

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.

HB21-1142 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

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

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

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

22 (3) (a) On or before ~~July 1, 2016~~ NOVEMBER 15, 2021, any
23 Colorado law enforcement agency THAT EMPLOYS A PEACE OFFICER
24 REQUIRED TO BE P.O.S.T.-CERTIFIED PURSUANT TO SECTION 16-2.5-102,
25 THAT IS charged with enforcing the criminal laws of Colorado, and that,
26 as part of any criminal investigation, uses or might use any eyewitness
27 identification procedure shall adopt written policies and procedures
28 concerning law-enforcement-conducted eyewitness identifications. The
29 policies and procedures adopted and implemented by a law enforcement
30 agency must be consistent with eyewitness identification procedures of
31 nationally recognized peer-reviewed research ~~or the policies and~~
32 ~~procedures developed, agreed upon, and recommended by the Colorado~~
33 ~~attorney general's office and the Colorado district attorneys' council~~ AND
34 MUST BE CONSISTENT WITH THE REQUIREMENTS OF SECTION 16-1-110 FOR
35 ADMISSIBILITY OF EVIDENCE OF EYEWITNESS IDENTIFICATION. THE
36 ATTORNEY GENERAL, THE COLORADO DISTRICT ATTORNEYS' COUNCIL,
37 REPRESENTATIVES OF LAW ENFORCEMENT, AND REPRESENTATIVES OF THE
38 STATE PUBLIC DEFENDER OFFICE, IN CONSULTATION WITH AN
39 ORGANIZATION THAT IS FAMILIAR WITH THE RESEARCH REGARDING

1 EYEWITNESS IDENTIFICATION AND SUPPORTS THE EXONERATION OF
2 PERSONS WHO HAVE BEEN WRONGFULLY CONVICTED, SHALL DEVELOP AND
3 RECOMMEND A SET OF MODEL POLICIES AND PROCEDURES THAT ARE
4 CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION AND SECTION
5 16-1-110 AND UPDATE THE POLICIES AND PROCEDURES AS NECESSARY.
6 The policies and procedures must include, but need not be limited to, the
7 following:

8 ~~(b) On or before July 1, 2016, all Colorado law enforcement~~
9 ~~agencies that conduct eyewitness identifications shall adopt and~~
10 ~~implement the written policies and procedures required by paragraph (a)~~
11 ~~of this subsection (3). If a law enforcement agency does not complete or~~
12 ~~adopt its own written policies and procedures relating to eyewitness~~
13 ~~identifications, the law enforcement agency must on or before July 1,~~
14 ~~2016, adopt and implement the model policies and procedures as~~
15 ~~developed and approved in 2015 by the Colorado attorney general and the~~
16 ~~Colorado district attorneys' council.~~

17 (4) Policies and procedures adopted and implemented by a law
18 enforcement agency pursuant to this section ~~shall~~ MUST be reviewed by
19 the agency at least every five years to ensure ~~consistency with~~ THE
20 POLICIES AND PROCEDURES ARE UPDATED TO INCLUDE BEST PRACTICES
21 RECOGNIZED BY nationally recognized peer-reviewed research.

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

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

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

30 (b) THE GENDER, AGE, AND RACE OF THE SUBJECT AND
31 EYEWITNESS IN THE SHOWUP, AS DETERMINED BY THE SUBJECT'S
32 IDENTIFICATION OR RETRIEVED FROM A DATABASE ACCESSIBLE BY LAW
33 ENFORCEMENT;

34 (c) THE ALLEGED CRIME; AND

35 (d) THE OUTCOME OF THE SHOWUP.

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

38 **16-1-110. Regulation of showup identification procedures -**
39 **definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
40 OTHERWISE REQUIRES:

41 (a) "P.O.S.T.-CERTIFIED" MEANS CERTIFIED BY THE PEACE
42 OFFICERS STANDARDS AND TRAINING BOARD CREATED IN SECTION
43 24-31-302.

1 (b) "SHOWUP" MEANS AN IDENTIFICATION PROCEDURE IN WHICH
2 AN EYEWITNESS IS PRESENTED WITH A SINGLE SUBJECT IN PERSON FOR THE
3 PURPOSE OF DETERMINING WHETHER THE EYEWITNESS IDENTIFIES THE
4 INDIVIDUAL AS THE SUSPECT.

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

7 (I) (A) FOLLOWING THE REPORT OF A CRIME, A PEACE OFFICER,
8 ACTING ON REASONABLE SUSPICION, HAS DETAINED A SUBJECT IN THE
9 CRIME WITHIN MINUTES OF THE COMMISSION OF THE CRIME AND NEAR THE
10 LOCATION OF THE CRIME;

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

13 (C) THE EYEWITNESS REASONABLY BELIEVES HE OR SHE CAN
14 IDENTIFY THE SUBJECT.

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

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

19 (3) (a) BEGINNING JANUARY 1, 2022, FOR SHOWUPS CONDUCTED
20 ON OR AFTER THIS DATE, WHEN A LAW ENFORCEMENT AGENCY THAT
21 EMPLOYS PEACE OFFICERS REQUIRED TO BE P.O.S.T.-CERTIFIED PURSUANT
22 TO SECTION 16-2.5-102 OR A P.O.S.T.-CERTIFIED PEACE OFFICER
23 CONDUCTS A SHOWUP, THE PEACE OFFICER SHALL COMPLY WITH THE
24 FOLLOWING PROVISIONS:

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

27 (II) THE SHOWUP LOCATION IS A WELL-LIT LOCATION WITH AN
28 UNOBSTRUCTED VIEW OF THE PERSON SUBJECT TO THE SHOWUP;

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

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

38 (V) A PEACE OFFICER SHALL NOT SHOW THE PERSON SUBJECT TO
39 THE SHOWUP TO THE EYEWITNESS WHILE THE PERSON WAS IN HANDCUFFS
40 OR IN THE BACK OF A PATROL VEHICLE, EXCEPT IN CIRCUMSTANCES TO
41 PREVENT AN IMMINENT THREAT OF PHYSICAL HARM TO A PEACE OFFICER
42 OR ANOTHER PERSON OR THE ESCAPE OF THE SUBJECT;

43 (VI) WHEN MULTIPLE EYEWITNESSES EXIST, A PEACE OFFICER

1 SHALL PERMIT ONLY ONE EYEWITNESS AT A TIME TO VIEW THE PERSON
2 SUBJECT TO THE SHOWUP;

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

6 (VIII) A PEACE OFFICER SHALL SEPARATE THE EYEWITNESSES
7 FROM ONE ANOTHER;

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

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

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

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

31 (b) IF A SHOWUP IDENTIFICATION WAS CONDUCTED IN A CASE,
32 UPON A MOTION OF THE DEFENDANT, THE COURT SHALL HOLD A HEARING
33 TO DETERMINE THE ADMISSIBILITY OF SUCH IDENTIFICATION. AT THE
34 HEARING, THE PROSECUTION SHALL ESTABLISH BY A PREPONDERANCE OF
35 THE EVIDENCE THAT THE LAW ENFORCEMENT AGENCY COMPLIED WITH
36 EACH OF THE PROVISIONS OF SUBSECTION (3)(a) OF THIS SECTION FOR THE
37 IDENTIFICATION TO BE ADMISSIBLE.

38 (c) IF THE COURT ADMITS EVIDENCE OF A SHOWUP IDENTIFICATION,
39 THE COURT SHALL STATE ON THE RECORD THE FACTUAL BASIS FOR
40 ADMITTING THE EVIDENCE.

41 (d) A P.O.S.T.-CERTIFIED PEACE OFFICER SHALL DOCUMENT THE
42 TIME AND LOCATION OF THE SHOWUP AND READ THE SHOWUP ADVISEMENT
43 REQUIRED BY SUBSECTION (3)(d) OF THIS SECTION TO EACH EYEWITNESS.

1 THE OFFICER SHALL DOCUMENT THE PROCEDURE IN THE OFFICER'S
2 WRITTEN STATEMENT AND, BEGINNING JULY 1, 2023, RECORD THE SHOWUP
3 IN ITS ENTIRETY WITH THE OFFICER'S BODY-WORN CAMERA.

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

7 IN A MOMENT I AM GOING TO ASK YOU TO VIEW
8 SOMEONE. YOU SHOULD NOT ASSUME THAT THE PERSON
9 YOU ARE ABOUT TO SEE HAS COMMITTED A CRIME. WE
10 COULD BE SHOWING YOU THIS PERSON FOR MANY REASONS,
11 INCLUDING TO CLEAR THE PERSON FROM THE
12 INVESTIGATION. KEEP IN MIND THAT ELIMINATING PEOPLE
13 FROM AN INVESTIGATION SERVES AN EQUALLY JUST
14 PURPOSE AS IDENTIFYING A PERSON WHO MIGHT HAVE BEEN
15 INVOLVED IN CRIMINAL ACTIVITY.

16 NO MATTER THE RESULT OF YOU SEEING THIS
17 PERSON, OUR INVESTIGATION WILL CONTINUE, AND WE
18 CANNOT DISCUSS THAT INVESTIGATION WITH YOU. THE
19 INVESTIGATION OF THIS MATTER WILL CONTINUE WHETHER
20 OR NOT YOU MAKE AN IDENTIFICATION. APART FROM YOUR
21 INDIVIDUAL ASSISTANCE AND COOPERATION WITH LAW
22 ENFORCEMENT IN THIS INVESTIGATION, WE CANNOT DISCUSS
23 THE INVESTIGATION WITH YOU. PLEASE DO NOT DISCUSS
24 WITH ANY OTHER EYEWITNESS WHAT YOU SAW, SAID, OR
25 DID DURING THIS PROCEDURE.

26 DO YOU UNDERSTAND THE INSTRUCTIONS I HAVE
27 GIVEN YOU? DO YOU AGREE TO COMPLY WITH THE
28 INSTRUCTIONS I HAVE GIVEN TO YOU? DO YOU HAVE ANY
29 QUESTIONS BEFORE WE BEGIN?

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

32 **24-31-903. Division of criminal justice report.** (2) Beginning
33 January 1, 2023, the Colorado state patrol and each local law enforcement
34 agency that employs peace officers shall report to the division of criminal
35 justice:

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

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

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

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

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

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

19 (2) This act applies to showups conducted on or after January 1,
20 2022."

** ** ** ** **