



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 21-0740	Date:	August 13, 2021
Prime Sponsors:	Rep. Bacon Sen. Gonzales	Bill Status:	Signed into Law
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Bill Topic: EYEWITNESS IDENTIFICATION SHOWUP REGULATIONS

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill creates new procedures and data collection requirements when eyewitness evidence is used in a criminal investigation. Beginning in FY 2021-22, it increases state and local government workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the enacted bill.

Summary of Legislation

Under current law, any law enforcement agency that uses eyewitness evidence, or showups, in a criminal investigation must have adopted written policies that meet statutory specifications. By November 15, 2021, the bill requires law enforcement agencies to meet additional requirements, including a recommended set of policies developed by the Attorney General, the Colorado District Attorneys' Council, a representative of law enforcement, and a representative of the Office of the State Public Defender.

Beginning January 1, 2022, the bill requires law enforcement agencies using showups to collect and annually report the following information on all showups: the date, time, and location of the showup; demographic information on the subject and eyewitness; the alleged crime, and the outcome of the showup.

A peace officer may only use a showup in the following instances:

- following the report of a crime, when a peace officer, acting on reasonable suspicion, has detained a subject in the crime within minutes of the commission of the crime and near the location of the crime; and, given the circumstances, neither a live lineup nor a photo array are available as a means of identification; and the eyewitness reasonably believes they can identify the subject;

- to verify the identity of an intimate relationship in a domestic violence case; or
- to confirm the identity of a familial subject, including a parent, child, or sibling, known to the eyewitness.

Peace officers are directed to comply with provisions related to transport, lighting, avoiding external suggestive factors, not requiring the person subject to the showup to dress, speak, or act like the suspect did during the commission of the reported crime, separating eyewitnesses, reading the advisement included in the bill, and obtaining interpreters, where necessary. The showup must also be video recorded.

The court must consider any failure by law enforcement to comply with the requirements of this section with respect to any challenge to a showup identification.

Beginning January 1, 2023, the bill requires law enforcement agencies to include showup data in their contact reporting to the Division of Criminal Justice.

State Expenditures

In FY 2021-22, the bill will increase workload in the Department of Law, the Office of the State Public Defender, the Judicial Department, state law enforcement agencies, and the Division of Criminal Justice in the Department of Public Safety. No change in appropriations is required for any agency.

State legal entities. The Attorney General and the Office of the State Public Defender will work to update policies and procedures related to eyewitness evidence.

Judicial Department. The trial courts will make a specific finding regarding eyewitness evidence; however, this is expected to occur infrequently.

State law enforcement agencies. If state law enforcement agencies use eyewitness evidence, workload will increase to update policies and provide reporting.

Division of Criminal Justice. Workload will also increase for the Division of Criminal Justice to accept this reporting.

Local Government

Similar to the state, local law enforcement agencies and district attorneys will have a workload increase to comply with the provisions of the bill, and the Denver County Court will make specific findings regarding eyewitness evidence.

Effective Date

The bill was signed into law by the Governor on June 24, 2021, and takes effect September 7, 2021, assuming no referendum petition is filed. It applies to eyewitness evidence collected on or after January 1, 2022.

State and Local Government Contacts

Counties
Law
Sheriffs

District Attorneys
Municipalities

Judicial
Public Safety