

[CAPTION]

MOTION FOR CONTINUANCE BECAUSE OF ILLNESS OF DEFENDANT/WITNESS

The Defendant, by counsel, respectfully requests this Court pursuant to I.C. 35-36-7-1(e) to grant a Motion for Continuance. In support of the Motion, the Defendant states the following:

1. The Defendant is charged with [insert offense(s)].
2. This cause is set for trial on [insert date].
3. A continuance is necessary because of the illness of [insert witness name], a necessary defense witness, who is presently suffering from [insert illness]. Attached is an affidavit from [insert doctor], which is incorporated and reference as Exhibit A.
4. Without this witness, the Defendant will be denied his constitutional rights to a fair trial, to compulsory process and to effective assistance of counsel. U.S. Const. Amend. XI, XIV; Ind. Const., art I, sections 12 and 13.

WHEREFORE, the Defendant, by counsel, respectfully requests that this Court grant a continuance for [specify time needed], and for all other relief just and proper in the premises.



(Signature)


REFERENCES


CASEBANK D.5.a

I.C. 35-36-7-1(e) (motion for continuance based on illness, requirements)

CASE LAW

Lockridge v. State, [172 Ind.App. 141](#)  , [359 N.E.2d 589](#)  (1977) (in prosecution for armed robbery and attempted armed robbery, trial court properly overruled the Defendant's motion for continuance where, although the Defendant attached physician's statement to his motion for continuance, statement was not notarized nor did it present nature of illness or probable duration of incapacity as required).

Jenks v. State, [39 Ind. 1](#)  (1872) (error to refuse to postpone trial, where before the defense had closed a material and competent witness for the Defendant, who had been served with process, became seriously ill, and unable to appear and testify, whereupon it was agreed, in open court, between Defendant and his counsel and those engaged in the prosecution, that if the witness should be able to appear at any time before the cause was submitted to the jury he should be allowed to testify, and if he should not be able to appear then the Defendant should have the same right to move for a postponement of the trial that he would have if the motion had been made before the close of the defense, and with like effect; with this agreement, the parties proceeded until the rebutting evidence on the part of the State was closed, whereupon, the Defendant's witness not yet being able to be present, a motion was made to postpone the trial for eight days, which motion was supported by affidavits showing the materiality of the facts expected to be proved by the witness, and that during the trial he had been suddenly taken ill and could not, without great danger, leave his house, etc.).

Vaughn v. State, [590 N.E.2d 134](#)  (Ind. 1992) (defense witness' labor entitled the Defendant to continuance on morning of trial for burglary of home, theft of traveler's checks, and forgery, even though there was audiotape of witness' testimony at prior trial; witness' testimony that she and Defendant never cashed traveler's checks at store directly conflicted with cashier's testimony, jury did not convict at prior trial despite state's fingerprint evidence, defense counsel first became aware of witness' labor on morning of trial, and prospective jurors had not yet been questioned; although motion did not comply with statutory requirements, the trial court still abused discretion in denying continuance).