

HOUSE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

March 31, 2021

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB21-1142 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 **"SECTION 1. Legislative declaration.** The general assembly
4 finds that showup identifications are disfavored as inherently suggestive
5 because, when compared to properly conducted lineups and photo arrays,
6 showups are more likely to yield false identifications. Because of the high
7 likelihood of misidentification during a showup, the general assembly
8 deems showups to be admissible only when the prosecution can
9 demonstrate law enforcement's strict compliance with showup
10 requirements.

11 **SECTION 2.** In Colorado Revised Statutes, 16-1-109, **amend**
12 (2)(h), (3)(a) introductory portion, (4), and (5); **repeal** (3)(b); and **add** (6)
13 as follows:

14 **16-1-109. Eyewitness identification procedures - policies and**
15 **procedures - training - admissibility - report - legislative declaration**
16 **- definitions.** (2) As used in this section, unless the context otherwise
17 requires:

18 (h) "Showup" means an identification procedure in which an
19 eyewitness is presented with a single ~~suspect~~ SUBJECT in person for the
20 purpose of determining whether the eyewitness identifies the individual
21 as the ~~perpetrator~~ SUSPECT.

22 (3) (a) On or before ~~July 1, 2016~~ NOVEMBER 15, 2021, any
23 Colorado law enforcement agency THAT EMPLOYS A PEACE OFFICER

1 REQUIRED TO BE P.O.S.T.-CERTIFIED PURSUANT TO SECTION 16-2.5-102,
2 THAT IS charged with enforcing the criminal laws of Colorado, and that,
3 as part of any criminal investigation, uses or might use any eyewitness
4 identification procedure shall adopt written policies and procedures
5 concerning law-enforcement-conducted eyewitness identifications. The
6 policies and procedures adopted and implemented by a law enforcement
7 agency must be consistent with eyewitness identification procedures of
8 nationally recognized peer-reviewed research ~~or the policies and~~
9 ~~procedures developed, agreed upon, and recommended by the Colorado~~
10 ~~attorney general's office and the Colorado district attorneys' council~~ AND
11 MUST BE CONSISTENT WITH THE REQUIREMENTS OF SECTION 16-1-110 FOR
12 ADMISSIBILITY OF EVIDENCE OF EYEWITNESS IDENTIFICATION. THE
13 ATTORNEY GENERAL, THE COLORADO DISTRICT ATTORNEYS' COUNCIL,
14 REPRESENTATIVES OF LAW ENFORCEMENT, AND REPRESENTATIVES OF THE
15 STATE PUBLIC DEFENDER OFFICE, IN CONSULTATION WITH AN
16 ORGANIZATION THAT IS FAMILIAR WITH THE RESEARCH REGARDING
17 EYEWITNESS IDENTIFICATION AND SUPPORTS THE EXONERATION OF
18 PERSONS WHO HAVE BEEN WRONGFULLY CONVICTED, SHALL DEVELOP AND
19 RECOMMEND A SET OF MODEL POLICIES AND PROCEDURES THAT ARE
20 CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION AND SECTION
21 16-1-110 AND UPDATE THE POLICIES AND PROCEDURES AS NECESSARY.
22 The policies and procedures must include, but need not be limited to, the
23 following:

24 ~~(b) On or before July 1, 2016, all Colorado law enforcement~~
25 ~~agencies that conduct eyewitness identifications shall adopt and~~
26 ~~implement the written policies and procedures required by paragraph (a)~~
27 ~~of this subsection (3). If a law enforcement agency does not complete or~~
28 ~~adopt its own written policies and procedures relating to eyewitness~~
29 ~~identifications, the law enforcement agency must on or before July 1,~~
30 ~~2016, adopt and implement the model policies and procedures as~~
31 ~~developed and approved in 2015 by the Colorado attorney general and the~~
32 ~~Colorado district attorneys' council.~~

33 (4) Policies and procedures adopted and implemented by a law
34 enforcement agency pursuant to this section ~~shall~~ MUST be reviewed by
35 the agency at least every five years to ensure ~~consistency with~~ THE
36 POLICIES AND PROCEDURES ARE UPDATED TO INCLUDE BEST PRACTICES
37 RECOGNIZED BY nationally recognized peer-reviewed research.

38 (5) Compliance or failure to comply with any of the requirements
39 of this section AND THE REQUIREMENTS OF SECTION 16-1-110 is
40 considered relevant evidence in any case involving eyewitness
41 identification, as long as such evidence is otherwise admissible.

1 (6) BEGINNING JANUARY 1, 2022, EACH LAW ENFORCEMENT
2 AGENCY THAT USES A SHOWUP SHALL COLLECT THE FOLLOWING DATA
3 RELATED TO THOSE IDENTIFICATION TECHNIQUES:

- 4 (a) THE DATE, TIME, AND LOCATION OF THE SHOWUP;
- 5 (b) THE GENDER, AGE, AND RACE OF THE SUBJECT AND
6 EYEWITNESS IN THE SHOWUP, AS DETERMINED BY THE SUBJECT'S
7 IDENTIFICATION OR RETRIEVED FROM A DATABASE ACCESSIBLE BY LAW
8 ENFORCEMENT;
- 9 (c) THE ALLEGED CRIME; AND
- 10 (d) THE OUTCOME OF THE SHOWUP.

11 **SECTION 3.** In Colorado Revised Statutes, **add** 16-1-110 as
12 follows:

13 **16-1-110. Regulation of showup identification procedures -**
14 **definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
15 OTHERWISE REQUIRES:

16 (a) "P.O.S.T.-CERTIFIED" MEANS CERTIFIED BY THE PEACE
17 OFFICERS STANDARDS AND TRAINING BOARD CREATED IN SECTION
18 24-31-302.

19 (b) "SHOWUP" MEANS AN IDENTIFICATION PROCEDURE IN WHICH
20 AN EYEWITNESS IS PRESENTED WITH A SINGLE SUBJECT IN PERSON FOR THE
21 PURPOSE OF DETERMINING WHETHER THE EYEWITNESS IDENTIFIES THE
22 INDIVIDUAL AS THE SUSPECT.

23 (2) (a) A PEACE OFFICER MAY UTILIZE A SHOWUP ONLY PURSUANT
24 TO THE FOLLOWING CONDITIONS:

25 (I) (A) FOLLOWING THE REPORT OF A CRIME, A PEACE OFFICER,
26 ACTING ON REASONABLE SUSPICION, HAS DETAINED A SUBJECT IN THE
27 CRIME WITHIN MINUTES OF THE COMMISSION OF THE CRIME AND NEAR THE
28 LOCATION OF THE CRIME;

29 (B) GIVEN THE CIRCUMSTANCES, NEITHER A LIVE LINEUP NOR A
30 PHOTO ARRAY ARE AVAILABLE AS A MEANS OF IDENTIFICATION; AND

31 (C) THE EYEWITNESS REASONABLY BELIEVES HE OR SHE CAN
32 IDENTIFY THE SUBJECT.

33 (II) TO VERIFY THE IDENTITY OF AN INTIMATE RELATIONSHIP, AS
34 DEFINED IN SECTION 18-6-800.3 (2), IN A DOMESTIC VIOLENCE CASE; OR

35 (III) TO CONFIRM THE IDENTITY OF A FAMILIAL SUBJECT,
36 INCLUDING A PARENT, CHILD, OR SIBLING KNOWN TO THE EYEWITNESS.

37 (3) (a) BEGINNING JANUARY 1, 2022, FOR SHOWUPS CONDUCTED
38 ON OR AFTER THIS DATE, WHEN A LAW ENFORCEMENT AGENCY THAT
39 EMPLOYS PEACE OFFICERS REQUIRED TO BE P.O.S.T.-CERTIFIED PURSUANT
40 TO SECTION 16-2.5-102 OR A P.O.S.T.-CERTIFIED PEACE OFFICER
41 CONDUCTS A SHOWUP, THE PEACE OFFICER SHALL COMPLY WITH THE



- 1 FOLLOWING PROVISIONS:
- 2 (I) A PEACE OFFICER SHALL TRANSPORT THE EYEWITNESSES
3 SEPARATELY TO THE LOCATION OF THE PERSON SUBJECT TO THE SHOWUP;
- 4 (II) THE SHOWUP LOCATION IS A WELL-LIT LOCATION WITH AN
5 UNOBSTRUCTED VIEW OF THE PERSON SUBJECT TO THE SHOWUP;
- 6 (III) A PEACE OFFICER SHALL AVOID EXTERNAL FACTORS THAT
7 CAN BE SUGGESTIVE TO THE EYEWITNESS, SUCH AS VERBAL COMMENTS,
8 COMPUTER SCREEN DATA, OR ANY OTHER INFORMATION CONCERNING THE
9 PERSON SUBJECT TO THE SHOWUP;
- 10 (IV) A PEACE OFFICER SHALL NOT REQUIRE THE PERSON SUBJECT
11 TO THE SHOWUP TO PUT ON DESCRIBED CLOTHING WORN BY THE SUSPECT,
12 SPEAK SPECIFIC WORDS UTTERED BY THE SUSPECT, OR PERFORM ANY
13 SPECIFIC ACTIONS MIMICKING THOSE OF THE SUSPECT THAT OCCURRED
14 DURING THE COMMISSION OF THE REPORTED CRIME;
- 15 (V) A PEACE OFFICER SHALL NOT SHOW THE PERSON SUBJECT TO
16 THE SHOWUP TO THE EYEWITNESS WHILE THE PERSON WAS IN HANDCUFFS
17 OR IN THE BACK OF A PATROL VEHICLE, EXCEPT IN CIRCUMSTANCES TO
18 PREVENT AN IMMINENT THREAT OF PHYSICAL HARM TO A PEACE OFFICER
19 OR ANOTHER PERSON OR THE ESCAPE OF THE SUBJECT;
- 20 (VI) WHEN MULTIPLE EYEWITNESSES EXIST, A PEACE OFFICER
21 SHALL PERMIT ONLY ONE EYEWITNESS AT A TIME TO VIEW THE PERSON
22 SUBJECT TO THE SHOWUP;
- 23 (VII) WHEN MULTIPLE SUBJECTS EXIST, A PEACE OFFICER SHALL
24 SEPARATE THE SUBJECTS AND CONDUCT SEPARATE SHOWUPS WITH EACH
25 SUBJECT;
- 26 (VIII) A PEACE OFFICER SHALL SEPARATE THE EYEWITNESSES
27 FROM ONE ANOTHER;
- 28 (IX) WHEN CONDUCTING A SHOWUP WITH AN EYEWITNESS WHO
29 HAS LIMITED ENGLISH PROFICIENCY OR WHO IS HEARING IMPAIRED OR
30 DEAF, A PEACE OFFICER, IF FEASIBLE, SHALL OBTAIN AN INTERPRETER
31 BEFORE PROCEEDING WITH THE SHOWUP. THE LACK OF AN INTERPRETER
32 DOES NOT PRECLUDE USE OF EVIDENCE DERIVED FROM THE SHOWUP
33 PROCEDURE IF A COURT FINDS THE IDENTIFICATION IS SUFFICIENTLY OR
34 NEVERTHELESS RELIABLE.
- 35 (X) A PEACE OFFICER SHALL GIVE THE ADMONITION REQUIRED BY
36 SUBSECTION (3)(e) OF THIS SECTION PRIOR TO CONDUCTING THE SHOWUP;
- 37 (XI) PRIOR TO THE SHOWUP, A PEACE OFFICER OR ANOTHER
38 PERSON AUTHORIZED BY THE PEACE OFFICER SHALL PHOTOGRAPH EACH
39 SUBJECT AT THE PLACE OF THE SHOWUP TO PRESERVE A RECORD OF THE
40 APPEARANCE OF THE SUBJECT AT THE TIME OF THE SHOWUP; AND
- 41 (XII) IF AN EYEWITNESS MAKES AN IDENTIFICATION DURING A

1 SHOWUP, A PEACE OFFICER SHALL ASK THE EYEWITNESS WHETHER THE
2 EYEWITNESS IS CONFIDENT, SOMEWHAT CONFIDENT, OR NOT CONFIDENT
3 ABOUT THE IDENTIFICATION. IF AN EYEWITNESS MAKES AN
4 IDENTIFICATION, A PEACE OFFICER, AT THE TIME OF THE IDENTIFICATION,
5 SHALL TAKE A CLEAR STATEMENT FROM THE EYEWITNESS AND DOCUMENT
6 THE STATEMENT IN THE EYEWITNESS'S OWN WORDS. IF AN EYEWITNESS
7 MAKES AN IDENTIFICATION AND AN ARREST OCCURS, ANY FURTHER ACTS
8 TO OBTAIN AN ADDITIONAL IDENTIFICATION BY SUBSEQUENT
9 EYEWITNESSES WERE THROUGH A LIVE LINEUP OR PHOTO ARRAY.

10 (b) IF A SHOWUP IDENTIFICATION WAS CONDUCTED IN A CASE,
11 UPON A MOTION OF THE DEFENDANT, THE COURT SHALL HOLD A HEARING
12 TO DETERMINE THE ADMISSIBILITY OF SUCH IDENTIFICATION. AT THE
13 HEARING, THE PROSECUTION SHALL ESTABLISH BY A PREPONDERANCE OF
14 THE EVIDENCE THAT THE LAW ENFORCEMENT AGENCY COMPLIED WITH
15 EACH OF THE PROVISIONS OF SUBSECTION (3)(a) OF THIS SECTION FOR THE
16 IDENTIFICATION TO BE ADMISSIBLE.

17 (c) IF THE COURT ADMITS EVIDENCE OF A SHOWUP IDENTIFICATION,
18 THE COURT SHALL STATE ON THE RECORD THE FACTUAL BASIS FOR
19 ADMITTING THE EVIDENCE.

20 (d) A P.O.S.T.-CERTIFIED PEACE OFFICER SHALL DOCUMENT THE
21 TIME AND LOCATION OF THE SHOWUP AND READ THE SHOWUP ADVISEMENT
22 REQUIRED BY SUBSECTION (3)(e) OF THIS SECTION TO EACH EYEWITNESS.
23 THE OFFICER SHALL DOCUMENT THE PROCEDURE IN THE OFFICER'S
24 WRITTEN STATEMENT AND, BEGINNING JULY 1, 2023, RECORD THE SHOWUP
25 IN ITS ENTIRETY WITH THE OFFICER'S BODY-WORN CAMERA.

26 (e) WHEN CONDUCTING A SHOWUP, A P.O.S.T.-CERTIFIED PEACE
27 OFFICER SHALL READ THE FOLLOWING INSTRUCTIONS TO EACH
28 EYEWITNESS:

29 IN A MOMENT I AM GOING TO ASK YOU TO VIEW
30 SOMEONE. YOU SHOULD NOT ASSUME THAT THE PERSON
31 YOU ARE ABOUT TO SEE HAS COMMITTED A CRIME. WE
32 COULD BE SHOWING YOU THIS PERSON FOR MANY REASONS,
33 INCLUDING TO CLEAR THE PERSON FROM THE
34 INVESTIGATION. KEEP IN MIND THAT ELIMINATING PEOPLE
35 FROM AN INVESTIGATION SERVES AN EQUALLY JUST
36 PURPOSE AS IDENTIFYING A PERSON WHO MIGHT HAVE BEEN
37 INVOLVED IN CRIMINAL ACTIVITY.

38 NO MATTER THE RESULT OF YOU SEEING THIS
39 PERSON, OUR INVESTIGATION WILL CONTINUE, AND WE
40 CANNOT DISCUSS THAT INVESTIGATION WITH YOU. THE
41 INVESTIGATION OF THIS MATTER WILL CONTINUE WHETHER

1 OR NOT YOU MAKE AN IDENTIFICATION. APART FROM YOUR
2 INDIVIDUAL ASSISTANCE AND COOPERATION WITH LAW
3 ENFORCEMENT IN THIS INVESTIGATION, WE CANNOT DISCUSS
4 THE INVESTIGATION WITH YOU. PLEASE DO NOT DISCUSS
5 WITH ANY OTHER EYEWITNESS WHAT YOU SAW, SAID, OR
6 DID DURING THIS PROCEDURE.

7 DO YOU UNDERSTAND THE INSTRUCTIONS I HAVE
8 GIVEN YOU? DO YOU AGREE TO COMPLY WITH THE
9 INSTRUCTIONS I HAVE GIVEN TO YOU? DO YOU HAVE ANY
10 QUESTIONS BEFORE WE BEGIN?

11 **SECTION 4.** In Colorado Revised Statutes, 24-31-903, **amend**
12 **(3); and add (2)(c)(II.5) and (2)(c)(VII)(E) as follows:**

13 **24-31-903. Division of criminal justice report.** (2) Beginning
14 January 1, 2023, the Colorado state patrol and each local law enforcement
15 agency that employs peace officers shall report to the division of criminal
16 justice:

17 (c) All data relating to contacts conducted by its peace officers,
18 including:

19 (II.5) WHETHER THE CONTACT WAS A SHOWUP, AS DEFINED IN
20 SECTION 16-1-110 (1)(b);

21 (VII) The result of the contact, such as:

22 (E) IF THE CONTACT WAS A SHOWUP, THE INFORMATION
23 COLLECTED PURSUANT TO SECTION 16-1-109 (6) FOR THE EYEWITNESS
24 AND THE SUBJECT.

25 (3) The Colorado state patrol and local law enforcement agencies
26 shall not report the name, address, social security number, or other unique
27 personal identifying information of the subject of the use of force, victim
28 of the official misconduct, EYEWITNESS OR SUBJECT IN A SHOWUP, or
29 persons contacted, searched, or subjected to a property seizure.
30 Notwithstanding any provision of law to the contrary, the data reported
31 pursuant to this section is available to the public pursuant to subsection
32 (4) of this section.

33 **SECTION 5. Act subject to petition - effective date -**
34 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
35 the expiration of the ninety-day period after final adjournment of the
36 general assembly; except that, if a referendum petition is filed pursuant
37 to section 1 (3) of article V of the state constitution against this act or an
38 item, section, or part of this act within such period, then the act, item,
39 section, or part will not take effect unless approved by the people at the
40 general election to be held in November 2022 and, in such case, will take
41 effect on the date of the official declaration of the vote thereon by the

1 governor.
2 (2) This act applies to showups conducted on or after January 1,
3 2022."

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