



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated April 14, 2021)

Drafting Number:	LLS 21-0740	Date:	May 3, 2021
Prime Sponsors:	Rep. Bacon Sen. Gonzales	Bill Status:	Senate Judiciary
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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 showups are 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 revised fiscal note reflects the reengrossed bill.

Summary of Legislation

Under current law, any law enforcement agency that uses eyewitness evidence, or showups, as a technique in a criminal investigation must have adopted written policies that meet statutory specifications.

Effective November 15, 2021, the bill requires that law enforcement agencies ensure that their policies 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 State Public Defender Office.

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, the technique that was used, the gender and race of the suspect, the alleged crime, and the outcome of the showup.

Under the bill, 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;

- when, 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.

The bill directs a peace officer conducting a showup to communicate to the eyewitness certain information and instructions about the showup process, and the eyewitness must agree to comply with the instructions for the showup to proceed. The bill also creates new criteria for showup compliance related transport, lighting, use of interpreters, and avoidance of suggestive elements and statements. The showup must also be video recorded.

In a case in which a showup was conducted, the court shall hold a hearing to determine the admissibility of the identification upon motion of the defendant. If the prosecution establishes by a preponderance of the evidence that the showup complied with the conditions, the identification is admissible.

Beginning January 1, 2023, the bill requires law enforcement agencies to include showups in its contacting 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 takes effect 90 days following adjournment of the General Assembly sine die, 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