

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.)

33 Section 99. Effective date. This Act takes effect upon

1 becoming law.