

SB0078



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB0078

Introduced 1/26/2005, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

725 ILCS 5/115-10.2
725 ILCS 5/115-10.4

Amends the Code of Criminal Procedure of 1963. Provides that prior statements of a witness who refuses to testify despite a court order to testify and of a deceased witness are admissible only if the prior statements were under oath and subject to cross-examination by the adverse party at the prior trial, hearing, or other proceeding. Effective immediately.

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A BILL FOR

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 Sections 115-10.2 and 115-10.4 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 material
15 fact; and

16 (2) the statement is more probative on the point for
17 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 the
25 adverse party with a fair opportunity to prepare to meet it,
26 the proponent's intention to offer the statement, and the
27 particulars of the statement, including the name and address of
28 the declarant.

29 (c) Unavailability as a witness is limited to the situation
30 in which the declarant persists in refusing to testify
31 concerning the subject matter of the declarant's statement
32 despite an order of the court to do so.

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

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

10 (f) Prior statements are admissible under this Section only
11 if the statements were made under oath and were subject to
12 cross-examination by the adverse party in a prior trial,
13 hearing, or other proceeding.

14 (Source: P.A. 93-413, eff. 8-5-03; 93-443, eff. 8-5-03.)

15 (725 ILCS 5/115-10.4)

16 Sec. 115-10.4. Admissibility of prior statements when
17 witness is deceased.

18 (a) A statement not specifically covered by any other
19 hearsay exception but having equivalent circumstantial
20 guarantees of trustworthiness is not excluded by the hearsay
21 rule if the declarant is deceased and if the court determines
22 that:

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

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

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

31 (b) A statement may not be admitted under this exception
32 unless the proponent of it makes known to the adverse party
33 sufficiently in advance of the trial or hearing to provide the
34 adverse party with a fair opportunity to prepare to meet it,
35 the proponent's intention to offer the statement, and the

1 particulars of the statement, including the name of the
2 declarant.

3 (c) Unavailability as a witness under this Section is
4 limited to the situation in which the declarant is deceased.

5 (d) Any prior statement that is sought to be admitted under
6 this Section must have been made by the declarant under oath at
7 a trial, hearing, or other proceeding and been subject to
8 cross-examination by the adverse party.

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

13 (Source: P.A. 91-363, eff. 7-30-99.)

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