

FIRST REGULAR SESSION

# SENATE BILL NO. 402

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

1602S.011

ADRIANE D. CROUSE, Secretary

## 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  
2 one new section, to be known as section 491.016, to read as  
3 follows:

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

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

9 (2) The wrongdoing in which the defendant engaged or  
10 acquiesced has caused the unavailability of the witness;

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

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

16 2. In a jury trial, the hearing and finding to  
17 determine the admissibility of the statement shall be held

18 and found outside the presence of the jury and before the  
19 case is submitted to the jury.

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