

By: Lucio III

H.B. No. 1973

A BILL TO BE ENTITLED

AN ACT

relating to the admissibility of certain statements in the prosecution of murder or capital murder.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.48 to read as follows:

Art. 38.48. HEARSAY STATEMENT; DECLARANT UNAVAILABLE IN CERTAIN PROSECUTIONS BASED ON DEFENDANT'S INTENTIONAL WRONGDOING.

(a) Notwithstanding Rule 804(a), Texas Rules of Evidence, a declarant who, because of death or then existing physical or mental illness or infirmity, is unable to be present or to testify at a hearing or proceeding in the prosecution of an offense under Section 19.02 or 19.03, Penal Code, is considered to be unavailable as a witness based on the defendant's intentional wrongdoing if the circumstances causing the declarant's absence first occur or were diagnosed after the date that an arrest warrant for the offense was issued with respect to the defendant.

(b) A statement legally obtained from a declarant described by Subsection (a) is not inadmissible because of the hearsay rule at a hearing or proceeding described by that subsection if:

(1) on or before the 14th day before the date the hearing or proceeding begins, the party intending to offer the statement:

(A) notifies the adverse party of its intention

1 to do so;

2 (B) provides the adverse party with the name of
3 the witness through whom it intends to offer the statement; and

4 (C) provides the adverse party with a written
5 summary of the statement; and

6 (2) the trial court finds, in a hearing conducted
7 outside the presence of the jury, that the statement is reliable
8 based on the time, content, and circumstances of the statement.

9 SECTION 2. Under the terms of Section 22.109(b), Government
10 Code, Rule 804(a), Texas Rules of Evidence, is disapproved to the
11 extent that a declarant described by Article 38.48(a), Code of
12 Criminal Procedure, as added by this Act, is not considered to be
13 unavailable as a witness based on the defendant's intentional
14 wrongdoing.

15 SECTION 3. The change in law made by this Act applies only
16 to a criminal hearing or proceeding that commences on or after the
17 effective date of this Act. A criminal hearing or proceeding that
18 commences before the effective date of this Act is governed by the
19 law in effect on the date the hearing or proceeding commenced, and
20 the former law is continued in effect for that purpose.

21 SECTION 4. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2011.