

## CONTINUANCES

A continuance is a postponement of a hearing, trial, or other proceeding to a subsequent day or time.

### **Clerks cannot grant continuances - Only judges can grant continuances.**

Article 29.03, C.C.P., requires requests for continuances to be in writing, but does not state a time the continuances must be submitted to the court. To help manage continuances, our court has established a policy for continuance. When clerks receive a request for a continuance, the clerk will give it to the judge to make a decision. After the judge decides whether or not to grant the motion, the clerk will notify the prosecutor and the defendant of the decision.

If the judge grants a continuance, the court clerk will show the case as continued on the trial docket. The case is then reset and a new notice sent to the defendant and prosecutor.

**Operation of Law:** Article 29.01, C.C.P., provides for continuances that come under operation of law. These continuances are for the following reasons:

- a defendant has not been arrested;
- a corporation or association has not been served with the summons; or
- there is not sufficient time for trial at that term of court.

**Agreement:** A criminal action (case) may be continued by consent and agreement of both the defense and prosecutor in open court. When a continuance by agreement is granted, it may be only for as long as is necessary. (Article 29.02, C.C.P.)

**Sufficient Cause:** The prosecutor or the defendant may request a continuance for cause. The request must be in writing, but it does not have to be a sworn affidavit. It must state fully the reason or cause for the motion. The judge determines if the motion contains sufficient cause to grant a continuance. This type of continuance may be only for as long as is necessary. (Article 29.03, C.C.P.)

**Religious Holy Days:** A continuance for a religious holy day can be requested by a defendant, defense attorney, prosecutor, or juror. (Articles 29.011 and 29.012, C.C.P.) Religious organization means an organization that meets the standards for qualifying as a religious organization under Section 11.20, Tax Code. Religious holy day means a day on which the tenets of a religious organization prohibit its member from participating in secular activities, such as court proceedings.

A person seeking the continuance must file with the court an affidavit stating:

- the grounds for the continuance; and
- the person holds religious beliefs that prohibit him or her from taking part in a court proceeding on the day for which the continuance is sought.

**Legislative Continuances:** Legislative continuances apply to members and members-elect of the Texas Legislature. If the attorney for a party to any criminal case is a member or member-elect of the Legislature who was employed on or after the 15<sup>th</sup> day before the date on which the suit is set for trial, the continuance is discretionary with the court. (Sections 30.003(b) and (c-1), Civil Practice and Remedies Code)

### **This Court's Continuance policy:**

1. The Code of Criminal Procedure requires all motions (requests), including a motion to reset trial date **be submitted in writing, in proper form, and in a timely manner**. The State has the right to object to any motion filed at the hearing. Handwritten requests are sufficient as long as they contain all key elements.
2. A timely manner does not mean filing a motion with the Court the day before or day of trial unless an emergency situation has arisen.
3. Parties are urged **NOT TO ASSUME THEIR MOTION HAS BEEN RECEIVED or GRANTED**, and should contact the court **24 Hours before** the hearing to confirm action taken.
4. If the motion has been denied and defendant fails to appear, the State may: (1) ask for arrest warrants due to non appearance, (2) require that bonds be posted, and/or (3) file additional charges of Failure to Appear.
5. No resets are granted without a valid reason. Work hours are not considered a reason for absence. The request must state specific facts not general assertions.
6. Defense and prosecution will be allowed one re-set for cause each; any subsequent requests must be supported with verifiable evidence or affidavit.
7. Cases will be set on the first available docket after the expiration of the continuance, notice will be sent.