

SUPPORT

HB 21-1142 Eyewitness Identification Showup Regulations

By Rep. Bacon and Sen. Gonzales

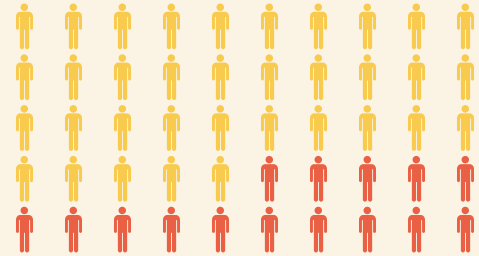
The presumption of innocent until proven guilty must not be undermined by allowing showup eyewitness identifications to continue in their current manner.

SHOWUP: an unreliable identification procedure used by law enforcement where a lone individual is presented in person to an eyewitness to “determine” if that individual committed the crime.

What problem is HB 21-1142 trying to solve?

The inherently biased and suggestive nature of showups contributes greatly to misidentifications. Eyewitness identifications of people who are of a different race have been found to be particularly unreliable. Several states have realized that the U.S. Supreme Court caselaw fails to provide an unbiased test for admission of eyewitness identifications and have been proactive in creating additional protections to guard against misidentifications.

For decades, the data has consistently shown that as many as 70% of exonerations through DNA evidence were for cases where the original conviction was based on eyewitness misidentification.



The Solution

Creating a legal duty for showups to be conducted according to statute in order to be admissible in court will lead to standardization of the most current best practices and limit the use of showups. Data collection across the state aligns with reporting requirements in SB 20-217 that created transparency and accountability for law enforcement interactions with the public. Colorado needs to require updated standardized and recognized best practices for eyewitness identification and limit admissibility in court unless certain practices are followed to reduce the pipeline of people to prison.

- Require an update of the current model policies and training for showup eyewitness identification procedures to reflect the most current recognized best practices for showup eyewitness identification practices.
- Require the P.O.S.T. Board to certify that law enforcement agencies have adopted the required policies.
- Limits the admissibility of showup eyewitness identifications in court if not conducted properly.
- Require data collection on the use of showups be added to currently required data collection by law enforcement.

Wrongful convictions are egregious and destroy people’s lives. Black, Latino, and low-income communities deserve protection from inherently biased showup eyewitness identifications.

Background

In 2015, the Colorado General Assembly adopted SB 15-058 that required law enforcement agencies statewide to adopt policies related to showup eyewitness identifications by July 1, 2016. Law enforcement agencies were required to update their policies every five years. In 2016, Colorado created award winning Model Policies for Eyewitness Identification Guidelines, but law enforcement agencies had the flexibility to adopt their own.

It has been five years since those guidelines were created and there is no requirement to update those guidelines with newly developed best practices. In 2021, only a handful of law enforcement agencies have adopted those dated exact guidelines from 2016, or gone beyond with recent updates, including Boulder, Denver, Lakewood, Loveland and Westminster. There was no enforcement mechanism in SB 15-058 to oversee whether policies adopted even follow nationally recognized best practices, to ensure agency policies are updated to protect the public from the biased and suggestive nature of showups, and to determine if any policy adopted, biased or not, is even being followed.



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