

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 20-0650.01 Jerry Barry x4341

SENATE BILL 20-088

SENATE SPONSORSHIP

Fields,

HOUSE SPONSORSHIP

Roberts,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING EVIDENTIARY RULES WHEN A DEFENDANT INTERFERES**
102 **WITH A WITNESS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under an opinion of the Colorado supreme court, if a party to a criminal case wrongfully procures the unavailability of a witness, evidence that the witness may have been able to offer is still inadmissible if it constitutes hearsay evidence. The bill provides that such a party forfeits the right to object to the admissibility of evidence of the witness based on hearsay and that such evidence is admissible.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 13-25-139 as
3 follows:

4 **13-25-139. Criminal action - interference with witness -**
5 **forfeiture by wrongdoing.** (1) A PARTY TO A CRIMINAL CASE THAT
6 WRONGFULLY PROCURES THE UNAVAILABILITY OF A WITNESS OR
7 PROSPECTIVE WITNESS:

8 (a) MAY NOT BENEFIT FROM THE WRONGDOING BY DEPRIVING THE
9 TRIER OF FACT OF RELEVANT EVIDENCE AND TESTIMONY; AND

10 (b) FORFEITS THE PARTY'S RIGHT TO OBJECT TO THE ADMISSIBILITY
11 OF EVIDENCE OR STATEMENTS BASED UPON THE UNAVAILABILITY OF THE
12 WITNESS THROUGH FORFEITURE BY WRONGDOING.

13 (2) SUBJECT TO THE PROVISIONS OF SUBSECTION (3) OF THIS
14 SECTION, EVIDENCE AND STATEMENTS RELATED TO A PARTY THAT HAS
15 ENGAGED OR ACQUIESCED IN WRONGDOING THAT WAS INTENDED TO, AND
16 DID, PROCURE THE UNAVAILABILITY OF A WITNESS OR PROSPECTIVE
17 WITNESS ARE ADMISSIBLE AND MAY BE USED BY THE OFFERING PARTY TO
18 MAKE A SHOWING OF FORFEITURE BY WRONGDOING.

19 (3) IN DETERMINING THE ADMISSIBILITY OF EVIDENCE OR
20 STATEMENTS DESCRIBED IN SUBSECTION (2) OF THIS SECTION, THE COURT
21 SHALL DETERMINE, OUT OF THE PRESENCE OF THE JURY, WHETHER
22 FORFEITURE BY WRONGDOING OCCURRED BY A PREPONDERANCE OF THE
23 EVIDENCE. IF PRACTICABLE, THE COURT SHALL MAKE THE DETERMINATION
24 PURSUANT TO THIS SUBSECTION (3) BEFORE TRIAL USING THE PROCEDURES
25 DESCRIBED IN RULE 104 OF THE COLORADO RULES OF EVIDENCE.

26 (4) THE PARTY OFFERING THE EVIDENCE OR STATEMENTS

1 DESCRIBED IN SUBSECTION (2) OF THIS SECTION IS NOT REQUIRED TO SHOW
2 THAT:

3 (a) THE ACTOR'S SOLE INTENT WAS TO WRONGFULLY CAUSE THE
4 WITNESS'S OR PROSPECTIVE WITNESSES'S UNAVAILABILITY;

5 (b) THE ACTIONS OF THE ACTOR CONSTITUTED A CRIMINAL
6 OFFENSE;

7 (c) ANY STATEMENTS OFFERED ARE RELIABLE;

8 (d) THE ACTOR WAS UNDER INDICTMENT OR PENDING TRIAL; OR

9 (e) THE DECLARANT WAS SCHEDULED TO BE A WITNESS AT THE
10 TIME OF THE ACTOR'S INTERFERENCE.

11 (5) A CONVICTION FOR AN OFFENSE AS DESCRIBED IN PART 7 OF
12 ARTICLE 8 OF TITLE 18 CREATES A PRESUMPTION OF FORFEITURE BY
13 WRONGDOING PURSUANT TO THIS SECTION.

14 (6) RULE 403 OF THE COLORADO RULES OF EVIDENCE APPLIES TO
15 EVIDENCE OF STATEMENTS SOUGHT TO BE INTRODUCED PURSUANT TO THIS
16 SECTION. THIS SECTION DOES NOT PERMIT THE PRESENTATION OF
17 CHARACTER EVIDENCE THAT WOULD BE OTHERWISE INADMISSIBLE UNDER
18 THE COLORADO RULES OF EVIDENCE OR ANY OTHER LAW.

19 **SECTION 2. Act subject to petition - effective date -**
20 **applicability.** (1) This act takes effect September 1, 2020; except that,
21 if a referendum petition is filed pursuant to section 1 (3) of article V of
22 the state constitution against this act or an item, section, or part of this act
23 within the ninety-day period after final adjournment of the general
24 assembly, then the act, item, section, or part will not take effect unless
25 approved by the people at the general election to be held in November
26 2020 and, in such case, will take effect on the date of the official
27 declaration of the vote thereon by the governor.

1 (2) This act applies to evidence or statements sought to be
2 admitted on or after the applicable effective date of this act.