

HCS HB 548 -- FORFEITURE BY WRONGDOING

SPONSOR: Hovis

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 10 to 0. Voted "Do Pass" by the Standing Committee on Rules- Administrative Oversight by a vote of 11 to 0.

The following is a summary of the House Committee Substitute for HB 548.

This bill specifies that an otherwise inadmissible witness statement is admissible in evidence in a criminal proceeding as substantive evidence if the court, after a hearing, finds by a preponderance of the evidence that the defendant engaged in or acquiesced to wrongdoing with the purpose of causing the unavailability of the witness, such wrongdoing caused or substantially contributed to the unavailability of the witness, the prosecution exercised due diligence to secure by subpoena or other means the attendance of the witness, and the witness failed to appear.

The following is a summary of the public testimony from the committee hearing. The testimony was based on the introduced version of the bill.

PROPONENTS: Supporters say that this follows the Federal Rule of Evidence. No one shall be permitted to take advantage of his or her own wrongs. This keeps defendants from being able to exclude evidence of witness who were not available to testify because of the wrongdoing of the defendant, which is not new doctrine. The Supreme Court of Missouri decided this in 2008 and the Supreme Court of the United States decided this in the 1800s.

Testifying for the bill were Representative Hovis; H. Morley Swingle, Office of Prosecuting Attorney, Boone County Missouri.

OPPONENTS: There was no opposition voiced to the committee.

OTHERS: Others testifying on the bill say that this is a necessary bill, and many judges are unfamiliar with these provisions. It is easier when it is codified. This comports with Missouri and United States Supreme Court decisions. There should be more clarity about what constitutes "wrongdoing," because it should be clear that it also means conferring a benefit or offering to confer a benefit or colluding not to testify.

Testifying on the bill was Stephen Sokoloff, Missouri Association

of Prosecuting Attorneys.