

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 402

AN ACT

To amend chapter 491, RSMo, by adding thereto one new section relating to forfeiture by wrongdoing.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 491, RSMo, is amended by adding thereto one new section, to be known as section 491.016, to read as follows:

491.016. 1. A statement made by a witness, which is not otherwise admissible, is admissible in evidence in a criminal proceeding as substantive evidence to prove the truth of the matter asserted if, after a hearing, the court finds, by a preponderance of the evidence, that:

(1) The defendant engaged in or acquiesced to wrongdoing with the intent of causing the unavailability of the witness;

(2) The wrongdoing in which the defendant engaged or acquiesced has caused or substantially contributed to cause the unavailability of the witness;

(3) The state exercised due diligence to secure by subpoena or other means the attendance of the witness at the proceeding, or the witness is unavailable because the defendant caused or acquiesced in the death of the witness;
and

(4) The witness fails to appear at the proceeding.

2. In a jury trial, the hearing and finding to determine the admissibility of the statement shall be held and found outside the presence of the jury and before the case is submitted to the jury.