

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0740.01 Michael Dohr x4347

HOUSE BILL 21-1142

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HOUSE SPONSORSHIP

**Bacon,**

SENATE SPONSORSHIP

**Gonzales,**

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**House Committees**  
Judiciary

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING MEASURES RELATED TO EYEWITNESS IDENTIFICATION**  
102           **TECHNIQUES, AND, IN CONNECTION THEREWITH, REQUIRING**  
103           **REPORTING DATA RELATED TO EYEWITNESS TECHNIQUES AND**  
104           **REGULATING THE USE OF SHOWUP IDENTIFICATIONS.**

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**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>.)*

Beginning October 1, 2021, each law enforcement agency that uses a showup shall collect for each showup the date the technique was used, the gender and race of the suspect, and whether the technique lead to

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.

identification of the suspect. Each law enforcement agency shall create an annual report of the data collected.

The bill prohibits a court from admitting evidence of a showup identification unless the court finds that the showup was conducted pursuant to the statutory requirements and the court determines:

- The showup was necessary because the peace officer lacked probable cause that permitted an arrest that would have allowed for the use of a lineup or photo array; or
- Exigent circumstances required an immediate identification procedure.

The bill creates requirements and conditions that must be followed when a showup is conducted.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 finds and declares that:

4 (a) Showup identifications are inherently suggestive, and,  
5 compared to properly conducted lineups and photo arrays, showups are  
6 more likely to yield false identifications; and

7 (b) To prevent improper identifications and reduce eyewitness  
8 identification error, showup identifications should be admissible only  
9 when the showup was necessary because police otherwise lacked  
10 probable cause that would permit an arrest and a proper lineup or photo  
11 array, or other exigent circumstances required an immediate identification  
12 procedure.

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

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

1 (h) "Showup" means an identification procedure in which A  
2 VICTIM OR an eyewitness is presented with a single suspect in person OR  
3 PHOTO OF A SINGLE SUSPECT ONLY for the purpose of determining whether  
4 the eyewitness identifies the individual as the perpetrator.

5 (3) (a) On or before ~~July 1, 2016~~ OCTOBER 1, 2021, any Colorado  
6 law enforcement agency THAT EMPLOYS A PEACE OFFICER REQUIRED TO  
7 BE P.O.S.T.-CERTIFIED PURSUANT TO SECTION 16-2.5-102, charged with  
8 enforcing the criminal laws of Colorado and that, as part of any criminal  
9 investigation, uses or might use any eyewitness identification procedure  
10 shall adopt written policies and procedures concerning law  
11 enforcement-conducted eyewitness identifications. The policies and  
12 procedures adopted and implemented by a law enforcement agency must  
13 be consistent with eyewitness identification procedures of nationally  
14 recognized peer-reviewed research ~~or the policies and procedures~~  
15 ~~developed, agreed upon, and recommended by the Colorado attorney~~  
16 ~~general's office and the Colorado district attorneys' council~~ AND  
17 CONSISTENT WITH THE REQUIREMENTS OF SECTION 16-1-110 FOR  
18 ADMISSIBILITY OF EVIDENCE OF EYEWITNESS IDENTIFICATION. THE  
19 ATTORNEY GENERAL AND THE COLORADO DISTRICT ATTORNEYS' COUNCIL  
20 TOGETHER SHALL DEVELOP AND RECOMMEND A SET OF MODEL POLICIES  
21 AND PROCEDURES THAT ARE CONSISTENT WITH THE REQUIREMENTS OF  
22 THIS SECTION AND SECTION 16-1-110 AND WHICH SHALL BE UPDATED AS  
23 NECESSARY. A LOCAL LAW ENFORCEMENT AGENCY MAY MODIFY THOSE  
24 PROCEDURES, SO LONG AS THEY ARE NOT OTHERWISE INCONSISTENT WITH  
25 STATUTORY REQUIREMENTS. The policies and procedures must include,  
26 but need not be limited to, the following:

27 (b) ~~On or before July 1, 2016, all Colorado law enforcement~~

1 ~~agencies that conduct eyewitness identifications shall adopt and~~  
2 ~~implement the written policies and procedures required by paragraph (a)~~  
3 ~~of this subsection (3). If a law enforcement agency does not complete or~~  
4 ~~adopt its own written policies and procedures relating to eyewitness~~  
5 ~~identifications, the law enforcement agency must on or before July 1,~~  
6 ~~2016, adopt and implement the model policies and procedures as~~  
7 ~~developed and approved in 2015 by the Colorado attorney general and the~~  
8 ~~Colorado district attorneys' council.~~

9 (6) (a) BEGINNING OCTOBER 1, 2021, EACH LAW ENFORCEMENT  
10 AGENCY THAT USES A SHOWUP SHALL COLLECT THE FOLLOWING DATA  
11 RELATED TO THOSE IDENTIFICATION TECHNIQUES: THE DATE, TIME, AND  
12 LOCATION OF THE SHOWUP; THE GENDER, AGE, AND RACE OF THE SUSPECT  
13 IN THE SHOWUP; THE ALLEGED CRIME; AND WHETHER THE SHOWUP LED TO  
14 IDENTIFICATION OF A SUSPECT.

15 (b) BEGINNING FEBRUARY 1, 2022, AND EACH FEBRUARY 1  
16 THEREAFTER, EACH LAW ENFORCEMENT AGENCY SHALL CREATE A REPORT  
17 OF THE DATA COLLECTED PURSUANT TO SUBSECTION (6)(a) OF THIS  
18 SECTION FOR THE PREVIOUS YEAR AND POST THAT REPORT ON ITS WEBSITE  
19 OR SOME OTHER PUBLICLY AVAILABLE ALTERNATIVE.

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

22 **16-1-110. Regulation of showup identification procedures -**  
23 **definitions.** (1) AS USED IN THIS SECTION:

24 (a) "EXIGENT CIRCUMSTANCES" MEANS A SITUATION THAT WOULD  
25 CAUSE A REASONABLE PERSON TO BELIEVE THAT A SHOWUP  
26 IDENTIFICATION WAS NECESSARY TO PREVENT PHYSICAL HARM TO A PEACE  
27 OFFICER OR ANOTHER PERSON, THE DESTRUCTION OF RELEVANT EVIDENCE,

1 THE ESCAPE OF THE SUSPECT, OR SOME OTHER CONSEQUENCE IMPROPERLY  
2 FRUSTRATING LEGITIMATE LAW ENFORCEMENT PURPOSE, AND THE VICTIM  
3 OR EYEWITNESS REASONABLY BELIEVES HE OR SHE CAN IDENTIFY THE  
4 SUBJECT.

5 (b) "P.O.S.T.-CERTIFIED" MEANS CERTIFIED BY THE PEACE  
6 OFFICERS STANDARDS AND TRAINING BOARD CREATED IN SECTION  
7 24-31-302.

8 (c) "SHOWUP" MEANS AN IDENTIFICATION PROCEDURE IN WHICH A  
9 VICTIM OR AN EYEWITNESS IS PRESENTED WITH A SINGLE SUSPECT IN  
10 PERSON OR PHOTO OF A SINGLE SUSPECT ONLY FOR THE PURPOSE OF  
11 DETERMINING WHETHER THE EYEWITNESS IDENTIFIES THE INDIVIDUAL AS  
12 THE PERPETRATOR.

13 (2)(a) A COURT, INCLUDING A JUVENILE COURT, SHALL NOT ADMIT  
14 EVIDENCE OF A SHOWUP IDENTIFICATION UNLESS THE PROSECUTION CAN  
15 SHOW THAT:

16 (I) THE PROSECUTION CAN SHOW THAT:

17 (A) THE SHOWUP WAS NECESSARY BECAUSE THE PEACE OFFICER  
18 LACKED PROBABLE CAUSE THAT PERMITTED AN ARREST THAT WOULD  
19 HAVE ALLOWED FOR THE USE OF A LIVE LINEUP OR PHOTO ARRAY; OR

20 (B) EXIGENT CIRCUMSTANCES REQUIRED AN IMMEDIATE  
21 IDENTIFICATION PROCEDURE; AND

22 (II) THE COURT FINDS AT AN EVIDENTIARY HEARING THAT THE  
23 PEACE OFFICER OR OFFICERS CONDUCTING THE SHOWUP COMPLIED WITH  
24 THE REQUIREMENTS OF SUBSECTION (3) OF THIS SECTION.

25 (b) IF THE COURT ADMITS EVIDENCE OF A SHOWUP IDENTIFICATION,  
26 THE COURT SHALL PRODUCE A WRITTEN ORDER SPECIFYING THE BASIS FOR  
27 ADMITTING THE EVIDENCE PURSUANT TO SUBSECTION (2)(a) OF THIS

1 SECTION.

2 (3) (a) BEGINNING OCTOBER 1, 2021, A LAW ENFORCEMENT  
3 AGENCY THAT EMPLOYS PEACE OFFICERS REQUIRED TO BE  
4 P.O.S.T.-CERTIFIED PURSUANT TO SECTION 16-2.5-102 OR A  
5 P.O.S.T.-CERTIFIED PEACE OFFICER MAY ONLY CONDUCT A SHOWUP WHEN  
6 COMPLYING WITH THE FOLLOWING:

7 (I) A PEACE OFFICER SHALL TRANSPORT THE VICTIMS OR  
8 EYEWITNESSES SEPARATELY TO THE LOCATION OF THE PERSON SUBJECT TO  
9 THE SHOWUP;

10 (II) THE SHOWUP LOCATION MUST BE A WELL-LIT LOCATION WITH  
11 AN UNOBSTRUCTED VIEW OF THE PERSON SUBJECT TO THE SHOWUP;

12 (III) A PEACE OFFICER SHALL AVOID EXTERNAL FACTORS THAT  
13 CAN BE DISTRACTING TO THE VICTIM OR EYEWITNESS, SUCH AS VERBAL  
14 COMMENTS, COMPUTER SCREEN DATA, OR ANY OTHER INFORMATION  
15 CONCERNING THE PERSON SUBJECT TO THE SHOWUP;

16 (IV) A PEACE OFFICER SHALL NOT REQUIRE AN INDIVIDUAL WHO  
17 IS THE SUBJECT OF THE SHOWUP TO PUT ON CLOTHING WORN BY THE  
18 SUSPECT, SPEAK WORDS UTTERED BY THE SUSPECT, OR PERFORM ANY  
19 ACTIONS MIMICKING THOSE OF THE SUSPECT;

20 (V) A PEACE OFFICER SHOULD AVOID SHOWING THE PERSON  
21 SUBJECT TO THE SHOWUP IN HANDCUFFS OR IN THE BACK OF A PATROL  
22 VEHICLE;

23 (VI) A PEACE OFFICER SHALL ONLY PERMIT ONE VICTIM OR  
24 WITNESS AT A TIME TO VIEW THE PERSON SUBJECT TO THE SHOWUP WHEN  
25 MULTIPLE VICTIMS OR EYEWITNESSES EXIST;

26 (VII) WHEN MULTIPLE SUSPECTS EXIST, A PEACE OFFICER SHALL  
27 SEPARATE THE SUSPECTS AND SHALL CONDUCT SEPARATE SHOWUPS WITH

1 EACH SUSPECT;

2 (VIII) A PEACE OFFICER SHALL SEPARATE VICTIMS AND  
3 EYEWITNESSES FROM ONE ANOTHER;

4 (IX) WHEN CONDUCTING A SHOWUP WITH A VICTIM OR  
5 EYEWITNESS WITH LIMITED ENGLISH PROFICIENCY OR WHO IS HEARING  
6 IMPAIRED OR DEAF, A PEACE OFFICER, IF FEASIBLE, SHALL OBTAIN AN  
7 INTERPRETER BEFORE PROCEEDING WITH THE SHOWUP. THE LACK OF AN  
8 INTERPRETER DOES NOT PRECLUDE USE OF EVIDENCE DERIVED FROM THE  
9 SHOWUP PROCEDURE IF A COURT FINDS THE IDENTIFICATION IS  
10 SUFFICIENTLY OR NEVERTHELESS RELIABLE.

11 (X) PRIOR TO THE SHOWUP, A PEACE OFFICER SHALL INFORM THE  
12 VICTIM OR WITNESS THAT THE PERSON WHO COMMITTED THE CRIME MAY  
13 OR MAY NOT BE THE PERSON SUBJECT TO THE SHOWUP;

14 (XI) PRIOR TO THE SHOWUP, A PEACE OFFICER OR ANOTHER  
15 PERSON AUTHORIZED BY THE PEACE OFFICER SHALL PHOTOGRAPH EACH  
16 SUSPECT AT THE PLACE OF THE SHOWUP TO PRESERVE A RECORD OF THE  
17 APPEARANCE OF THE SUSPECT AT THE TIME OF THE SHOWUP; AND

18 (XII) IF A VICTIM OR EYEWITNESS MAKES AN IDENTIFICATION  
19 DURING A SHOWUP, A PEACE OFFICER SHALL ASK THE VICTIM OR  
20 EYEWITNESS WHETHER THE VICTIM OR EYEWITNESS IS HIGHLY CONFIDENT,  
21 CONFIDENT, SOMEWHAT CONFIDENT, NEUTRAL, OR NOT CONFIDENT ABOUT  
22 THE IDENTIFICATION. IF A VICTIM OR EYEWITNESS MAKES AN  
23 IDENTIFICATION, A PEACE OFFICER, AT THE TIME OF THE IDENTIFICATION,  
24 SHALL TAKE A CLEAR STATEMENT FROM THE EYEWITNESS AND DOCUMENT  
25 THE STATEMENT IN THE EYEWITNESS'S OWN WORDS. IF A VICTIM OR  
26 EYEWITNESS MAKES AN IDENTIFICATION AND AN ARREST IS JUSTIFIED, ALL  
27 SUBSEQUENT EYEWITNESSES OR THE VICTIM MUST BE SHOWN A LIVE

1 LINEUP OR PHOTO LINEUP.

2 (b) A P.O.S.T.-CERTIFIED PEACE OFFICER SHALL DOCUMENT THE  
3 TIME AND LOCATION OF THE SHOWUP AND READ THE SHOWUP ADVISEMENT  
4 REQUIRED BY SUBSECTION (3)(c) OF THIS SECTION TO EACH VICTIM OR  
5 EYEWITNESS. THE OFFICER SHALL DOCUMENT THE PROCEDURE IN THE  
6 OFFICER'S WRITTEN STATEMENT AND BEGINNING JULY 1, 2023, RECORD  
7 THE SHOWUP IN ITS ENTIRETY WITH THE OFFICER'S BODY-WORN CAMERA.

8 (c) WHEN CONDUCTING A SHOWUP, A P.O.S.T.-CERTIFIED PEACE  
9 OFFICER SHALL READ THE FOLLOWING INSTRUCTIONS TO EACH VICTIM OR  
10 EYEWITNESS:

11 IN A MOMENT I AM GOING TO ASK YOU TO VIEW  
12 SOMEONE. THE PERSON WHO COMMITTED THE CRIME MAY  
13 OR MAY NOT BE ONE OF THE PEOPLE YOU ARE ABOUT TO  
14 VIEW. YOU SHOULD NOT FEEL YOU HAVE TO MAKE AN  
15 IDENTIFICATION. IT IS JUST AS IMPORTANT TO CLEAR  
16 INNOCENT PEOPLE FROM SUSPICION AS IT IS TO IDENTIFY THE  
17 SUSPECT. THE INVESTIGATION WILL CONTINUE WHETHER OR  
18 NOT YOU MAKE AN IDENTIFICATION. IF YOU DO SELECT  
19 SOMEONE, PLEASE DO NOT ASK ME ABOUT THAT PERSON, AS  
20 I AM UNABLE TO SHARE ANY INFORMATION AT THIS STAGE  
21 OF THE INVESTIGATION.

22 BECAUSE YOU ARE INVOLVED IN AN ONGOING  
23 INVESTIGATION, TO PREVENT COMPROMISING THE  
24 INVESTIGATION, YOU SHOULD AVOID DISCUSSING THIS  
25 IDENTIFICATION PROCEDURE OR ITS RESULTS. KEEPING THE  
26 RESULTS OF THIS PROCEDURE TO YOURSELF IS NECESSARY  
27 TO PRESERVE THE INTEGRITY OF THE PROCEDURE.



1                   DO YOU UNDERSTAND THE INSTRUCTIONS I HAVE  
2                   GIVEN YOU? DO YOU HAVE ANY QUESTIONS BEFORE WE  
3                   BEGIN?

4                   (d) IF A PERSON OF INTEREST IS NOT IDENTIFIED BY THE VICTIM OR  
5                   EYEWITNESS DURING A SHOWUP, A PEACE OFFICER SHALL OBTAIN THE  
6                   PERSON OF INTEREST'S NAME, DATE OF BIRTH, AND ADDRESS PRIOR TO  
7                   RELEASING THE PERSON AND DOCUMENT THE CONTACT ACCORDING TO  
8                   ESTABLISHED AGENCY PROTOCOL AND SECTION 24-31-903.

9                   (4) A P.O.S.T.-CERTIFIED PEACE OFFICER MAY SHOW A SINGLE  
10                  PHOTOGRAPH TO A VICTIM OR EYEWITNESS TO CONFIRM IDENTITY IN  
11                  EXIGENT CIRCUMSTANCES. A SINGLE PHOTOGRAPH MAY BE USED IN THE  
12                  FOLLOWING SITUATIONS:

13                  (a) TO VERIFY THE IDENTITY OF A SPOUSE, BOYFRIEND,  
14                  GIRLFRIEND, OR PARTNER IN A DOMESTIC VIOLENCE CASE; OR

15                  (b) TO CONFIRM THE IDENTITY OF A SUSPECT KNOWN TO THE  
16                  WITNESS OR VICTIM.

17                  **SECTION 4. Act subject to petition - effective date.** This act  
18                  takes effect at 12:01 a.m. on the day following the expiration of the  
19                  ninety-day period after final adjournment of the general assembly; except  
20                  that, if a referendum petition is filed pursuant to section 1 (3) of article V  
21                  of the state constitution against this act or an item, section, or part of this  
22                  act within such period, then the act, item, section, or part will not take  
23                  effect unless approved by the people at the general election to be held in  
24                  November 2022 and, in such case, will take effect on the date of the  
25                  official declaration of the vote thereon by the governor.