integrity plan may specify who is responsible for certain entries and how to protect data accuracy. To ensure consistency in tracking the reasons for continuances, courts may find it beneficial to allow court staff to select the continuance reason from a list of common options while also allowing an "Other" option. However, text boxes and choices of "Other" should be used sparingly, perhaps requiring an extra step or justification. The court may want to work with the court partners, including the clerk, to identify the common continuance reasons that can be selected in the case management system.

If the case management system does not allow this level of detail or the tracking of the listed data elements, the court may consider consulting with the vendor to determine if the data elements can be tracked. If this information simply cannot be measured in the case management system, the court should consider tracking a minimum number of data points manually and generating reports through other software, such as spreadsheets and charts. At a minimum, a court should track the number of continuances by:

- *Date of request and date the matter was scheduled for hearing/trial*
- *Party requesting the continuance (name of attorney and state or defense)*
- *The name of the judicial officer or staff (if applicable) who granted the continuance*
- *Reason for the request*
- *Date of the next hearing*

If a court allows continuances to be granted off the record, in chambers, and/or through other non-written means (phone), the same continuance data must be tracked in order to provide an accurate and comprehensive picture of court continuance practices. Therefore, having a model continuance order form (in addition to a model motion) to capture these elements would be beneficial to the judicial officer or non-judicial officer granting the continuance and the court staff entering data in the case management system.

The data will be used to generate reports by the [court administrator/court coordinator] on the number of continuances for each case, continuances granted by each judge, and the reason for the continuance. These reports will be prepared on a [monthly] basis to be shared with the judges and discussed at justice partner meetings. At least once per quarter, the Court will work with the Bar and justice partners to seek resolution of any organizational or systemic problems that cause cases to be continued or rescheduled that go beyond the unique circumstances of individual judicial officers or individual cases.

Implementation note: *Entering continuance data will be most impactful if a court can generate reports, use the data to guide court discussions about court practices, and share the information with justice system partners at regular meetings. It is recommended that a court generate monthly continuance reports, share the reports with the judges, and discuss them at bench and court staff meetings. However, a court may determine to generate such reports with greater or less frequency. For example, a high-volume court with multiple criminal courts operating weekly may generate reports more frequently than a court with less volume and less frequent weekly criminal court sessions.*

The person responsible for generating the report may vary by court — i.e., the court administrator, a case manager, court coordinator, judicial assistant, or court clerk. This level of transparency informs the stakeholders that the information is being reviewed and being used to improve court operation and also helps ensure accountability.

This policy shall be effective _____ until further notice.

Signatures of the Court

Date

Appendix

Continuance Policy of [insert name] Court

Purpose. It is the policy of this Court to provide equal justice for all without unnecessary delay and while efficiently using the resources of the Court. Such delay erodes public trust and confidence in the Court. To avoid delays, the Court must control the pace of criminal case progress and limit continuances. Research shows that continuances are the most significant contributor to case delay. While some continuances may be outside of the Court’s control, managing the number of continuances in a case will allow the Court to reduce delay while ensuring due process and procedural fairness.

This policy sets forth what the Court will consider good cause to request a continuance, the process to request continuances, the data the Court will collect in furtherance of efforts to reduce continuances, and how the data will be used. The [district/county] judges are committed to effective criminal case management which includes the consistent application of this continuance policy by all judges. For all criminal case types and dockets and in all [divisions] courtrooms, the Court looks with strong disfavor on motions or requests to continue court events, both hearings and trials, without good cause. To protect the credibility of scheduled trial dates, trial date continuances are especially disfavored. Parties should be prepared to proceed on the scheduled hearing or trial date.

Time Standards. Time standards assist the Court in monitoring case timeliness and represent a goal for achieving the final disposition in criminal cases. This policy is designed to ensure case progress to disposition within the time standards adopted by this Court as set forth below. The time standards reflect the disposition goal for cases from the [initial filing of the criminal case, date of arrest, indictment] to the disposition of the case (e.g., dismissal, sentencing). Note: Time associated with failures to appear or bench warrants does not count toward the time standard goal. [Insert state-specific or local time standards to replace the National Model Time Standards.]

Felony	Misdemeanor	Traffic/Local Ordinance
75% within 90 days	75% within 60 days	75% within 30 days
90% within 180 days	90% within 90 days	90% within 60 days
98% within 365 days	98% within 180 days	98% within 90 days

In monitoring the effectiveness of the policy, the Court will consider if the time to disposition is reduced, if the time standards are being met, and if the continuance rate is reduced by [20%] within the first [6 months] of implementation. The Court, Court Administrator, and justice partners will annually review this policy to ensure it is achieving its intended goal to reduce delay and improve case processing times.

Continuance Request Process. Absent good cause, a motion or request for continuance filed pursuant to [insert court rule, if applicable] shall be filed as soon as the party is aware of the need for a continuance but no later than [24 hours] before the scheduled hearing or trial. The motion shall:

- i. Be in writing (email or fax may be permitted by the Court);
- ii. state the good cause reasons for the request;
- iii. be signed by the attorney making the request (or the defendant if they are not represented by counsel) and the defendant, if possible;
- iv. state whether the defendant consents to the continuance, if requested by defense counsel;
- v. state the number of prior continuances granted and upon whose motion those continuances were granted, if known;
- vi. state whether or not the defendant is currently in custody, the date the defendant was arrested, and the total days in custody in the matter in which the continuance is requested;
- vii. state whether the opposing counsel or party consents or objects to the continuance; and
- viii. propose the next court date.

Parties are encouraged but not required to use the continuance form that accompanies this policy. Continuance requests will be accepted by means other than writing (e.g., phone, text, in person) only in the following circumstances: if the request is not for a trial setting AND [no previous continuances have been granted in the case, the case type if not a felony, all parties agree, the disposition time standards will not be delayed, there is an emergency situation]. If continuances are granted in chambers or off the record, the information required in the motion stated above will be documented by the court official granting the continuance.

The Court, in its discretion, will determine good cause to grant a continuance based on individual case circumstances. The following reasons, though not exhaustive, will generally be considered good cause to grant a continuance.

- i. Hearing commitment or conflict in another court.
- ii. Sudden medical emergency (not elective medical care) or death of a party, counsel, or subpoenaed material witness.
- iii. A party did not receive notice of the setting of the trial date through no fault of the party or the party's counsel.
- iv. A competency evaluation of the defendant is pending.
- v. A treatment or diversion court assessment/evaluation of the defendant is pending.
- vi. Unanticipated absence of a subpoenaed material witness.
- vii. Facts or circumstances arising or becoming apparent too late in the proceedings to be fully corrected and which, in the view of the Court, would likely cause undue hardship or possible miscarriage of justice if the trial is required to proceed as scheduled.

The Court will determine if good cause does not exist to grant a continuance. The following reasons, though not exhaustive, will generally not be considered good cause to grant a continuance.

- i. A police officer or other witness is either in training or is scheduled to be on vacation unless the Court is advised of the conflict soon after the case is scheduled and sufficiently in advance of the trial date.²
- ii. A party or counsel is unprepared to try the case for reasons including, but not limited to, the party's failure to maintain necessary contact with counsel.
- iii. Unanticipated absence of a witness who has not been subpoenaed.
- iv. Discovery is ongoing and has not been completed.
- v. The parties are discussing a settlement or plea.
- vi. New counsel has entered an appearance in the case or a party wants to retain new counsel.
- vii. Counsel or parties agree to the continuance.
- viii. The case has not previously been continued.

The following factors will be considered, in addition to the totality of the circumstances of the case, to determine if good cause exists to grant a continuance.

- i. Weather or travel delays.
- ii. Inability to transfer a defendant from where they are incarcerated.
- iii. Change in representation for the state or defense (e.g., District Attorney, Public Defender).
- iv. Due process issues (e.g., new evidence, delay of lab results).
- v. Age of the case or the point in the court process.

In determining what constitutes good cause, the Court shall consider the age of the case, number of prior continuances, reason for continuance, due process concerns for the defendant, the pre-trial custodial status of the defendant, and speedy trial motions. The granting or denying of written continuance motions shall be made on the record, with an indication of who requested the continuance, the reasons for granting or denying the motion, and the next hearing date.

Non-judicial officers such as [court administrators, court managers, clerks, case managers, judicial assistants, etc.] may grant continuances only if the [presiding judge, chief judge] grants such authority and only under the following conditions: if the request is not for a trial setting and [no previous continuances have been granted in the case, the case type is not a felony, AND all parties agree].

When granting the continuance for good cause that is consistent with this policy, the Court shall schedule the next court date and the date shall be set with certainty. The Court shall consult with the

² A motion for continuance based on a conflict with a previously scheduled vacation shall state the date the vacation was set.

state, defense attorney, or defendant if they have not been appointed counsel or are not eligible for court-appointed counsel and have not retained counsel. The next hearing date should be based on and tailored to the reason the continuance was requested to reduce the impact of the delay and to meet court time standards, if possible. For example, the Court may ask:

- i. Is discovery complete? If not, what is missing and when will it be complete?
- ii. Has the state made a plea offer?
- iii. Has the defense made a counteroffer?
- iv. Are the parties likely to settle and when?
- v. Are there any barriers to settlement?
- vi. Are there any pretrial motions or evidentiary issues pending?

Whenever possible, the Court shall hold the rescheduled court matter within a reasonable time frame as determined by the event but not later than [Insert time frame, e.g., 7 days] after the date from which it was continued, unless the Court determines a later date is needed after conferring with counsel (e.g., the reason for the continuance will not be resolved within the designated time frame).

Case Management and Continuance Data. To ensure time standard goals are being met, the Court will monitor and review time standard performance and will discuss performance and goals at regular bench meetings and justice partner meetings. Additionally, continuance data elements will also be documented in the case management system to allow for the generation of continuance reports that will determine continuance trends and adherence to the policy.

The data will be used to generate reports by the [court administrator/court coordinator] on the number of continuances for each case, continuances granted by each judge, and the reason for the continuance. These reports will be prepared on a [monthly] basis to be shared with the judges and discussed at justice partner meetings. At least once per quarter, the Court will work with the Bar and justice partners to seek resolution of any organizational or systemic problems that cause cases to be continued or rescheduled that go beyond the unique circumstances of individual judicial officers or individual cases.

This policy shall be effective _____ until further notice.

Signatures of the Court

Date

Motion for Continuance

Case/File Number _____

State of _____

County/Judicial District _____

STATE
VS.

MOTION AND ORDER TO CONTINUE

Defendant

MOTION FOR CONTINUANCE

1. The State Defendant Parties jointly request(s) the hearing trial scheduled on _____ at _____ in the above captioned case be continued to _____ (date) or at a later time convenient for the court.
2. Good cause for the continuance exists for the following reason(s):
 - There is a conflict with another court hearing or trial in case/file # _____ in _____ court at _____ am/pm.
 - There is a sudden medical emergency of _____.
 - The competency evaluation of the defendant is pending.
 - The evaluation has been scheduled for _____, 20____.
 - The evaluation has not been scheduled because: _____
 - Results of the evaluation are expected on or before _____, 20____.
 - A treatment or diversion court assessment/evaluation of the defendant is pending.
 - The assessment/evaluation has been scheduled for _____, 20____.
 - The assessment/evaluation has not been scheduled because: _____
 - Results of the assessment/evaluation are expected on or before _____, 20____.
 - There is the unanticipated absence of _____, who is a subpoenaed material witness.
 - There are facts or circumstances that have come to light that would cause an undue hardship or possible miscarriage of justice if the trial or hearing is required to proceed. Please explain.

- The State Defendant did not receive notice of the trial or hearing date through no fault of the party or the party's counsel.
- Other. Please explain

3. The defendant consents to the motion for continuance in this matter. (Select only if defense counsel is the movant.)
4. Movant has conferred with opposing counsel/party and
 - Opposing counsel consents to the motion for continuance.
 - Opposing counsel objects to the motion for continuance.
 - The parties stipulate to the continuance.
5. No prior continuances have been granted in this matter.
 ___ prior continuances have been granted in this matter. The continuances were granted on the motion of
 State _____ Defendant _____ Both _____.
6. The defendant was arrested on _____ and has been in pretrial custody for this matter at _____ for _____ days.
 The defendant is not currently in custody.
7. This request is not made for purposes of delay but in the interest of a fair and impartial hearing.
8. The State has conferred has not conferred with the victim regarding this request and the victim:
 - Consents to the continuance
 - Objects to the continuance: _____
 - Takes no position on the continuance
 - This case is not subject to the Victims' Rights Act.

This the _____ day of _____, 20____.

Movant/Attorney

ORDER

Having reviewed the Motion for Continuance made by the State Defendant Parties jointly, the Court hereby:

- Finds good cause does not exist to continue this matter. The Court denies the motion for continuance.
- Finds good cause exists to continue this matter. The Court grants the motion for continuance. The matter will be set for _____ at _____ am/pm. All subpoenas are continued to this date.
- The State has has not complied with the Victims' Rights Act (victim's notification), if applicable.

This the _____ day of _____, 20____.

Presiding Judge