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SENATE BILL 15-058

BY SENATOR(S) Guzman, Aguilar, Carroll, Cooke, Donovan, Garcia, Heath, Hodge, Jahn, Johnston, Kefalas, Kerr, Merrifield, Newell, Roberts, Steadman, Todd, Ulibarri;
also REPRESENTATIVE(S) Kagan, Buckner, Fields, Foote, Ginal, Lee, McCann, Mitsch Bush, Pettersen, Rosenthal, Ryden, Salazar, Singer, Tyler, Williams.

CONCERNING STATEWIDE POLICIES AND PROCEDURES FOR LAW ENFORCEMENT AGENCIES THAT CONDUCT EYEWITNESS IDENTIFICATIONS.

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

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

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

(a) OVER THE PAST FORTY YEARS, A LARGE BODY OF PEER-REVIEWED SCIENTIFIC RESEARCH AND PRACTICE HAS DEMONSTRATED THAT SIMPLE SYSTEMATIC CHANGES IN THE ADMINISTRATION OF

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

EYEWITNESS IDENTIFICATION PROCEDURES BY ALL LAW ENFORCEMENT AGENCIES CAN GREATLY IMPROVE THE ACCURACY OF THOSE IDENTIFICATIONS AND STRENGTHEN PUBLIC SAFETY WHILE PROTECTING THE INNOCENT;

(b) THE INTEGRITY OF COLORADO'S CRIMINAL JUSTICE SYSTEM BENEFITS FROM ADHERENCE TO PEER-REVIEWED RESEARCH-BASED PRACTICES IN THE INVESTIGATION OF CRIMINAL ACTIVITY; AND

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

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

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

(b) "BLINDED" MEANS THE ADMINISTRATOR OF A LIVE LINEUP, PHOTO ARRAY, OR SHOWUP MAY KNOW WHO THE SUSPECT IS BUT DOES NOT KNOW IN WHICH POSITION THE SUSPECT IS PLACED IN THE PHOTO ARRAY WHEN IT IS VIEWED BY THE EYEWITNESS.

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

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

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

(f) "PEACE OFFICERS STANDARDS AND TRAINING BOARD" OR "P.O.S.T. BOARD" MEANS THE BOARD CREATED IN SECTION 24-31-302, C.R.S., FOR THE CERTIFICATION OF PEACE OFFICERS IN COLORADO.

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

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

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

(I) PROTOCOLS GUIDING THE USE OF A SHOWUP;

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

(III) THE DEVELOPMENT OF A SET OF EASILY UNDERSTOOD

INSTRUCTIONS FOR EYEWITNESSES THAT, AT A MINIMUM, ADVISE THE EYEWITNESS THAT THE ALLEGED PERPETRATOR MAY OR MAY NOT BE PRESENT IN THE PHOTO ARRAY OR LIVE LINEUP AND THAT THE INVESTIGATION WILL CONTINUE WHETHER OR NOT THE EYEWITNESS IDENTIFIES ANYONE AS THE ALLEGED PERPETRATOR IN THE PHOTO ARRAY OR LIVE LINEUP;

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

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

(b) ON OR BEFORE JULY 1, 2016, ALL COLORADO LAW ENFORCEMENT AGENCIES THAT CONDUCT EYEWITNESS IDENTIFICATIONS SHALL ADOPT AND IMPLEMENT THE WRITTEN POLICIES AND PROCEDURES REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (3). IF A LAW ENFORCEMENT AGENCY DOES NOT COMPLETE OR ADOPT ITS OWN WRITTEN POLICIES AND PROCEDURES RELATING TO EYEWITNESS IDENTIFICATIONS, THE LAW ENFORCEMENT AGENCY MUST, ON OR BEFORE JULY 1, 2016, ADOPT AND IMPLEMENT THE MODEL POLICIES AND PROCEDURES AS DEVELOPED AND APPROVED IN 2015 BY THE COLORADO ATTORNEY GENERAL AND THE COLORADO DISTRICT ATTORNEYS' COUNCIL.

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

(d) SUBJECT TO AVAILABLE RESOURCES, LAW ENFORCEMENT SHALL CREATE, CONDUCT, OR FACILITATE PROFESSIONAL TRAINING PROGRAMS FOR LAW ENFORCEMENT OFFICERS AND OTHER RELEVANT PERSONNEL ON METHODS AND TECHNICAL ASPECTS OF EYEWITNESS IDENTIFICATION POLICIES AND PROCEDURES. WHILE THESE TRAINING PROGRAMS SHALL BE APPROVED BY THE P.O.S.T. BOARD, ANY PROGRAMS MAY BE CREATED, PROVIDED, AND 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.

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

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

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

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

Bill L. Cadman
PRESIDENT OF
THE SENATE

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO