

Model Criminal Continuance Policy and Form

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This model criminal continuance policy and form 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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# 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:

* 1. Be in writing (email or fax may be permitted by the Court);
	2. state the good cause reasons for the request;
	3. be signed by the attorney making the request (or the defendant if they are not represented by counsel) and the defendant, if possible;
	4. state whether the defendant consents to the continuance, if requested by defense counsel;
	5. state the number of prior continuances granted and upon whose motion those continuances were granted, if known;
	6. 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;
	7. state whether the opposing counsel or party consents or objects to the continuance; and
	8. 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.

* 1. Hearing commitment or conflict in another court.
	2. Sudden medical emergency (not elective medical care) or death of a party, counsel, or subpoenaed material witness.
	3. A party did not receive notice of the setting of the trial date through no fault of the party or the party's counsel.
	4. A competency evaluation of the defendant is pending.
	5. A treatment or diversion court assessment/evaluation of the defendant is pending.
	6. Unanticipated absence of a subpoenaed material witness.
	7. 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.

* 1. 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]](#footnote-1)
	2. 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.
	3. Unanticipated absence of a witness who has not been subpoenaed.
	4. Discovery is ongoing and has not been completed.
	5. The parties are discussing a settlement or plea.
	6. New counsel has entered an appearance in the case or a party wants to retain new counsel.
	7. Counsel or parties agree to the continuance.
	8. 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.

* 1. Weather or travel delays.
	2. Inability to transfer a defendant from where they are incarcerated.
	3. Change in representation for the state or defense (e.g., District Attorney, Public Defender).
	4. Due process issues (e.g., new evidence, delay of lab results).
	5. 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 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:

* 1. Is discovery complete? If not, what is missing and when will it be complete?
	2. Has the state made a plea offer?
	3. Has the defense made a counteroffer?
	4. Are the parties likely to settle and when?
	5. Are there any barriers to settlement?
	6. 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.

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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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_1. [ ]  The defendant consents to the motion for continuance in this matter. (Select only if defense counsel is the movant.)
2. 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. 1. [ ]  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 \_\_\_\_\_\_.1. [ ]  The defendant was arrested on \_\_\_\_\_\_\_\_\_\_ and has been in pretrial custody for this matter at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for \_\_\_\_\_\_ days.

[ ]  The defendant is not currently in custody. 1. This request is not made for purposes of delay but in the interest of a fair and impartial hearing.
2. 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 |

1. A motion for continuance based on a conflict with a previously scheduled vacation shall state the date the vacation was set. [↑](#footnote-ref-1)