

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

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  
Appropriations

**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.** 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 SUBJECT'S  
24 IDENTIFICATION OR RETRIEVED FROM A DATABASE ACCESSIBLE BY LAW  
25 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.** (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 EMPLOYSP EACE 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 IS A WELL-LIT LOCATION WITH AN  
9 UNOBSTRUCTED VIEW OF THE PERSON SUBJECT TO THE SHOWUP;

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

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

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

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

27 (VII) WHEN MULTIPLE SUBJECTS EXIST, A PEACE OFFICER SHALL

1 SEPARATE THE SUBJECTS AND CONDUCT SEPARATE SHOWUPS WITH EACH  
2 SUBJECT;

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

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

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

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

18 (XII) IF AN EYEWITNESS MAKES AN IDENTIFICATION DURING A  
19 SHOWUP, A PEACE OFFICER SHALL ASK THE EYEWITNESS WHETHER THE  
20 EYEWITNESS IS CONFIDENT, SOMEWHAT CONFIDENT, OR NOT CONFIDENT  
21 ABOUT THE IDENTIFICATION. IF AN EYEWITNESS MAKES AN  
22 IDENTIFICATION, A PEACE OFFICER, AT THE TIME OF THE IDENTIFICATION,  
23 SHALL TAKE A CLEAR STATEMENT FROM THE EYEWITNESS AND DOCUMENT  
24 THE STATEMENT IN THE EYEWITNESS'S OWN WORDS. IF AN EYEWITNESS  
25 MAKES AN IDENTIFICATION AND AN ARREST OCCURS, ANY FURTHER ACTS  
26 TO OBTAIN AN ADDITIONAL IDENTIFICATION BY SUBSEQUENT  
27 EYEWITNESSES WERE THROUGH A LIVE LINEUP OR PHOTO ARRAY.

1 (b) IF A SHOWUP IDENTIFICATION WAS CONDUCTED IN A CASE,  
2 UPON A MOTION OF THE DEFENDANT, THE COURT SHALL HOLD A HEARING  
3 TO DETERMINE THE ADMISSIBILITY OF SUCH IDENTIFICATION. AT THE  
4 HEARING, THE PROSECUTION SHALL ESTABLISH BY A PREPONDERANCE OF  
5 THE EVIDENCE THAT THE LAW ENFORCEMENT AGENCY COMPLIED WITH  
6 EACH OF THE PROVISIONS OF SUBSECTION (3)(a) OF THIS SECTION FOR THE  
7 IDENTIFICATION TO BE ADMISSIBLE.

8 (c) IF THE COURT ADMITS EVIDENCE OF A SHOWUP IDENTIFICATION,  
9 THE COURT SHALL STATE ON THE RECORD THE FACTUAL BASIS FOR  
10 ADMITTING THE EVIDENCE.

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

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

20 IN A MOMENT I AM GOING TO ASK YOU TO VIEW  
21 SOMEONE. YOU SHOULD NOT ASSUME THAT THE PERSON  
22 YOU ARE ABOUT TO SEE HAS COMMITTED A CRIME. WE  
23 COULD BE SHOWING YOU THIS PERSON FOR MANY REASONS,  
24 INCLUDING TO CLEAR THE PERSON FROM THE  
25 INVESTIGATION. KEEP IN MIND THAT ELIMINATING PEOPLE  
26 FROM AN INVESTIGATION SERVES AN EQUALLY JUST  
27 PURPOSE AS IDENTIFYING A PERSON WHO MIGHT HAVE BEEN



1 INVOLVED IN CRIMINAL ACTIVITY.

2 NO MATTER THE RESULT OF YOU SEEING THIS  
3 PERSON, OUR INVESTIGATION WILL CONTINUE, AND WE  
4 CANNOT DISCUSS THAT INVESTIGATION WITH YOU. THE  
5 INVESTIGATION OF THIS MATTER WILL CONTINUE WHETHER  
6 OR NOT YOU MAKE AN IDENTIFICATION. APART FROM YOUR  
7 INDIVIDUAL ASSISTANCE AND COOPERATION WITH LAW  
8 ENFORCEMENT IN THIS INVESTIGATION, WE CANNOT DISCUSS  
9 THE INVESTIGATION WITH YOU. PLEASE DO NOT DISCUSS  
10 WITH ANY OTHER EYEWITNESS WHAT YOU SAW, SAID, OR  
11 DID DURING THIS PROCEDURE.

12 DO YOU UNDERSTAND THE INSTRUCTIONS I HAVE  
13 GIVEN YOU? DO YOU AGREE TO COMPLY WITH THE  
14 INSTRUCTIONS I HAVE GIVEN TO YOU? DO YOU HAVE ANY  
15 QUESTIONS BEFORE WE BEGIN?

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

18 **24-31-903. Division of criminal justice report.** (2) Beginning  
19 January 1, 2023, the Colorado state patrol and each local law enforcement  
20 agency that employs peace officers shall report to the division of criminal  
21 justice:

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

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

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

27 (E) IF THE CONTACT WAS A SHOWUP, THE INFORMATION

1 COLLECTED PURSUANT TO SECTION 16-1-109 (6) FOR THE EYEWITNESS  
2 AND THE SUBJECT.

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

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

21 (2) This act applies to showups conducted on or after January 1,  
22 2022.