

1 AMENDMENT TO HOUSE BILL 563

2 AMENDMENT NO. _____. Amend House Bill 563 by replacing
3 everything after the enacting clause with the following:

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

7 (725 ILCS 5/115-10.2)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (d) A declarant is not unavailable as a witness if
 34 exemption, refusal, claim or lack of memory, inability or

1 absence is due to the procurement or wrongdoing of the
2 proponent of a statement for purpose of preventing the
3 witness from attending or testifying.

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

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

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

11 (725 ILCS 5/115-10.2a new)

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

15 (a) In a domestic violence prosecution, a statement,
16 made by an individual identified in Section 201 of the
17 Illinois Domestic Violence Act of 1986 as a person protected
18 by that Act, that is 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 identified as unavailable as defined
22 in subsection (c) and if the court determines that:

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

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

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

32 (b) A statement may not be admitted under this exception

1 unless the proponent of it makes known to the adverse party
2 sufficiently in advance of the trial or hearing to provide
3 the adverse party with a fair opportunity to prepare to meet
4 it, the proponent's intention to offer the statement, and the
5 particulars of the statement, including the name and address
6 of the declarant.

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

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

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

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

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

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

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

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

33 (e) Nothing in this Section shall render a prior
34 statement inadmissible for purposes of impeachment because

1 the statement was not recorded or otherwise fails to meet the
2 criteria set forth in this Section.

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