



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5265

by Rep. Jim Durkin

SYNOPSIS AS INTRODUCED:

725 ILCS 5/115-10.6 new

Amends the Code of Criminal Procedure of 1963. Provides that a statement of a witness is not excluded at the trial or hearing of any defendant by the hearsay rule or as a violation of any right to confront witnesses if the witness was killed, bribed, kidnapped, secreted, intimidated, or otherwise induced by a party, or one for whose conduct such party is legally responsible, to prevent the witness from being available to testify at such trial or hearing. Provides that the party seeking to introduce the statement shall disclose the statement sufficiently in advance of trial or hearing to provide the opposing party with a fair opportunity to meet it. Provides that the disclosure shall include notice of an intent to offer the statement, including the identity of the declarant. Provides that prior to ruling on the admissibility of a statement under this provision, the court shall conduct a hearing outside the presence of the jury. Provides that except in cases where a preponderance of the evidence establishes that the defendant killed the declarant, the party seeking to introduce the statement shall be required to show by a preponderance of the evidence that the party who caused the unavailability of the witness did so with the intent or motive that the witness be unavailable for trial or hearing. Provides that the court is not required to find that the conduct or wrongdoing amounts to a criminal act. Provides that nothing in this provision shall be construed to prevent the admissibility of statements under existing hearsay exceptions. Provides that the provisions of the Act are severable.

LRB095 15337 RLC 41325 b

1 AN ACT concerning criminal law.

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

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by adding Section 115-10.6 as follows:

6 (725 ILCS 5/115-10.6 new)

7 Sec. 115-10.6. Admissibility of prior statements of an
8 unavailable witness whose absence was wrongfully procured.

9 (a) Legislative intent. The Illinois General Assembly
10 finds that no party to a criminal case who wrongfully procures
11 the unavailability of a witness should be allowed to benefit
12 from such wrongdoing by depriving the trier of fact of relevant
13 testimony.

14 (b) A statement of a witness is not excluded at the trial
15 or hearing of any defendant by the hearsay rule or as a
16 violation of any right to confront witnesses if the witness was
17 killed, bribed, kidnapped, secreted, intimidated, or otherwise
18 induced by a party, or one for whose conduct such party is
19 legally responsible, to prevent the witness from being
20 available to testify at such trial or hearing.

21 (c) The party seeking to introduce the statement shall
22 disclose the statement sufficiently in advance of trial or
23 hearing to provide the opposing party with a fair opportunity

1 to meet it. The disclosure shall include notice of an intent to
2 offer the statement, including the identity of the declarant.

3 (d) Prior to ruling on the admissibility of a statement
4 under this Section, the court shall conduct a hearing outside
5 the presence of the jury. Except in cases where a preponderance
6 of the evidence establishes that the defendant killed the
7 declarant, the party seeking to introduce the statement shall
8 be required to show by a preponderance of the evidence that the
9 party who caused the unavailability of the witness did so with
10 the intent or motive that the witness be unavailable for trial
11 or hearing. The court is not required to find that the conduct
12 or wrongdoing amounts to a criminal act.

13 (e) Nothing in this Section shall be construed to prevent
14 the admissibility of statements under existing hearsay
15 exceptions.

16 Section 97. Severability. The provisions of this Act are
17 severable under Section 1.31 of the Statute on Statutes.