

RESOLUTION 06-11-2018

DIGEST

Continuances: Good Cause to Keep Assigned Prosecutor in Human Trafficking Case
Amends Penal Code section 1050 to include human trafficking cases when assigned prosecutor is unavailable due to a trial, preliminary hearing, or motion to suppress in another case.

STATEMENT OF REASONS

The Problem: Existing law provides that certain types of cases establish good cause for a continuance in a criminal proceeding when the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress. Human trafficking cases are not currently, included in the types of cases that establish good cause for a continuance. Many human trafficking victims lack stable family lives and are/were foster care youth. It is well accepted among those fighting human trafficking that as a society we have failed these victims. Human traffickers recognize this short-coming and capitalize on this. Due to the continued physical and mental trauma often seen in human trafficking cases, victims are extremely fearful, vulnerable, and reluctant to trust others. The prosecuting attorney assigned to the case works extremely hard to establish a relationship with the human trafficking victim and to establish trust so that the victim will testify against the trafficker. The prosecuting attorney assures the victim that they are in this together and the prosecuting attorney will be there to seek justice. Then at trial a new prosecuting attorney is assigned if the former prosecutor is assigned to another matter. This is because prosecuting attorneys are seen as fungible.

The Solution: The Legislature has already recognized that for certain types of cases (including stalking and domestic violence) prosecuting attorneys are not fungible, and that good cause exists for a continuance in those types cases when the prosecuting attorney assigned to the case is unavailable. This current amendment would make the necessary addition of adding human trafficking cases to the enumerated types of cases which provide good cause for a continuance of a criminal proceeding when the prosecuting attorney is unavailable due to having another trial, preliminary hearing, or motion to suppress in progress in that court or another court.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1050 to read as follows:

- 1 § 1050
- 2 (a) The welfare of the people of the State of California requires that all proceedings in
- 3 criminal cases shall be set for trial and heard and determined at the earliest possible time. To this
- 4 end, the Legislature finds that the criminal courts are becoming increasingly congested with
- 5 resulting adverse consequences to the welfare of the people and the defendant. Excessive
- 6 continuances contribute substantially to this congestion and cause substantial hardship to victims
- 7 and other witnesses. Continuances also lead to longer periods of presentence confinement for
- 8 those defendants in custody and the concomitant overcrowding and increased expenses of local
- 9 jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses
- 10 have the right to an expeditious disposition, and to that end it shall be the duty of all courts and

11 judicial officers and of all counsel, both for the prosecution and the defense, to expedite these
12 proceedings to the greatest degree that is consistent with the ends of justice. In accordance with
13 this policy, criminal cases shall be given precedence over, and set for trial and heard without
14 regard to the pendency of, any civil matters or proceedings. In further accordance with this
15 policy, death penalty cases in which both the prosecution and the defense have informed the
16 court that they are prepared to proceed to trial shall be given precedence over, and set for trial
17 and heard without regard to the pendency of, other criminal cases and any civil matters or
18 proceedings, unless the court finds in the interest of justice that it is not appropriate.

19 (b) To continue any hearing in a criminal proceeding, including the trial, (1) a written
20 notice shall be filed and served on all parties to the proceeding at least two court days before the
21 hearing sought to be continued, together with affidavits or declarations detailing specific facts
22 showing that a continuance is necessary and (2) within two court days of learning that he or she
23 has a conflict in the scheduling of any court hearing, including a trial, an attorney shall notify the
24 calendar clerk of each court involved, in writing, indicating which hearing was set first. A party
25 shall not be deemed to have been served within the meaning of this section until that party
26 actually has received a copy of the documents to be served, unless the party, after receiving
27 actual notice of the request for continuance, waives the right to have the documents served in a
28 timely manner. Regardless of the proponent of the motion, the prosecuting attorney shall notify
29 the people's witnesses and the defense attorney shall notify the defense's witnesses of the notice
30 of motion, the date of the hearing, and the witnesses' right to be heard by the court.

31 (c) Notwithstanding subdivision (b), a party may make a motion for a continuance
32 without complying with the requirements of that subdivision. However, unless the moving party
33 shows good cause for the failure to comply with those requirements, the court may impose
34 sanctions as provided in Section 1050.5.

35 (d) When a party makes a motion for a continuance without complying with the
36 requirements of subdivision (b), the court shall hold a hearing on whether there is good cause for
37 the failure to comply with those requirements. At the conclusion of the hearing, the court shall
38 make a finding whether good cause has been shown and, if it finds that there is good cause, shall
39 state on the record the facts proved that justify its finding. A statement of the finding and a
40 statement of facts proved shall be entered in the minutes. If the moving party is unable to show
41 good cause for the failure to give notice, the motion for continuance shall not be granted.

42 (e) Continuances shall be granted only upon a showing of good cause. Neither the
43 convenience of the parties nor a stipulation of the parties is in and of itself good cause.

44 (f) At the conclusion of the motion for continuance, the court shall make a finding
45 whether good cause has been shown and, if it finds that there is good cause, shall state on the
46 record the facts proved that justify its finding. A statement of facts proved shall be entered in the
47 minutes.

48 (g)(1) When deciding whether or not good cause for a continuance has been shown, the
49 court shall consider the general convenience and prior commitments of all witnesses, including
50 peace officers. Both the general convenience and prior commitments of each witness also shall
51 be considered in selecting a continuance date if the motion is granted. The facts as to
52 inconvenience or prior commitments may be offered by the witness or by a party to the case.

53 (2) For purposes of this section, "good cause" includes, but is not limited to, those cases
54 involving murder, as defined in subdivision (a) of Section 187, allegations that involve stalking,
55 as defined in Section 646.9, a violation of one or more of the sections specified in subdivision (a)
56 of Section 11165.1 or Section 11165.6, or domestic violence as defined in Section 13700, or a

57 case being handled in the Career Criminal Prosecution Program pursuant to Sections 999b
58 through 999h, or a hate crime, as defined in Title 11.6 (commencing with Section 422.6) of Part
59 1, or human trafficking as defined in Section 236.1 or a violation of one or more of the sections
60 specified in subdivision (b) of Section 236.1, except violations of Section 311.1, 311.2, and
61 311.5, has occurred and the prosecuting attorney assigned to the case has another trial,
62 preliminary hearing, or motion to suppress in progress in that court or another court. A
63 continuance under this paragraph shall be limited to a maximum of 10 additional court days.

64 (3) Only one continuance per case may be granted to the people under this subdivision
65 for cases involving stalking, hate crimes, or cases handled under the Career Criminal Prosecution
66 Program. Any continuance granted to the people in a case involving stalking or handled under
67 the Career Criminal Prosecution Program shall be for the shortest time possible, not to exceed 10
68 court days.

69 (h) Upon a showing that the attorney of record at the time of the defendant's first
70 appearance in the superior court on an indictment or information is a Member of the Legislature
71 of this state and that the Legislature is in session or that a legislative interim committee of which
72 the attorney is a duly appointed member is meeting or is to meet within the next seven days, the
73 defendant shall be entitled to a reasonable continuance not to exceed 30 days.

74 (i) A continuance shall be granted only for that period of time shown to be necessary by
75 the evidence considered at the hearing on the motion. Whenever any continuance is granted, the
76 court shall state on the record the facts proved that justify the length of the continuance, and
77 those facts shall be entered in the minutes.

78 (j) Whenever it shall appear that any court may be required, because of the condition of
79 its calendar, to dismiss an action pursuant to Section 1382, the court must immediately notify the
80 Chair of the Judicial Council.

81 (k) This section shall not apply when the preliminary examination is set on a date less
82 than 10 court days from the date of the defendant's arraignment on the complaint, and the
83 prosecution or the defendant moves to continue the preliminary examination to a date not more
84 than 10 court days from the date of the defendant's arraignment on the complaint.

85 (l) This section is directory only and does not mandate dismissal of an action by its terms.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT: Dena N. Sites, Esq., 20523 Crescent Bay
Dr., 2nd Floor, Lake Forest, CA 92630; Phone (760) 964-1672; Email: dena.n.sites@gmail.com

RESPONSIBLE FLOOR DELEGATE: Dena N. Sites, Esq.

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RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 1050 to include human trafficking cases when the assigned prosecutor is unavailable due to a trial, preliminary hearing, or motion to suppress in another case. This resolution should be approved in principle because it helps ensure that human trafficking cases are vertically-prosecuted by a knowledgeable prosecutor and limits the continuance to a maximum of 10 days.

Currently, Penal Code section 1050, subdivision (g)(2), authorizes a limited continuance to accommodate an assigned prosecutor's handling of a significant hearing in another case, when the charged offense involves murder, domestic violence, stalking, child abuse or neglect, or a hate crime. Human trafficking cases similarly require special handling by a vertically-assigned prosecutor who handles the case from beginning to end. The successful prosecution of a human trafficking case requires an understanding of the special dynamics of the crime and time to develop a rapport with victims and witnesses, who are often fearful of law enforcement and reluctant to testify against the accused.

The primary objection to the resolution would be that any continuance, however brief, necessarily extends a case beyond a statutorily-defined period that would otherwise mandate dismissal. However, the constitutional right to a speedy trial does not mandate a specific timeframe and is not curtailed by a continuance supported by good cause and capped at no more than 10 days. Good cause should include allowing an advocate to effectively seek justice on behalf of vulnerable victims who have been deprived of liberty and/or human dignity, usually for a time period far longer than 10 days. Furthermore, a continuance under this subdivision is only available when the assigned prosecutor is unavailable due to the need to protect another defendant's right to a preliminary hearing, trial, or motion to suppress.