

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0325.01 Jane Ritter x4342

SENATE BILL 15-058

SENATE SPONSORSHIP

Guzman,

HOUSE SPONSORSHIP

Kagan,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING STATEWIDE POLICIES AND PROCEDURES FOR LAW
102 ENFORCEMENT AGENCIES THAT CONDUCT EYEWITNESS
103 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://www.leg.state.co.us/bills summaries>.)

The bill requires all Colorado law enforcement agencies (law enforcement) to adopt, on or before July 1, 2016, written policies and procedures (policies) relating to eyewitness identifications. The policies must include protocols related to the use of photo arrays, live lineups, and showup identification procedures; instructions for an eyewitness that

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

clearly state that the perpetrator might not be in the lineup; instructions regarding the use of live or photo fillers in a lineup or array; instructions for eyewitnesses that advise the eyewitness that the perpetrator may or may not be in the photo array or live lineup and that the investigation will continue whether or not the eyewitness identifies an alleged perpetrator; and instructions for obtaining a statement from the eyewitness concerning the eyewitness' confidence in his or her identification. Law enforcement shall submit the policies to the P.O.S.T. board on or before July 1, 2016. The policies must be posted on a law enforcement agency web site, if the agency has a web site, and available, without cost, to the public upon request. Subject to available resources, the P.O.S.T. board shall approve professional training programs relating to eyewitness identifications, and the programs may be created, provided, or conducted by any law enforcement agency, the office of the attorney general, the Colorado district attorneys' council, or any other P.O.S.T.-approved training entity.

Compliance or failure to comply with written policies is considered relevant evidence in any case involving eyewitness identification.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 16-1-109 as
3 follows:

4 **16-1-109. Eyewitness identification procedures - legislative**
5 **declaration - definitions - policies and procedures - training -**
6 **admissibility.** (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

7 (a) OVER THE PAST FORTY YEARS, A LARGE BODY OF
8 PEER-REVIEWED SCIENTIFIC RESEARCH AND PRACTICE HAS
9 DEMONSTRATED THAT SIMPLE SYSTEMATIC CHANGES IN THE
10 ADMINISTRATION OF EYEWITNESS IDENTIFICATION PROCEDURES BY ALL
11 LAW ENFORCEMENT AGENCIES CAN GREATLY IMPROVE THE ACCURACY OF
12 THOSE IDENTIFICATIONS AND STRENGTHEN PUBLIC SAFETY WHILE
13 PROTECTING THE INNOCENT;

14 (b) THE INTEGRITY OF COLORADO'S CRIMINAL JUSTICE SYSTEM
15 BENEFITS FROM ADHERENCE TO PEER-REVIEWED RESEARCH-BASED

1 PRACTICES IN THE INVESTIGATION OF CRIMINAL ACTIVITY; AND

2 (c) COLORADO WILL BENEFIT FROM THE DEVELOPMENT AND USE
3 OF WRITTEN LAW ENFORCEMENT POLICIES THAT ARE DERIVED FROM
4 PEER-REVIEWED SCIENTIFIC RESEARCH AND RESEARCH-BASED PRACTICES,
5 WHICH WILL ULTIMATELY IMPROVE THE ACCURACY OF EYEWITNESS
6 IDENTIFICATION AND STRENGTHEN THE CRIMINAL JUSTICE SYSTEM IN
7 COLORADO.

8 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
9 REQUIRES:

10 (a) "BLIND" MEANS THE ADMINISTRATOR OF A LIVE LINEUP, PHOTO
11 ARRAY, OR SHOWUP DOES NOT KNOW THE IDENTITY OF THE SUSPECT.

12 (b) "BLINDED" MEANS THE ADMINISTRATOR OF A LIVE LINEUP,
13 PHOTO ARRAY, OR SHOWUP MAY KNOW WHO THE SUSPECT IS BUT DOES
14 NOT KNOW WHICH LINEUP MEMBER IS BEING VIEWED BY THE EYEWITNESS.

15 (c) "EYEWITNESS" MEANS A PERSON WHO OBSERVED ANOTHER
16 PERSON AT OR NEAR THE SCENE OF AN OFFENSE.

17 (d) "FILLER" MEANS EITHER A PERSON OR A PHOTOGRAPH OF A
18 PERSON WHO IS NOT SUSPECTED OF AN OFFENSE AND IS INCLUDED IN AN
19 IDENTIFICATION PROCEDURE.

20 (e) "LIVE LINEUP" MEANS AN IDENTIFICATION PROCEDURE IN
21 WHICH A GROUP OF PERSONS, INCLUDING THE SUSPECTED PERPETRATOR OF
22 AN OFFENSE AND OTHER PERSONS WHO ARE NOT SUSPECTED OF THE
23 OFFENSE, IS DISPLAYED TO AN EYEWITNESS FOR THE PURPOSE OF
24 DETERMINING WHETHER THE EYEWITNESS IDENTIFIES THE SUSPECT AS THE
25 PERPETRATOR.

26 (f) "PEACE OFFICERS STANDARDS AND TRAINING BOARD" OR
27 "P.O.S.T. BOARD" MEANS THE BOARD CREATED IN SECTION 24-31-302,

1 C.R.S., FOR THE CERTIFICATION OF PEACE OFFICERS IN COLORADO.

2 (g) "PHOTO ARRAY" MEANS AN IDENTIFICATION PROCEDURE IN
3 WHICH AN ARRAY OF PHOTOGRAPHS, INCLUDING A PHOTOGRAPH OF THE
4 SUSPECTED PERPETRATOR OF AN OFFENSE AND ADDITIONAL PHOTOGRAPHS
5 OF OTHER PERSONS WHO ARE NOT SUSPECTED OF THE OFFENSE, IS
6 DISPLAYED TO AN EYEWITNESS EITHER IN HARD COPY FORM OR VIA
7 ELECTRONIC MEANS FOR THE PURPOSE OF DETERMINING WHETHER THE
8 EYEWITNESS IDENTIFIES THE SUSPECT AS THE PERPETRATOR.

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

13 (3) (a) ON OR BEFORE JULY 1, 2016, ALL COLORADO LAW
14 ENFORCEMENT AGENCIES SHALL ADOPT WRITTEN POLICIES AND
15 PROCEDURES CONCERNING LAW ENFORCEMENT-CONDUCTED EYEWITNESS
16 IDENTIFICATIONS. THE POLICIES AND PROCEDURES ADOPTED AND
17 IMPLEMENTED BY A LAW ENFORCEMENT AGENCY MUST BE CONSISTENT
18 WITH EYEWITNESS IDENTIFICATION PROCEDURES RECOMMENDED BY
19 NATIONALLY RECOGNIZED RESEARCH OR THE POLICIES AND PROCEDURES
20 DEVELOPED AND RECOMMENDED BY THE COLORADO ATTORNEY
21 GENERAL'S OFFICE AND THE COLORADO DISTRICT ATTORNEYS' COUNCIL.
22 THE POLICIES AND PROCEDURES MUST INCLUDE, BUT NEED NOT BE LIMITED
23 TO, THE FOLLOWING:

24 (I) PROTOCOLS GUIDING THE USE OF A SHOWUP;

25 (II) PROTOCOLS GUIDING THE RECOMMENDED USE OF A BLIND
26 ADMINISTRATION OF BOTH PHOTO ARRAYS AND LIVE LINEUPS OR THE
27 RECOMMENDED USE OF A BLINDED ADMINISTRATION OF THE

1 IDENTIFICATION PROCESS WHEN CIRCUMSTANCES PREVENT THE USE OF A
2 BLIND ADMINISTRATION;

3 (III) THE DEVELOPMENT OF A SET OF EASILY UNDERSTOOD
4 INSTRUCTIONS FOR EYEWITNESSES THAT, AT A MINIMUM, ADVISE THE
5 EYEWITNESS THAT THE ALLEGED PERPETRATOR MAY OR MAY NOT BE
6 PRESENT IN THE PHOTO ARRAY OR LIVE LINEUP AND THAT THE
7 INVESTIGATION WILL CONTINUE WHETHER OR NOT THE EYEWITNESS
8 IDENTIFIES ANYONE AS THE ALLEGED PERPETRATOR IN THE PHOTO ARRAY
9 OR LIVE LINEUP;

10 (IV) INSTRUCTIONS TO THE LAW ENFORCEMENT AGENCY
11 REGARDING THE APPROPRIATE CHOICE AND USE OF FILLERS IN COMPILING
12 A LIVE LINEUP OR PHOTO ARRAY, INCLUDING ENSURING THAT FILLERS
13 MATCH THE ORIGINAL DESCRIPTION OF THE PERPETRATOR; AND

14 (V) PROTOCOLS REGARDING THE DOCUMENTATION OF THE
15 EYEWITNESS' LEVEL OF CONFIDENCE AS ELICITED AT THE TIME HE OR SHE
16 FIRST IDENTIFIES AN ALLEGED PERPETRATOR AND MEMORIALIZED
17 VERBATIM IN WRITING.

18 (b) ON OR BEFORE JULY 1, 2016, ALL COLORADO LAW
19 ENFORCEMENT AGENCIES THAT CONDUCT EYEWITNESS IDENTIFICATIONS
20 SHALL COMPLETE AND ADOPT THE WRITTEN POLICIES AND PROCEDURES
21 REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (3) AND SUBMIT A COPY
22 OF THE WRITTEN POLICIES AND PROCEDURES TO THE P.O.S.T. BOARD. IF A
23 LAW ENFORCEMENT AGENCY DOES NOT ADOPT ITS OWN WRITTEN POLICIES
24 AND PROCEDURES RELATING TO EYEWITNESS IDENTIFICATIONS, THE LAW
25 ENFORCEMENT AGENCY SHALL ADOPT AND USE THE MODEL POLICIES AND
26 PROCEDURES DEVELOPED BY THE OFFICE OF THE COLORADO ATTORNEY
27 GENERAL AND THE COLORADO DISTRICT ATTORNEYS' COUNCIL.

1 (c) LOCAL LAW ENFORCEMENT POLICIES AND PROCEDURES
2 RELATING TO EYEWITNESS IDENTIFICATION ARE PUBLIC DOCUMENTS. ALL
3 SUCH POLICIES AND PROCEDURES MUST BE POSTED ON LAW ENFORCEMENT
4 AGENCY WEB SITES, IF THE AGENCY HAS A WEB SITE, AND MUST BE
5 AVAILABLE, WITHOUT COST, TO THE PUBLIC UPON REQUEST.

6 (d) SUBJECT TO AVAILABLE RESOURCES, THE P.O.S.T. BOARD
7 SHALL CREATE, CONDUCT, OR FACILITATE PROFESSIONAL TRAINING
8 PROGRAMS FOR LAW ENFORCEMENT OFFICERS AND OTHER RELEVANT
9 PERSONNEL ON METHODS AND TECHNICAL ASPECTS OF EYEWITNESS
10 IDENTIFICATION POLICIES AND PROCEDURES. WHILE THESE TRAINING
11 PROGRAMS SHALL BE APPROVED BY THE P.O.S.T. BOARD, THE PROGRAMS
12 MAY BE CREATED, PROVIDED, AND CONDUCTED BY ANY LAW
13 ENFORCEMENT AGENCY, THE OFFICE OF THE ATTORNEY GENERAL, THE
14 COLORADO DISTRICT ATTORNEYS' COUNCIL, OR ANY OTHER
15 P.O.S.T-APPROVED TRAINING ENTITY.

16 (4) COMPLIANCE OR FAILURE TO COMPLY WITH ANY OF THE
17 REQUIREMENTS OF THIS SECTION IS CONSIDERED RELEVANT EVIDENCE IN
18 ANY CASE INVOLVING EYEWITNESS IDENTIFICATION, AS LONG AS SUCH
19 EVIDENCE IS OTHERWISE ADMISSIBLE.

20 **SECTION 2. Effective date.** This act takes effect July 1, 2015.

21 **SECTION 3. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.