

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 21-0740.01 Michael Dohr x4347

HOUSE BILL 21-1142

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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.**

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.

SENATE
Amended 2nd Reading
May 17, 2021

HOUSE
3rd Reading Unamended
April 28, 2021

HOUSE
Amended 2nd Reading
April 27, 2021

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.

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

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

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

13 **16-1-109. Eyewitness identification procedures - policies and**
14 **procedures - training - admissibility - report - legislative declaration**
15 **- definitions.** (2) As used in this section, unless the context otherwise
16 requires:

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

1 as the perpetrator SUSPECT.

2 (3) (a) On or before ~~July 1, 2016~~ NOVEMBER 15, 2021, any
3 Colorado law enforcement agency THAT EMPLOYS A PEACE OFFICER
4 REQUIRED TO BE P.O.S.T.-CERTIFIED PURSUANT TO SECTION 16-2.5-102,
5 THAT IS charged with enforcing the criminal laws of Colorado, and that,
6 as part of any criminal investigation, uses or might use any eyewitness
7 identification procedure shall adopt written policies and procedures
8 concerning law-enforcement-conducted eyewitness identifications. The
9 policies and procedures adopted and implemented by a law enforcement
10 agency must be consistent with eyewitness identification procedures of
11 nationally recognized peer-reviewed research ~~or the policies and~~
12 ~~procedures developed, agreed upon, and recommended by the Colorado~~
13 ~~attorney general's office and the Colorado district attorneys' council~~ AND
14 MUST BE CONSISTENT WITH THE REQUIREMENTS OF SECTION 16-1-110 FOR
15 ADMISSIBILITY OF EVIDENCE OF EYEWITNESS IDENTIFICATION. THE
16 ATTORNEY GENERAL, THE COLORADO DISTRICT ATTORNEYS' COUNCIL,
17 REPRESENTATIVES OF LAW ENFORCEMENT, AND REPRESENTATIVES OF THE
18 STATE PUBLIC DEFENDER OFFICE, IN CONSULTATION WITH AN
19 ORGANIZATION THAT IS FAMILIAR WITH THE RESEARCH REGARDING
20 EYEWITNESS IDENTIFICATION AND SUPPORTS THE EXONERATION OF
21 PERSONS WHO HAVE BEEN WRONGFULLY CONVICTED, SHALL DEVELOP AND
22 RECOMMEND A SET OF MODEL POLICIES AND PROCEDURES THAT ARE
23 CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION AND SECTION
24 16-1-110 AND UPDATE THE POLICIES AND PROCEDURES AS NECESSARY.
25 The policies and procedures must include, but need not be limited to, the
26 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 (4) Policies and procedures adopted and implemented by a law
10 enforcement agency pursuant to this section shall MUST be reviewed by
11 the agency at least every five years to ensure consistency with THE
12 POLICIES AND PROCEDURES ARE UPDATED TO INCLUDE BEST PRACTICES
13 RECOGNIZED BY nationally recognized peer-reviewed research.

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

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

21 (a) THE DATE, TIME, AND LOCATION OF THE SHOWUP;

22 (b) THE GENDER, AGE, AND RACE OF THE SUBJECT AND
23 EYEWITNESS IN THE SHOWUP, AS DETERMINED BY THE LAW ENFORCEMENT
24 OFFICER'S PERCEPTION OR THE SUBJECT'S IDENTIFICATION OR RETRIEVED
25 FROM A DATABASE ACCESSIBLE BY LAW ENFORCEMENT;

26 (c) THE ALLEGED CRIME; AND

27 (d) THE OUTCOME OF THE SHOWUP.

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

3 **16-1-110. Regulation of showup identification procedures -**
4 **definitions - repeal.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
5 OTHERWISE REQUIRES:

6 (a) "P.O.S.T.-CERTIFIED" MEANS CERTIFIED BY THE PEACE
7 OFFICERS STANDARDS AND TRAINING BOARD CREATED IN SECTION
8 24-31-302.

9 (b) "SHOWUP" MEANS AN IDENTIFICATION PROCEDURE IN WHICH
10 AN EYEWITNESS IS PRESENTED WITH A SINGLE SUBJECT IN PERSON FOR THE
11 PURPOSE OF DETERMINING WHETHER THE EYEWITNESS IDENTIFIES THE
12 INDIVIDUAL AS THE SUSPECT.

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

15 (I) (A) FOLLOWING THE REPORT OF A CRIME, A PEACE OFFICER,
16 ACTING ON REASONABLE SUSPICION, HAS DETAINED A SUBJECT IN THE
17 CRIME WITHIN MINUTES OF THE COMMISSION OF THE CRIME AND NEAR THE
18 LOCATION OF THE CRIME;

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

21 (C) THE EYEWITNESS REASONABLY BELIEVES HE OR SHE CAN
22 IDENTIFY THE SUBJECT.

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

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

27 (3) (a) BEGINNING JANUARY 1, 2022, FOR SHOWUPS CONDUCTED

1 ON OR AFTER THIS DATE, WHEN A LAW ENFORCEMENT AGENCY THAT
2 EMPLOYS PEACE OFFICERS REQUIRED TO BE P.O.S.T.-CERTIFIED PURSUANT
3 TO SECTION 16-2.5-102 OR A P.O.S.T.-CERTIFIED PEACE OFFICER
4 CONDUCTS A SHOWUP, THE PEACE OFFICER SHALL COMPLY WITH THE
5 FOLLOWING PROVISIONS:

6 (I) A PEACE OFFICER SHALL TRANSPORT THE EYEWITNESSES
7 SEPARATELY TO THE LOCATION OF THE PERSON SUBJECT TO THE SHOWUP;

8 (II) THE SHOWUP LOCATION MUST BE AS WELL-LIT AS
9 PRACTICABLE WITH AN UNOBSTRUCTED VIEW OF THE PERSON SUBJECT TO
10 THE SHOWUP;

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

15 (IV) A PEACE OFFICER SHALL NOT REQUIRE THE PERSON SUBJECT
16 TO THE SHOWUP TO PUT ON DESCRIBED CLOTHING WORN BY THE SUSPECT,
17 SPEAK SPECIFIC WORDS UTTERED BY THE SUSPECT, OR PERFORM ANY
18 SPECIFIC ACTIONS MIMICKING THOSE OF THE SUSPECT THAT OCCURRED
19 DURING THE COMMISSION OF THE REPORTED CRIME;

20 (V) A PEACE OFFICER SHALL NOT SHOW THE PERSON SUBJECT TO
21 THE SHOWUP TO THE EYEWITNESS WHILE THE PERSON WAS IN HANDCUFFS
22 OR IN THE BACK OF A PATROL VEHICLE, EXCEPT IN CIRCUMSTANCES TO
23 PREVENT AN IMMINENT THREAT OF PHYSICAL HARM TO A PEACE OFFICER
24 OR ANOTHER PERSON OR THE ESCAPE OF THE SUBJECT;

25 (VI) WHEN MULTIPLE EYEWITNESSES EXIST, A PEACE OFFICER
26 SHALL PERMIT ONLY ONE EYEWITNESS AT A TIME TO VIEW THE PERSON
27 SUBJECT TO THE SHOWUP;

1 (VII) WHEN MULTIPLE SUBJECTS EXIST, A PEACE OFFICER SHALL
2 SEPARATE THE SUBJECTS AND CONDUCT SEPARATE SHOWUPS WITH EACH
3 SUBJECT;

4 (VIII) A PEACE OFFICER SHALL SEPARATE THE EYEWITNESSES
5 FROM ONE ANOTHER;

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

13 (X) A PEACE OFFICER SHALL GIVE THE ADMONITION REQUIRED BY
14 SUBSECTION (3)(d) OF THIS SECTION PRIOR TO CONDUCTING THE SHOWUP;

15 (XI) (A) IF A PEACE OFFICER IS NOT REQUIRED TO WEAR A
16 BODY-WORN CAMERA, PRIOR TO THE SHOWUP, A PEACE OFFICER OR
17 ANOTHER PERSON AUTHORIZED BY THE PEACE OFFICER SHALL
18 PHOTOGRAPH OR USE A BODY-WORN CAMERA TO CAPTURE VIDEO THAT
19 SHOWS CLEARLY AND WITHOUT OBSTRUCTION EACH SUBJECT AT THE
20 PLACE OF THE SHOWUP TO PRESERVE A RECORD OF THE APPEARANCE OF
21 THE SUBJECT AT THE TIME OF THE SHOWUP. THIS SUBSECTION
22 (3)(a)(XI)(A) IS REPEALED, EFFECTIVE JANUARY 1, 2023.

23 (B) NO LATER THAN JANUARY 1, 2023, USING A BODY-WORN
24 CAMERA, A PEACE OFFICER SHALL RECORD A VIDEO OF THE ENTIRETY
25 OF THE SHOWUP PROCEDURE INCLUDING EACH SUBJECT TO PRESERVE A
26 RECORD OF THE APPEARANCE OF THE SUBJECT AT THE TIME OF THE
27 SHOWUP AND THE LOCATION AND CONDITIONS OF THE SHOWUP, THE

1 ADMONITION A PEACE OFFICER IS REQUIRED TO PROVIDE TO AN
2 EYEWITNESS AS REQUIRED BY SUBSECTION (3)(d) OF THIS SECTION, AND
3 THE EYEWITNESS CONFIDENCE STATEMENT REQUIRED BY SUBSECTION
4 (3)(a)(XII) OF THIS SECTION.

5 (XII) IF AN EYEWITNESS MAKES AN IDENTIFICATION DURING A
6 SHOWUP, A PEACE OFFICER SHALL ASK THE EYEWITNESS WHETHER THE
7 EYEWITNESS IS CONFIDENT, SOMEWHAT CONFIDENT, OR NOT CONFIDENT
8 ABOUT THE IDENTIFICATION. IF AN EYEWITNESS MAKES AN
9 IDENTIFICATION, A PEACE OFFICER, AT THE TIME OF THE IDENTIFICATION,
10 SHALL TAKE A CLEAR STATEMENT FROM THE EYEWITNESS AND DOCUMENT
11 THE STATEMENT IN THE EYEWITNESS'S OWN WORDS. IF AN EYEWITNESS
12 MAKES AN IDENTIFICATION AND AN ARREST OCCURS, ANY FURTHER ACTS
13 TO OBTAIN AN ADDITIONAL IDENTIFICATION BY SUBSEQUENT
14 EYEWITNESSES MUST BE THROUGH A LIVE LINEUP OR PHOTO ARRAY.

15 (b) THE COURT SHALL CONSIDER ANY FAILURE BY LAW
16 ENFORCEMENT TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION
17 WITH RESPECT TO ANY CHALLENGE TO A SHOWUP IDENTIFICATION.

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

24 (d) (I) WHEN CONDUCTING A SHOWUP, A P.O.S.T.-CERTIFIED
25 PEACE OFFICER SHALL VERBALLY COMMUNICATE TO THE EYEWITNESS THE
26 SUBSTANCE OF THE FOLLOWING STATEMENTS:

27 (A) YOU SHOULD NOT ASSUME THE PERSON YOU ARE ABOUT TO SEE

1 HAS COMMITTED A CRIME;

2 (B) WE COULD BE SHOWING YOU A PERSON FOR MANY REASONS,
3 INCLUDING TO CLEAR THE PERSON FROM INVESTIGATION;

4 (C) ELIMINATING A PERSON FROM AN INVESTIGATION SERVES AN
5 EQUALLY IMPORTANT PURPOSE AS IDENTIFYING A PERSON WHO MIGHT
6 HAVE BEEN INVOLVED IN THE CRIMINAL ACTIVITY;

7 (D) THE INVESTIGATION OF THIS MATTER WILL CONTINUE
8 WHETHER OR NOT YOU IDENTIFY A PERSON;

9 (E) APART FROM INDIVIDUAL ASSISTANCE AND COOPERATION WITH
10 LAW ENFORCEMENT, WE CANNOT DISCUSS THE INVESTIGATION WITH YOU;

11 AND

12 (F) PLEASE DO NOT DISCUSS WHAT YOU SAW, SAID, OR DID DURING
13 THIS PROCEDURE WITH ANY OTHER EYEWITNESS.

14 (II) THE P.O.S.T.-CERTIFIED PEACE OFFICER SHALL ASK THE
15 EYEWITNESS IF THEY UNDERSTAND THE INSTRUCTIONS, IF THEY AGREE TO
16 COMPLY WITH THE INSTRUCTIONS, AND IF THEY HAVE ANY QUESTIONS
17 BEFORE THE IDENTIFICATION PROCEDURES BEGINS. THE EYEWITNESS MUST
18 RESPOND AFFIRMATIVELY IN ORDER FOR THE SHOWUP TO PROCEED.

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

21 **24-31-903. Division of criminal justice report.** (2) Beginning
22 January 1, 2023, the Colorado state patrol and each local law enforcement
23 agency that employs peace officers shall report to the division of criminal
24 justice:

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

27 (II.5) WHETHER THE CONTACT WAS A SHOWUP, AS DEFINED IN

1 SECTION 16-1-110 (1)(b);

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

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

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

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

24 (2) This act applies to showups conducted on or after January 1,
25 2022.