

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 15-0325.01 Jane Ritter x4342

SENATE BILL 15-058

SENATE SPONSORSHIP

Guzman,

HOUSE SPONSORSHIP

Kagan,

Senate Committees
Judiciary

House Committees
Judiciary

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/billsummaries>.)

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.

HOUSE
Amended 2nd Reading
March 24, 2015

SENATE
3rd Reading Unamended
February 13, 2015

SENATE
Amended 2nd Reading
February 12, 2015

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 IN WHICH POSITION THE SUSPECT IS PLACED IN THE PHOTO
15 ARRAY WHEN IT IS VIEWED BY THE EYEWITNESS.

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

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

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

27 (f) "PEACE OFFICERS STANDARDS AND TRAINING BOARD" OR

1 "P.O.S.T. BOARD" MEANS THE BOARD CREATED IN SECTION 24-31-302,
2 C.R.S., FOR THE CERTIFICATION OF PEACE OFFICERS IN COLORADO.

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

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

14 (3) (a) ON OR BEFORE JULY 1, 2016, ANY COLORADO LAW
15 ENFORCEMENT AGENCY CHARGED WITH ENFORCING THE CRIMINAL LAWS
16 OF COLORADO AND THAT, AS PART OF ANY CRIMINAL INVESTIGATION, USES
17 OR MIGHT USE ANY EYEWITNESS IDENTIFICATION PROCEDURE SHALL
18 ADOPT WRITTEN POLICIES AND PROCEDURES CONCERNING LAW
19 ENFORCEMENT-CONDUCTED EYEWITNESS IDENTIFICATIONS. THE POLICIES
20 AND PROCEDURES ADOPTED AND IMPLEMENTED BY A LAW ENFORCEMENT
21 AGENCY MUST BE CONSISTENT WITH EYEWITNESS IDENTIFICATION
22 PROCEDURES OF NATIONALLY RECOGNIZED PEER-REVIEWED RESEARCH OR
23 THE POLICIES AND PROCEDURES DEVELOPED, AGREED UPON, AND
24 RECOMMENDED BY THE COLORADO ATTORNEY GENERAL'S OFFICE AND THE
25 COLORADO DISTRICT ATTORNEYS' COUNCIL. THE POLICIES AND
26 PROCEDURES MUST INCLUDE, BUT NEED NOT BE LIMITED TO, THE
27 FOLLOWING:

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

2 (II) PROTOCOLS GUIDING THE RECOMMENDED USE OF A BLIND
3 ADMINISTRATION OF BOTH PHOTO ARRAYS AND LIVE LINEUPS OR THE
4 RECOMMENDED USE OF A BLINDED ADMINISTRATION OF THE
5 IDENTIFICATION PROCESS WHEN CIRCUMSTANCES PREVENT THE USE OF A
6 BLIND ADMINISTRATION;

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

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

18 (V) PROTOCOLS REGARDING THE DOCUMENTATION OF THE
19 EYEWITNESS' LEVEL OF CONFIDENCE AS ELICITED AT THE TIME HE OR SHE
20 FIRST IDENTIFIES AN ALLEGED PERPETRATOR OR OTHER PERSON AND
21 MEMORIALIZED VERBATIM IN WRITING.

22 (b) ON OR BEFORE JULY 1, 2016, ALL COLORADO LAW
23 ENFORCEMENT AGENCIES THAT CONDUCT EYEWITNESS IDENTIFICATIONS
24 SHALL ADOPT AND IMPLEMENT THE WRITTEN POLICIES AND PROCEDURES
25 REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (3). IF A LAW
26 ENFORCEMENT AGENCY DOES NOT COMPLETE OR ADOPT ITS OWN WRITTEN
27 POLICIES AND PROCEDURES RELATING TO EYEWITNESS IDENTIFICATIONS,

1 THE LAW ENFORCEMENT AGENCY MUST, ON OR BEFORE JULY 1, 2016,
2 ADOPT AND IMPLEMENT THE MODEL POLICIES AND PROCEDURES AS
3 DEVELOPED AND APPROVED IN 2015 BY THE COLORADO ATTORNEY
4 GENERAL AND THE COLORADO DISTRICT ATTORNEYS' COUNCIL.

5 (c) LOCAL LAW ENFORCEMENT POLICIES AND PROCEDURES
6 RELATING TO EYEWITNESS IDENTIFICATION ARE PUBLIC DOCUMENTS. ALL
7 SUCH POLICIES AND PROCEDURES MUST BE AVAILABLE, WITHOUT COST, TO
8 THE PUBLIC UPON REQUEST PURSUANT TO THE PROVISIONS OF THIS
9 SECTION.

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

20 (4) POLICIES AND PROCEDURES ADOPTED AND IMPLEMENTED BY A
21 LAW ENFORCEMENT AGENCY PURSUANT TO THIS SECTION SHALL BE
22 REVIEWED BY THE AGENCY AT LEAST EVERY FIVE YEARS TO ENSURE
23 CONSISTENCY WITH NATIONALLY RECOGNIZED PEER-REVIEWED RESEARCH.

24 (5) COMPLIANCE OR FAILURE TO COMPLY WITH ANY OF THE
25 REQUIREMENTS OF THIS SECTION IS CONSIDERED RELEVANT EVIDENCE IN
26 ANY CASE INVOLVING EYEWITNESS IDENTIFICATION, AS LONG AS SUCH
27 EVIDENCE IS OTHERWISE ADMISSIBLE.

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

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