

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 changing Section 115-10.2 as follows:

6 (725 ILCS 5/115-10.2)

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (6) is a crime victim as defined in Section 3 of
15 the Rights of Crime Victims and Witnesses Act and the
16 failure of the declarant to testify is caused by the
17 defendant's intimidation of the declarant as defined in
18 Section 12-6 of the Criminal Code of 1961. Unavailability
19 as-a-witness-is-limited-to-the--situation--in--which--the
20 declarant--persists-in-refusing-to-testify-concerning-the
21 subject-matter-of-the-declarant's--statement--despite--an
22 order-of-the-court-to-do-so.

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

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

32 (Source: P.A. 89-689, eff. 12-31-96.)