

AN ACT in relation to criminal law.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 5. If and only if House Bill 2526 of the 93rd
General Assembly becomes law, the Code of Criminal Procedure
of 1963 is amended by changing Section 115-10.2 as follows:

(725 ILCS 5/115-10.2)

Sec. 115-10.2. Admissibility of prior statements when
witness refused to testify despite a court order to testify.

(a) A statement not specifically covered by any other
hearsay exception but having equivalent circumstantial
guarantees of trustworthiness, is not excluded by the hearsay
rule if the declarant is unavailable as defined in subsection
(c) and if the court determines that:

(1) the statement is offered as evidence of a
material fact; and

(2) the statement is more probative on the point
for which it is offered than any other evidence which the
proponent can procure through reasonable efforts; and

(3) the general purposes of this Section and the
interests of justice will best be served by admission of
the statement into evidence.

(b) A statement may not be admitted under this exception
unless the proponent of it makes known to the adverse party
sufficiently in advance of the trial or hearing to provide
the adverse party with a fair opportunity to prepare to meet
it, the proponent's intention to offer the statement, and the
particulars of the statement, including the name and address
of the declarant.

(c) Unavailability as a witness is limited to the
situation in which the declarant persists in refusing to

testify concerning the subject matter of the declarant's statement despite an order of the court to do so.

~~Unavailability--as--a--witness--includes--circumstances--in--which the--declarant:~~

~~(1)--is--exempted--by--ruling--of--the--court--on--the ground--of--privilege--from--testifying--concerning--the subject--matter--of--the--declarant's--statement;--or~~

~~(2)--persists--in--refusing--to--testify--concerning--the subject--matter--of--the--declarant's--statement--despite--an order--of--the--court--to--do--so;--or~~

~~(3)--testifies--to--a--lack--of--memory--of--the--subject matter--of--the--declarant's--statement;--or~~

~~(4)--is--unable--to--be--present--or--to--testify--at--the hearing--because--of--health--or--then--existing--physical--or mental--illness--or--infirmity;--or~~

~~(5)--is--absent--from--the--hearing--and--the--proponent--of the--statement--has--been--unable--to--procure--the--declarant's attendance--by--process--or--other--reasonable--means;--or~~

~~(6)--is--a--crime--victim--as--defined--in--Section--3--of the--Rights--of--Crime--Victims--and--Witnesses--Act--and--the failure--of--the--declarant--to--testify--is--caused--by--the defendant's--intimidation--of--the--declarant--as--defined--in Section--12-6--of--the--Criminal--Code--of--1961.~~

(d) A declarant is not unavailable as a witness if exemption, refusal, claim or lack of memory, inability or absence is due to the procurement or wrongdoing of the proponent of a statement for purpose of preventing the witness from attending or testifying.

(e) Nothing in this Section shall render a prior statement inadmissible for purposes of impeachment because the statement was not recorded or otherwise fails to meet the criteria set forth in this Section.

(Source: P.A. 89-689, eff. 12-31-96; 93HB2526enrolled.)

Section 10. The Code of Criminal Procedure of 1963 is amended by adding Section 115-10.2a as follows:

(725 ILCS 5/115-10.2a new)

Sec. 115-10.2a. Admissibility of prior statements in domestic violence prosecutions when the witness is unavailable to testify.

(a) In a domestic violence prosecution, a statement, made by an individual identified in Section 201 of the Illinois Domestic Violence Act of 1986 as a person protected by that Act, that is not specifically covered by any other hearsay exception but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule if the declarant is identified as unavailable as defined in subsection (c) and if the court determines that:

(1) the statement is offered as evidence of a material fact; and

(2) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(3) the general purposes of this Section and the interests of justice will best be served by admission of the statement into evidence.

(b) A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement, and the particulars of the statement, including the name and address of the declarant.

(c) Unavailability as a witness includes circumstances in which the declarant:

(1) is exempted by ruling of the court on the

ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of health or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance by process or other reasonable means; or

(6) is a crime victim as defined in Section 3 of the Rights of Crime Victims and Witnesses Act and the failure of the declarant to testify is caused by the defendant's intimidation of the declarant as defined in Section 12-6 of the Criminal Code of 1961.

(d) A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for purpose of preventing the witness from attending or testifying.

(e) Nothing in this Section shall render a prior statement inadmissible for purposes of impeachment because the statement was not recorded or otherwise fails to meet the criteria set forth in this Section.

Section 99. Effective date. This Act takes effect upon becoming law.