

## Guilty at First Sight: Legislation to Prevent the Misidentification of Innocent Persons in Illinois

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## GUILTY AT FIRST SIGHT: LEGISLATION TO PREVENT THE MISIDENTIFICATION OF INNOCENT PERSONS IN ILLINOIS

### I. INTRODUCTION

Imagine it is a warm July evening and you just dropped your significant other off at home after spending the evening at a friend's house.<sup>1</sup> On your way home you are stopped by an officer who approaches your car with a flashlight and his gun drawn. The officer tells you your car matches the description of a car involved in a crime earlier that evening. You speak and understand minimal English and cannot comprehend the events unfolding. The officer who stopped you had been radioed the description of suspects of a violent crime, but you do not match many of the details in the description of the suspects. The police officer handcuffs and places you in the police car anyway.

The victim is then taken to the location where you were pulled over to identify you. With the police car directly behind and illuminating your car, the victim positively identifies your car. An officer takes you out of the police car and places you in front of the patrol car, where the victim sits in the backseat. Despite not getting out of the car, the victim is able to identify you. You are immediately put back into the police car. The victim has no chance to look at you closely. When you get to the police station, you still have not been told why you were arrested. You have now been awake for over twenty-four hours. A police officer reads you your *Miranda* rights in English, and you waive them, not understanding what they mean.<sup>2</sup>

At the start of the interrogation, you give the investigators an alibi, but the investigators never look into it. Your interrogation eventually switches to Spanish, and you are asked to write out a statement in Spanish, which is later orally translated to English. Your statements do not match. A video confession is later recorded, which only shows you waiving your *Miranda* rights and signing the English version of your confession.

Despite having four alibi witnesses to testify in your defense, the victim's identification of you and your signed confession prove your guilt beyond a reasonable doubt. You are convicted of aggravated sexual assault and aggravated kidnapping and are sentenced to forty years in prison. Twenty years later you are exonerated for the crime that you never

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<sup>1</sup> This is a hypothetical situation based on Angel Gonzalez's wrongful conviction. See Gonzalez v. City of Waukegan, 220 F. Supp. 3d 876 (N.D. Ill. 2016).

<sup>2</sup> See Miranda v. Arizona, 384 U.S. 436 (1966).

committed. Unfortunately, this does not need to be imagined – this is the story of Angel Gonzalez.<sup>3</sup>

Many people like Angel Gonzalez are wrongfully convicted, and Illinois does not have adequate legislation in place to prevent eyewitness misidentifications.<sup>4</sup> While Illinois has an eyewitness procedure statute, the legislation does not fully protect suspects.<sup>5</sup> This Note examines and compares the eyewitness identification procedures in Illinois, Connecticut, and Florida, and calls for the amendment of the Illinois Lineup Procedure.<sup>6</sup>

First, Part II of this Note addresses wrongful convictions, a background on eyewitness procedures, and certain laws related to eyewitness procedures.<sup>7</sup> Next, Part III analyzes the current laws regarding eyewitness procedures in Illinois, Connecticut, and Florida, and the impacts of those laws.<sup>8</sup> This Note also discusses how the law can be a solution to prevent eyewitness misidentifications.<sup>9</sup> Part IV proposes a new statutory approach for eyewitness procedures in Illinois.<sup>10</sup> Finally, Part V concludes by summarizing the current laws and the solution to the problem and explains why solving this problem is important.<sup>11</sup>

## II. BACKGROUND

Eyewitness misidentifications are one of the greatest causes of wrongful convictions nationwide, along with invalidated forensics, false confessions, and incorrect information from informants.<sup>12</sup> In the United States, as of 2017, 362 individuals have been exonerated by DNA testing, including 20 who served time on death row.<sup>13</sup> On average, individuals

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<sup>3</sup> See *Angel Gonzalez*, INNOCENCE PROJECT (2015), <https://www.innocenceproject.org/cases/angel-gonzalez/> [<https://perma.cc/4HH8-TQ5Y>] [hereinafter *Gonzalez*, INNOCENCE] (describing the night Angel Gonzalez was misidentified). Angel Gonzalez's story will be analyzed more in-depth later in this Note.

<sup>4</sup> See *infra* Part III.

<sup>5</sup> See *infra* Part III.

<sup>6</sup> See *infra* Part III.

<sup>7</sup> See *infra* Part II.

<sup>8</sup> See *infra* Part III.

<sup>9</sup> See *infra* Part III (analyzing the current law on eyewitness procedure in Illinois and how that statute compares to other states).

<sup>10</sup> See *infra* Part IV (presenting the author's contribution that aims to create a more specific law that deals with the issue of eyewitness misidentification in Illinois).

<sup>11</sup> See *infra* Part V.

<sup>12</sup> See *The Causes of Wrongful Convictions*, INNOCENCE PROJECT (2017), <https://www.innocenceproject.org/causes-wrongful-conviction> [<https://perma.cc/4BHC-XKYZ>] (laying out the main factors involved in wrongful convictions).

<sup>13</sup> See *Exonerate the Innocent*, INNOCENCE PROJECT (2017), <https://www.innocenceproject.org/exonerate/> [<https://perma.cc/5GHU-G5W6>].

serve approximately fourteen years in prison before they are exonerated.<sup>14</sup> Mistaken identification is the leading factor of wrongful convictions.<sup>15</sup> Eyewitness misidentifications have contributed to approximately 71% of the more than 350 wrongful convictions overturned by post-conviction DNA evidence in the United States.<sup>16</sup>

Part II.A of this Note will examine lineups, both photo and live; the effect they can have on an eyewitness's memory; and the way they can skew a police investigation.<sup>17</sup> Part II.B will discuss the Innocence Project and how its work has led the wrongful conviction-inspired movement toward amending eyewitness identification statutes.<sup>18</sup> Part II.C will examine the Illinois Pilot Program and its evaluation of simultaneous and sequential lineups.<sup>19</sup> Finally, Part II.D will detail Illinois, Connecticut, and Florida laws pertaining to eyewitness procedures.<sup>20</sup>

#### A. *Lineups: Simultaneous, Sequential, and Show-Ups*

Inaccurate eyewitness identifications cause many problems with investigations.<sup>21</sup> An eyewitness plays a key role in shaping investigations, especially in murder and rape cases.<sup>22</sup> Right after a crime is committed an

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<sup>14</sup> See *id.* (describing the average number of years exonerated individuals spend in prison over wrongful convictions).

<sup>15</sup> See *Eyewitness Misidentification*, INNOCENCE PROJECT (2017), <https://www.innocenceproject.org/causes/eyewitness-misidentification/> [<https://perma.cc/M3W4-GPCU>] (claiming eyewitness misidentifications are the number one reason for wrongful convictions).

<sup>16</sup> See *Eyewitness Identification Reform*, INNOCENCE PROJECT (2017), <https://www.innocenceproject.org/eyewitness-identification-reform/> [<https://perma.cc/29EQ-32LY>] (identifying the number of eyewitness misidentification wrongful convictions overturned by DNA evidence). See also *Exonerations by State*, NAT'L REGISTRY EXONERATIONS (2018), <http://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> [<https://perma.cc/68M5-A42N>] (expressing the wrongful conviction numbers overall). As of January 22, 2019, there have been 2360 exonerations since 1989, which totals to 20,647 years lost by exonerees. *Id.*

<sup>17</sup> See *infra* Part II.A (examining different types of lineups used throughout the United States).

<sup>18</sup> See *infra* Part II.B (explaining the Innocence Project's movement toward eyewitness reform).

<sup>19</sup> See *infra* Part II.C (discussing the Illinois Pilot Program's work toward amending lineup procedures in Illinois).

<sup>20</sup> See *infra* Part II.D.

<sup>21</sup> See *Reevaluating Lineups: Why Witnesses Make Mistakes and How to Reduce the Chance of a Misidentification*, INNOCENCE PROJECT 3, 3 (2009), [https://www.innocenceproject.org/wpcontent/uploads/2016/05/eyewitness\\_id\\_report-5.pdf](https://www.innocenceproject.org/wpcontent/uploads/2016/05/eyewitness_id_report-5.pdf) [<https://perma.cc/B5PK-NU9A>] [hereinafter *Reevaluating Lineups*] (highlighting an inaccurate identification's role in wrongful convictions).

<sup>22</sup> See *id.* (adding that eyewitness identification evidence is a factor in wrongful convictions).

eyewitness misidentification can derail police investigations by causing police officers and investigators to put their focus on an innocent person while the actual perpetrator stays on the streets.<sup>23</sup> Once an eyewitness has identified a potential perpetrator, investigators may stop looking for other suspects because they believe they have the suspect in custody.<sup>24</sup> According to the Innocence Project, “Decades of empirical, peer-reviewed social science research reaffirms what DNA exonerations have proven to be true: human memory is fallible.”<sup>25</sup> When a witness attempts to piece together the crime, her memory can be influenced and altered by this information.<sup>26</sup> A witness’s memory is evidence and must be handled by police officers and investigators as carefully as other forms of evidence to avoid altering it and skewing the investigation.<sup>27</sup>

At a basic level, police lineups involve placing a suspect among fillers—non-suspect individuals—and asking the witness if she can identify the person she witnessed committing the crime.<sup>28</sup>

Simultaneous lineups are regularly used in police departments around the country.<sup>29</sup> In a simultaneous lineup all participants or photos are shown to the eyewitness at the same time.<sup>30</sup> In contrast, sequential lineups present photographs or participants in the lineup to the eyewitness individually.<sup>31</sup> These two types of lineups require the eyewitness to use different mental processes.<sup>32</sup> Simultaneous lineups require the witness to use relative judgment, which is used to compare

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<sup>23</sup> See *id.* (expanding on how eyewitness misidentifications can mislead police investigations due to bad police procedures).

<sup>24</sup> See *Reevaluating Lineups*, *supra* note 21, at 3.

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*

<sup>27</sup> See *id.* (pointing out the susceptibility of an eyewitness’s memory).

<sup>28</sup> See Beth Schuster, *Police Lineups: Making Eyewitness Identification More Reliable*, 258 NAT’L INST. JUST. J. 2, 3 (2007) (setting forth the basic level of how lineups work in the United States). See also Gary L. Wells, *Eyewitness Identification: Systemic Reforms*, 2006 WIS. L. REV. 615, 615 [hereinafter Wells, *Systemic Reforms*]. Fillers, also called stand-ins or distractors, are non-suspect individuals in the lineup who are only involved in the process to make it fair to the suspect. *Id.*

<sup>29</sup> See Schuster, *supra* note 28, at 3 (analyzing the use of simultaneous lineups over sequential lineups in the United States).

<sup>30</sup> See *id.* (noting how simultaneous lineups are conducted).

<sup>31</sup> See Wells et al., *Eyewitness Evidence: Improving Its Probative Value*, 7 PSYCHOL. SCI. PUB. INT. 45, 63 (2006) [hereinafter Wells et al., *Improving Its Probative Value*] (clarifying the difference in how suspects are presented in simultaneous and sequential lineups). Sequential lineups were introduced in the mid-1980s. *Id.*

<sup>32</sup> See *Eyewitness Identification: Simultaneous vs. Sequential Lineups*, NAT’L INST. JUST. J. (2009), <https://www.nij.gov/topics/law-enforcement/investigations/eyewitness-identification/Pages/simultaneous-sequential.aspx> [https://perma.cc/ZT5L-2L8X] [hereinafter *Simultaneous vs. Sequential Lineups*].

photos or people to one another via comparing and contrasting.<sup>33</sup> However, in sequential lineups a witness must exercise absolute judgment—a comparison against her memory—when comparing each photograph or participant, solely, to the image she has in her mind of what the offender looked like.<sup>34</sup>

In a sequential lineup, the eyewitness is instructed that she will view an unspecified number of photos or participants.<sup>35</sup> The eyewitness then views the photos or participants one at a time and renders a decision, before the next photo or lineup participant appears, on whether each lineup participant was the individual she allegedly saw committing the crime.<sup>36</sup> While the eyewitness can mentally compare the lineup participant being viewed to those viewed previously, the eyewitness cannot be sure that the next lineup participant will be a better match to the culprit she allegedly saw.<sup>37</sup> The theory behind sequential lineups is that the witness is required to use absolute judgment instead of relative judgment, relieving the witness of feeling as if she is required to provide a suspect identification.<sup>38</sup> Simultaneous lineups, on the other hand, use relative judgment which can cause the witness to choose an individual based on a comparison to all lineup participants, instead of accurately recalling the perpetrator.<sup>39</sup>

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<sup>33</sup> See Shirley N. Glaze, *Selecting the Guilty Perpetrator: An Examination of the Effectiveness of Sequential Lineups*, 31 L. & PSYCHOL. REV. 199, 201 (2007). Relative judgment in a simultaneous lineup is comparing and contrasting “faces of the suspects to each other to decipher which individual among the lineup individuals most closely resembles the culprit.” *Id.* See also *Simultaneous vs. Sequential Lineups*, *supra* note 32 (pointing out how relative judgment is used in simultaneous lineups).

<sup>34</sup> See Glaze, *supra* note 33, at 201 (illustrating the meaning of absolute judgment). See also *Simultaneous vs. Sequential Lineups*, *supra* note 32 (noting the use of absolute judgment in sequential lineups).

<sup>35</sup> See Wells et al., *Improving Its Probative Value*, *supra* note 31, at 63 (pointing out part of the instructions that eyewitnesses are given in sequential lineups).

<sup>36</sup> See *id.* (explaining how an eyewitness views each person in a lineup during a sequential lineup).

<sup>37</sup> See Wells et al., *Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads*, 22 L. & HUM. BEHAV. 603, 617 (1998) [hereinafter Wells et al., *Recommendations for Lineups and Photospreads*] (highlighting the process an eyewitness must use in making an identification).

<sup>38</sup> See Wells et al., *Improving Its Probative Value*, *supra* note 31, at 63 (expanding on the theories of mental judgment behind each type of lineup). See also Wells et al., *Recommendations for Lineups and Photospreads*, *supra* note 37, at 613 (demonstrating how the two different mental processes used in lineup identifications can change how an eyewitness feels during the identification process).

<sup>39</sup> See *Simultaneous vs. Sequential Lineups*, *supra* note 32 (discussing how simultaneous lineups and relative judgment can cause an eyewitness to choose an individual in the lineup even though she is unsure of her choice).

While the traditional lineup practices can cause unreliable identification, inherently suggestive identifications—such as show-ups—can be unreliable as well.<sup>40</sup> A show-up is an identification procedure in which the suspect is presented individually and in person.<sup>41</sup> Typically, after a positive identification by the victim, the prosecutor will bring charges—and often convict—the individual identified during the show-up.<sup>42</sup> Law enforcement agencies rationalize this procedure by arguing that they want to obtain offender identification as soon as possible after the event and cannot construct a photo or live lineup in a timely manner.<sup>43</sup> Show-ups are thought to be the least reliable lineup procedure, and the use of show-ups increases the possibility of wrongful convictions.<sup>44</sup> The unreliability of show-ups and simultaneous lineups has led not only to wrongful convictions but also to a reform movement spearheaded by the Innocence Project.<sup>45</sup>

Reforms put forth by the Innocence Project have been recognized by many entities, including the National Institute of Justice and the American Bar Association.<sup>46</sup> The susceptibility of a witness' memory is part of the

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<sup>40</sup> See Michael D. Cicchini & Joseph G. Easton, *Reforming the Law on Show-Up Identifications*, 100 J. CRIM. L. & CRIMINOLOGY 381, 381 (2010) (discussing the problems with the various types of lineups). See also Keith A. Findley, *Implementing the Lessons from Wrongful Convictions: An Empirical Analysis of Eyewitness Identification Reform Strategies*, 81 MO. L. REV. 377, 398 (2016) (pointing out how show-ups are unethical lineup procedures).

<sup>41</sup> See Findley, *supra* note 40, at 398 (writing about show-ups). See also Cicchini & Easton, *supra* note 40, at 381 (explaining how show-ups work).

<sup>42</sup> See Cicchini & Easton, *supra* note 40, at 381 (noting how prosecutors use a positive identification from a show-up).

<sup>43</sup> See Findley, *supra* note 40, at 398 (determining why show-ups are used).

<sup>44</sup> See Cicchini & Easton, *supra* note 40, at 381 (expanding on the unreliability of show-ups).

<sup>45</sup> See *Eyewitness Identification Reform*, *supra* note 16 (specifying the reforms the Illinois Innocence Project supports).

<sup>46</sup> See U.S. DEP'T OF JUST. OFFICE OF RESEARCH PROGRAMS, *EYEWITNESS EVIDENCE: A GUIDE FOR LAW ENFORCEMENT* (Oct. 1999) [hereinafter *DOJ GUIDE*] (demonstrating the recommendations and need for reform in eyewitness identification procedures). The document is available from the National Criminal Justice Reference Service <https://www.ncjrs.gov/pdffiles1/nij/178240.pdf> [<https://perma.cc/WLX4-6P7Z>]. The book is updated periodically to better reflect reforms and new practices for police jurisdictions. *Id.* In an attempt to stop these eyewitness misidentifications, the National Institute of Justice wrote a book, *Eyewitness Evidence: A Guide for Law Enforcement* ("*Guide*"), which gives recommendations for eyewitness procedures and its preferred method for conducting the procedures. *Id.* at iii. However, the National Institute of Justice prefaces its book by stating that "every jurisdiction should give careful consideration to the recommendations in th[e] *Guide* and to its own unique local conditions and logistical circumstances." *Id.* Because these are only recommendations, not mandatory guidelines, the National Institute did not enact any real changes. *Id.* See also *Our Start*, INNOCENCE PROJECT, <https://25years.innocenceproject.org/start/> [<https://perma.cc/W32V-348X>] [hereinafter *Our Start*] (stating the Innocence Project's involvement in reform). The *Guide* has clear

reason the Innocence Project recommended reforms to improve the accuracy of eyewitness identification.<sup>47</sup> These reforms include: double-blind procedures; instruction; composition of the lineups; confidence statements; and documentation of the lineup procedure.<sup>48</sup> Illinois—along with several other states, cities, and towns—has adopted the reforms set forth.<sup>49</sup>

### *B. Innocence Project*

The Innocence Project has led the movement for reforming eyewitness identification legislation.<sup>50</sup> As of today, there are sixty-nine Innocence Network member organizations around the world.<sup>51</sup> The Illinois Innocence Project is also one of those sixty-nine network members.<sup>52</sup> The Downstate Illinois Innocence Project is known today as the Illinois Innocence Project (“IIP”).<sup>53</sup> IIP advocates on behalf of the wrongfully convicted by researching and investigating claims of actual innocence, as

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limitations, but guidelines for reform and procedures are also promulgated by other institutions and groups, like the Innocence Project. *Id.* See *Eyewitness Identification Reform*, *supra* note 16.

<sup>47</sup> See *Eyewitness Identification Reform*, *supra* note 16 (clarifying how an eyewitness’s memory factors into eyewitness identification reform).

<sup>48</sup> *Id.*

<sup>49</sup> See *Reevaluating Lineups*, *supra* note 21, at 4–5.

<sup>50</sup> See *Our Start*, *supra* note 46 (detailing how the Innocence Project has grown since its beginning). The Innocence Project was founded in 1992, by Barry Scheck and Peter Neufeld, as a legal clinic at Benjamin N. Cardozo School of Law. *Id.* The duo’s idea was simple, “If DNA technology could prove people guilty of crimes, it could also prove that people who had been wrongfully convicted were innocent.” *Id.* The duo and their team of students learned of different DNA methods through their work on Marion Coakley’s case. *Id.* Coakley was wrongly convicted of rape and robbery. *Id.* While the “biological material had been lost after his conviction, the team proved Coakley innocent through other means and realized the power of DNA technology.” *Id.* After Coakley’s exoneration, groups began to take on trailblazing legal cases to help exonerate wrongfully convicted individuals.” In 2004, with the help of philanthropists and a strong group of individuals to take on the work, the Innocence Project became an independent nonprofit. *Id.*

<sup>51</sup> See *Our Start*, *supra* note 46 (discussing how the Innocence Project has expanded).

<sup>52</sup> See *id.* (explaining the Illinois Innocence Project’s part in the innocence network). See also *About Us*, UNIV. ILL. SPRINGFIELD, <https://www.uis.edu/illinoisinnocenceproject/about/> [<https://perma.cc/Q9NN-UMPN>] [hereinafter *About Us*] (highlighting the connections the Illinois Innocence Project has around the country).

<sup>53</sup> See *Founding Director Larry Golden*, UNIV. ILL. SPRINGFIELD, <https://www.uis.edu/illinoisinnocenceproject/about/larrygolden/> [<https://perma.cc/AFP5-GZJF>] (noting the start of the Illinois Innocence Project). The Downstate Illinois Innocence Project was founded in 2001 by Larry Golden, Nancy Ford, and Bill Clutter. *Id.*



well as providing legal representation.<sup>54</sup> Since 2003, IIP has helped exonerate eleven innocent individuals, including Angel Gonzalez.<sup>55</sup>

In 2001, Gonzalez was granted post-conviction DNA testing.<sup>56</sup> The DNA tests performed identified a male DNA profile that did not belong to Gonzalez.<sup>57</sup> However, Gonzalez was not released because, while two men committed the crime, only Gonzalez was convicted, so it was possible that the DNA profile belonged to the other assailant.<sup>58</sup>

The Illinois Innocence Project joined forces with the Innocence Project on Gonzalez's case of actual innocence in 2012.<sup>59</sup> In March 2013, they approached the Lake County State's Attorney Office and asked to conduct DNA testing on the crime scene evidence, including the rape kit.<sup>60</sup> Michael Nerheim, the chief prosecutor at the office of the Lake County State's Attorney, agreed to the additional testing, which was later performed by Cellmark and consisted of multiple tests on the victim's clothing and rape kit.<sup>61</sup> The additional test results showed two male DNA

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<sup>54</sup> See Matthew Aglialoro, Note, *A Case for Actual Innocence*, 23 CORNELL J. L. & PUB. POL'Y 635, 639 (2014). Actual innocence and legal innocence are two separate concepts. *Id.* Actual innocence focuses on the factual assertions of the case. *Id.* Legal innocence focuses the fact that the prosecution has not established the defendant's guilt beyond a reasonable doubt. *Id.* The Illinois Innocence Project takes on cases of actual innocence, which is a contingency "that he or she did not commit the crime alleged, regardless of the judge or jury's finding of legal innocence." *Id.* See also *About Us*, *supra* note 52 (acknowledging the work the IIP does).

<sup>55</sup> See *About Us*, *supra* note 52 (expanding on the importance and dedication of the Illinois Innocence Project's work). See also *The Teshome Campbell Case*, UNIV. ILL. SPRINGFIELD, <https://www.uis.edu/illinoisinnocenceproject/teshome-campbell-case/> [https://perma.cc/HF84-YJKA]. Teshome Campbell, who was also convicted using faulty eyewitness testimony, was exonerated in 2016 by staff and students of the Illinois Innocence Project. *Id.* See also *The Bill Amor Case*, UNIV. ILL. SPRINGFIELD, <https://www.uis.edu/illinoisinnocenceproject/the-william-amor-case/> [https://perma.cc/W3JJ-RYNU]. IIP's most recent exoneree was Bill Amor on February 21, 2018. *Id.*

<sup>56</sup> See *Angel Gonzalez*, NAT'L REGISTRY EXONERATIONS (2015), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4657> [https://perma.cc/Q3XK-6VW3] [hereinafter NAT'L REGISTRY EXONERATIONS]; *Gonzalez*, INNOCENCE, *supra* note 3; *Access to Post-Conviction DNA Testing*, INNOCENCE PROJECT (2017), <https://www.innocenceproject.org/access-post-conviction-dna-testing/> [https://perma.cc/B6JL-AYQE]; *supra* Part I (explaining the facts of Gonzalez's case). According to the Innocence Project, "Today every state has enacted a post-conviction DNA statute because the traditional appeals process was often insufficient for proving a wrongful conviction." *Id.* In addition, "Prior to the passage of post-conviction DNA laws, it was not uncommon for an innocent person to exhaust all possible appeals without being allowed access to the DNA evidence in his case." *Id.*

<sup>57</sup> See NAT'L REGISTRY EXONERATIONS, *supra* note 56.

<sup>58</sup> See *id.*

<sup>59</sup> See *Gonzalez*, INNOCENCE, *supra* note 3.

<sup>60</sup> See *The Angel Gonzalez Case*, UNIV. ILL. SPRINGFIELD, <https://www.uis.edu/illinoisinnocenceproject/exonerees/angel-gonzalez-case/> [https://perma.cc/LQ72-G5NY].

<sup>61</sup> See NAT'L REGISTRY EXONERATIONS, *supra* note 56 (examining the steps taken by the Lake County State's Attorney). In March 2013, the Lake County State's Attorney was Michel

profiles, neither of which belonged to Gonzalez.<sup>62</sup> After Nerheim was presented with the test results, he moved to vacate Gonzalez's charges.<sup>63</sup>

The Innocence Project was making such great progress in exonerating wrongfully convicted individuals and leading the charge for eyewitness identification reform that Illinois began to realize the need for institutions like the Illinois Innocence Project and became involved in the reform.<sup>64</sup>

### C. *Illinois Pilot Program*

In 2003, the Illinois Legislature tasked the Illinois State Police with conducting a study to evaluate the effectiveness of the double-blind sequential identification procedure in the field due to new recommendations by the Illinois Governor's Commission on Capital Punishment.<sup>65</sup> The Illinois Governor's Commission on Capital Punishment originally wanted this study conducted because laboratory research on eyewitness identification showed that photo lineups conducted by the double-blind sequential procedure produced fewer false identifications than the traditional simultaneous photo lineup.<sup>66</sup> On behalf of the Illinois State Police, Sheri H. Mecklenburg was appointed Program Director of the Illinois Pilot Program.<sup>67</sup> As director of the program, Mecklenburg sought out comments and approval from eyewitness researchers, especially Roy Malpass, throughout the process.<sup>68</sup> Uniform report forms and procedures for determining which lineups would be the simultaneous control group or the new sequential procedure

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Nerheim. *Id.* Nerheim was a newly elected chief prosecutor who formed a Conviction Integrity Unit. *Id.*

<sup>62</sup> See NAT'L REGISTRY EXONERATIONS, *supra* note 56.

<sup>63</sup> See *id.* (acknowledging Nerheim's participation in testing the evidence and exonerating Gonzalez).

<sup>64</sup> See Roy S. Malpass, *Notes on the Illinois Pilot Program on Sequential Double-Blind Identification Procedures*, 11 PUB. INT. L. REP. 5, 5 (2006) [hereinafter Malpass, *Notes on the Illinois Pilot Program*] (analyzing why Illinois implemented its legislation). See also *Exonerees and Releases*, UNIV. ILL. SPRINGFIELD, <https://www.uis.edu/illinoisinnocenceproject/exonerees/> [<https://perma.cc/S9NZ-T8J8>] (listing the individuals exonerated by the Illinois Innocence Project).

<sup>65</sup> See Malpass, *Notes on the Illinois Pilot Program*, *supra* note 64, at 5.

<sup>66</sup> See Sheri H. Mecklenburg, Illinois State Police, Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures, i (Mar. 17, 2006), [https://www.cga.ct.gov/jud/tfs/20130901\\_Eyewitness%20Identification%20Task%20Force/20110921/Illinois%20ID%20Pilot%20Program.pdf](https://www.cga.ct.gov/jud/tfs/20130901_Eyewitness%20Identification%20Task%20Force/20110921/Illinois%20ID%20Pilot%20Program.pdf) [<https://perma.cc/JT6K-VK9L>].

<sup>67</sup> *Id.* at ii.

<sup>68</sup> See Malpass, *Notes on the Illinois Pilot Program*, *supra* note 64, at 5 (expanding on Mecklenburg's duties as director of the Illinois Pilot Program).

were developed, and approximately 476 police officers were trained on the new procedure.<sup>69</sup>

Based on recommendations by the Illinois Legislature and the Illinois Governor's Commission on Capital Punishment, the overall purpose of the Illinois Pilot Program was to determine whether or not a double-blind sequential lineup was superior to the simultaneous lineup procedure used by police departments across the United States.<sup>70</sup> The Chicago, Joliet, and Evanston Police Departments all participated in the pilot program.<sup>71</sup> The year-long study commenced in late 2004, and the study sample consisted of 367 different cases in which a total of 741 lineups were conducted.<sup>72</sup> Of this total, 521 unique lineups were identified, as some lineups consisted of the same suspect, position, and fillers for different witnesses.<sup>73</sup> The Program used the identification of fillers for the measure of known false errors and suspect identifications as an indication of correct identifications.<sup>74</sup>

Across all three jurisdictions, the suspect choice rate by eyewitnesses was higher and the filler choice rate was lower for simultaneous than sequential lineups, indicating that simultaneous lineups produced more accurate results.<sup>75</sup> However, these results – which created confusion and were later found to have been skewed – were used by Illinois in laying the groundwork for new legislation on eyewitness identification procedures.<sup>76</sup> Many other states, such as Connecticut and Florida, did the same.<sup>77</sup>

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<sup>69</sup> See *id.* 5 (specifying the procedures used in the study). See also Mecklenburg, *supra* note 66, at iii (noting the number of officers trained in compliance with the Illinois Pilot Programs procedures).

<sup>70</sup> See Malpass, *Notes on the Illinois Pilot Program*, *supra* note 64, at 5. The study was conducted on its own in 2004 and “was not the extension of an academic research program and was not undertaken to untangle theoretical issues.” *Id.*

<sup>71</sup> See Mecklenburg, *supra* note 66, at ii.

<sup>72</sup> See Ebbe B. Ebbesen & Kristin M. Finklea, *In Response to the Illinois Pilot Program on Simultaneous v. Sequential Lineups*, 11 PUB. INT. L. REP. 9, 44 (2006) (discussing the police jurisdictions involved in the Illinois Pilot Program).

<sup>73</sup> See *id.* at 9 (clarifying the number of lineups conducted during the study).

<sup>74</sup> See Mecklenburg, *supra* note 66, at iii (noting the use of filler and accurate identifications in the results).

<sup>75</sup> See Ebbesen & Finklea, *supra* note 72, at 9. There was “a total of 366 standard simultaneous, single-suspect lineups and a total of 271 sequential, double-blind, single-suspect lineups.” *Id.*

<sup>76</sup> See Schuster, *Police Lineups*, *supra* note 28, at 6 (pointing out the results of the study).

<sup>77</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2 (Westlaw through 2018) (elaborating on Illinois using the Pilot Program as a stepping stone).

*D. State Statutes*

Many eyewitness misidentifications that have led to wrongful convictions could have been avoided if more reliable lineup procedures had been used.<sup>78</sup> First, this Part will analyze the Illinois lineup procedure. Second, it will examine Connecticut's legislation. Finally, it will discuss Florida's eyewitness identification procedures.

## 1. Illinois Lineup Procedure

Illinois implemented the *Code of Criminal Procedure* (1963) to help reduce the number of wrongfully convicted individuals in the state of Illinois, and the state amended its criminal law statute in 2014.<sup>79</sup> Effective January 1, 2015, Illinois added sections 107A-0.1 and 107A-2 to its criminal procedure code.<sup>80</sup> These sections cover definitions and lineup procedures, respectively.<sup>81</sup> They were added to reduce the risk of misidentification and require agencies around the state of Illinois to use blind administration.<sup>82</sup>

Subsection (a) implemented blind administration of lineups, stating that all lineups conducted must use an independent administrator or an automated computer system to prevent the lineup administrator from seeing the photographs until after the procedure is complete.<sup>83</sup> The

<sup>78</sup> See *Reevaluating Lineups*, *supra* note 21, at 4 (commenting on the use of lineup procedures to prevent wrongful convictions).

<sup>79</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2 (highlighting when Illinois amended its statute). See also *Bill Status*, ILL. GEN. ASSEMBLY (2014) <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=802&GAID=12&DocTypeID=HB&LegId=71099&SessionID=85&GA=98> [<https://perma.cc/6W54-VLTA>]. The law was sponsored by Representative Scott Drury and Senators Patricia Van Pelt, Jacqueline Collins, and Kwame Raoul. *Id.*

<sup>80</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2.

<sup>81</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-0.1 (Westlaw through 2018).

<sup>82</sup> See *Illinois Passes Identification Law*, INNOCENCE PROJECT (2014), <https://www.innocenceproject.org/illinois-passes-identification-law/> [<https://perma.cc/U4VA-79YB>].

<sup>83</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(a). Subsection (a) of 725 ILCS 5/107A-2 states:

(a) All lineups shall be conducted using one of the following methods:

(1) An independent administrator, unless it is not practical.

(2) An automated computer program or other device that can automatically display a photo lineup to an eyewitness in a manner that prevents the lineup administrator from seeing which photograph or photographs the eyewitness is viewing until after the lineup is completed. The automated computer program may present the photographs to the eyewitness simultaneously or sequentially, consistent with the law enforcement agency guidelines required under subsection (b) of this Section.

(3) A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the lineup administrator cannot see or know which photograph or

automated computer system can be set up to present the lineup sequentially or simultaneously, whichever the law enforcement guidelines establish.<sup>84</sup> In lieu of the automated system, photographs can be placed in randomly numbered folders and then shuffled and presented to the eyewitness in a way that ensures the lineup administrator cannot see which photographs are being presented.<sup>85</sup> The lineup administrators can also use any other procedure that prevents them from knowing the identity of the perpetrators or seeing or knowing which participants or photographs are being presented until after the procedure is complete.<sup>86</sup>

Subsection (b) sets forth the guidelines and procedures for law enforcement agencies.<sup>87</sup> Every law enforcement agency shall adopt its own guidelines setting forth when to conduct simultaneous and sequential lineups.<sup>88</sup> The statute does not establish a preference, and the lineup procedure is selected solely at the discretion of each law

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photographs are being presented to the eyewitness until after the procedure is completed. The photographs may be presented to the eyewitness simultaneously or sequentially, consistent with the law enforcement agency guidelines required under subsection (b) of this Section.

(4) Any other procedure that prevents the lineup administrator from knowing the identity of the suspected perpetrator or seeing or knowing the persons or photographs being presented to the eyewitness until after the procedure is completed.

*Id.*

<sup>84</sup> *See id.* (reiterating that at certain points in an investigation, blind administration cannot be conducted and therefore other methods need to be used).

<sup>85</sup> *See id.* (recognizing that randomized photos in folders can act as a blind administration).

<sup>86</sup> *Id.*

<sup>87</sup> *See* ILL. COMP. STAT. ANN. 5/107A-2(b). Subsection (b) of 725 ILCS 5/107A-2 states:

(b) Each law enforcement agency shall adopt written guidelines setting forth when, if at all, simultaneous lineups shall be conducted and when, if at all, sequential lineups shall be conducted. This subsection does not establish a preference for whether a law enforcement agency should conduct simultaneous lineups or sequential lineups. Whether and when to conduct simultaneous lineups or sequential lineups is at the discretion of each law enforcement agency. If, after the effective date of this amendatory Act of the 98th General Assembly, a method of conducting a lineup different from a simultaneous or sequential lineup is determined by the Illinois Supreme Court to be sufficiently established to have gained general acceptance as a reliable method for eyewitness identifications and provides more accurate results than simultaneous or sequential lineups, a law enforcement agency may adopt written guidelines setting forth when, if at all, this different method of conducting lineups shall be used and, when feasible, the provisions of subsection (d) of this Section shall apply to the use of these methods.

*Id.*

<sup>88</sup> *Id.*

enforcement agency.<sup>89</sup> If the Illinois Supreme Court establishes a more reliable method for eyewitness identifications, a law enforcement agency may adopt written guidelines pertaining to when these new methods must be used.<sup>90</sup>

Subsection (c) explains that the selection of a live or photo lineup is entirely the decision of the law enforcement agency.<sup>91</sup> The statute, through subsection (d), explains the conditions for a sequential lineup, and in subsection (e), explains the eyewitness instructions before a lineup is conducted.<sup>92</sup> Subsection (f) discusses the conditions and placements of eyewitnesses when the lineup is being conducted and the composition of fillers to ensure the alleged perpetrator does not stand out.<sup>93</sup> Subsection (g) sets forth the requirement that a lineup administrator must make an official report of all lineups.<sup>94</sup> It also sets forth the procedures for the creation of the report and content requirements.<sup>95</sup>

Additionally, efforts by Illinois to reduce the risk of misidentification are manifested in subsections (h), (i), and (j) of the statute.<sup>96</sup> Subsection (h) requires a video recording of all lineup procedures unless it is not

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<sup>89</sup> *Id.* As the Illinois statute reads, every police jurisdiction must adopt its own guidelines as to when, if at all, simultaneous and sequential lineups shall be used. *Id.* The statute also specifically states the Illinois legislation does not establish a preference as to which lineup procedure shall be used. *Id.* Allowing the police jurisdictions to govern when each type of lineup must be used does not allow for uniformity within Illinois. *Id.*

<sup>90</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(d). Subsection (d) of 725 ILCS 5/107A-2 states:

(d) If a lineup administrator conducts a sequential lineup, the following shall apply:

(1) Solely at the eyewitness's request, the lineup administrator may present a person or photograph to the eyewitness an additional time but only after the eyewitness has first viewed each person or photograph one time.

(2) If the eyewitness identifies a person as a perpetrator, the lineup administrator shall continue to sequentially present the remaining persons or photographs to the eyewitness until the eyewitness has viewed each person or photograph.

*Id.*

<sup>91</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(c). The legislation states, "[T]here is no preference as to whether a law enforcement agency conducts a live lineup or a photo lineup and to the extent that the common law directs otherwise, this direction is abrogated." *Id.*

<sup>92</sup> *Id.* 5/107A-2(d), (e) (focusing on the procedure and conditions for conducting 2(d), (e) sequential lineups).

<sup>93</sup> *Id.* 5/107A-2(f).

<sup>94</sup> *Id.* 5/107A-2(g).

<sup>95</sup> See *id.* (summarizing the information required in the official report).

<sup>96</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(h), (i), (j) (reiterating Illinois has established many subsections of the statute to better prevent wrongful convictions based on eyewitness misidentifications).

practicable or the eyewitness refuses.<sup>97</sup> Subsection (i) requires all photographs, recordings, and the official report of the lineup to be disclosed to the defense counsel, as provided by the Illinois Supreme Court Rules regarding discovery.<sup>98</sup> Finally, subsection (j) sets forth the consequences of non-compliance with the overall statute.<sup>99</sup> Illinois enacted the framework for, potentially, an effective eyewitness identification statute, however, Connecticut set forth a more comprehensive statute and began progressing toward fewer eyewitness misidentifications.<sup>100</sup>

## 2. Connecticut Eyewitness Procedures

While Illinois amended its law to ensure more effective eyewitness identifications, some states took the initiative before Illinois.<sup>101</sup> Recently, Connecticut added § 54-1p to its criminal procedure code.<sup>102</sup> Section 54-1p covers eyewitness identification procedures.<sup>103</sup> The statute begins by

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<sup>97</sup> *Id.* 5/107A-2(h). Subsection (h) of 725 ILCS 5/107A-2 states:

(h) Unless it is not practical or the eyewitness refuses, a video record of all lineup procedures shall be made. (1) If a video record is not practical or the eyewitness refuses to allow a video record to be made: (A) the reasons or the refusal shall be documented in the official report required under subsection (g) of this Section; (B) an audio record shall be made, if practical; and (C) if a live lineup, the lineup shall be photographed.

*Id.*

<sup>98</sup> *See* 725 ILL. COMP. STAT. ANN. 5/107A-2(i). Subsection (i) of 725 ILCS 5/107A-2 states:

The photographs, recordings, and the official report of the lineup required by this Section shall be disclosed to counsel for the accused as provided by the Illinois Supreme Court Rules regarding discovery. All photographs of suspected perpetrators shown to an eyewitness during a lineup shall be disclosed to counsel for the accused as provided by the Illinois Supreme Court Rules regarding discovery. To protect the identity of the eyewitness and the identities of law enforcement officers used as fillers in the lineup from being disclosed to third parties, the State's Attorney shall petition the court for a protective order under Supreme Court Rule 415 upon disclosure of the photographs or recordings to the counsel of the accused.

*Id.*

<sup>99</sup> *Id.* 5/107A-2(j).

<sup>100</sup> *Compare* 725 ILL. COMP. STAT. ANN. 5/107A-2 (setting forth the Illinois framework for eyewitness identification), *with* CONN. GEN. STAT. ANN. § 54-1p (West, Westlaw through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019) (enumerating Connecticut's more comprehensive framework).

<sup>101</sup> *See Eyewitness Identification Reform, supra* note 16 (specifying the states that have implemented eyewitness identification reform).

<sup>102</sup> *See* CONN. GEN. STAT. ANN. § 54-1p.

<sup>103</sup> *See id.*

defining key terms.<sup>104</sup> Next, the statute identifies a task force to develop and enact the guidelines and procedures for eyewitness identifications to be followed by all police jurisdictions.<sup>105</sup> In addition, the task force develops and enacts the standardized form for eyewitness procedures.<sup>106</sup>

To further the efforts of the task force, subsection (c) ensures that the policies and guidelines developed and promulgated are complied with, requiring each municipal police department to adopt the procedures of the task force.<sup>107</sup> Subsection (c)(3) then explains the instructions to be given to the eyewitnesses prior to the identification procedures.<sup>108</sup> These instructions include: how the photographs or group of participants will be presented; the importance of excluding innocent individuals as well as actual perpetrators; and that the eyewitness should not feel the need to make an identification if she does not see the suspect she allegedly witnessed committing the crime.<sup>109</sup> Subsection (c)(4) requires any other

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<sup>104</sup> See CONN. GEN. STAT. ANN. § 54-1p(a). These definitions include eyewitness, photo lineup, live lineup, identification procedure, and filler. *Id.*

<sup>105</sup> See *id.* § 54-1p(b). The legislation states that the Board will “develop and promulgate uniform mandatory policies and appropriate guidelines for the conducting of eyewitness identification procedures that shall be based on best practices and be followed by all municipal and state law enforcement agencies.” *Id.*

<sup>106</sup> See *id.* The legislation states that the Board will also “develop and promulgate a standardized form to be used by municipal and state law enforcement agencies when conducting an identification procedure and making a written record thereof.” *Id.*

<sup>107</sup> See CONN. GEN. STAT. ANN. § 54-1p(c). The statute states:

(1) Whenever a specific person is suspected as the perpetrator of an offense, the photographs included in a photo lineup or the persons participating in a live lineup shall be presented sequentially so that the eyewitness views one photograph or one person at a time in accordance with the policies and guidelines developed and promulgated by the Police Officer Standards and Training Council and the Division of State Police within the Department of Emergency Services and Public Protection pursuant to subsection (b) of this section;

(2) The identification procedure shall be conducted in such a manner that the person conducting the procedure does not know which person in the photo lineup or live lineup is suspected as the perpetrator of the offense, except that, if it is not practicable to conduct a photo lineup in such a manner, the photo lineup shall be conducted by the use of a folder shuffle method, computer program or other comparable method so that the person conducting the procedure does not know which photograph the eyewitness is viewing during the procedure[.]

*Id.* § 54-1p(c)(1)-(2).

<sup>108</sup> See *id.* § 54-1p(c)(1) (describing the instructions required for sequential lineups).

<sup>109</sup> See *id.* § 54-1p(c)(3). The statute states:

The eyewitness shall be instructed prior to the identification procedure:  
 (A) That the eyewitness will be asked to view an array of photographs or a group of persons, and that each photograph or person will be presented one at a time;



instructions that may be developed and promulgated by the task force to be given to the eyewitness.<sup>110</sup>

Next, subsections (c)(5) through (c)(13) explain the composition of the lineup.<sup>111</sup> The lineups must be composed so that the fillers generally fit the description of the person suspected.<sup>112</sup> Further, if an eyewitness previously viewed a lineup, the new lineup shall be composed of different fillers than those in the previous lineup.<sup>113</sup> Subsection (c)(14) explains that if an eyewitness identifies a lineup participant as the perpetrator, the eyewitness shall give a confidence statement regarding how confident she is of her choice before being provided with any information concerning the lineup participant identified.<sup>114</sup> Finally, subsection (c)(15) explains that a written record of the identification—both identification and nonidentification results—should be recorded, including the eyewitness's statement regarding how confident she is of her selection and identification information on all persons who participated in the lineup.<sup>115</sup> While Connecticut set forth a more comprehensive statute than Illinois, Florida closely imitated Illinois, enacting more of a framework than a comprehensive statute.

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- (B) That it is as important to exclude innocent persons as it is to identify the perpetrator;
  - (C) That the persons in a photo lineup or live lineup may not look exactly as they did on the date of the offense because features like facial or head hair can change;
  - (D) That the perpetrator may or may not be among the persons in the photo lineup or live lineup;
  - (E) That the eyewitness should not feel compelled to make an identification;
  - (F) That the eyewitness should take as much time as needed in making a decision; and
  - (G) That the police will continue to investigate the offense regardless of whether the eyewitness makes an identification.

*Id.*

<sup>110</sup> See *id.* § 54-1p(c)(4).

<sup>111</sup> See *id.* § 54-1p(c)(5)–(13).

<sup>112</sup> See *id.* § 54-1p(c)(5).

<sup>113</sup> See CONN. GEN. STAT. ANN. § 54-1p(c)(6). The statute states:

If the eyewitness has previously viewed a photo lineup or live lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the person suspected as the perpetrator participates or in which the photograph of the person suspected as the perpetrator is included shall be different from the fillers used in any prior lineups.

*Id.*

<sup>114</sup> See CONN. GEN. STAT. ANN. § 54-1p(c)(14).

<sup>115</sup> See CONN. GEN. STAT. ANN. § 54-1p(c)(15).

## 3. Florida Eyewitness Procedure

Florida, in an attempt to help prevent wrongful convictions, added section 92.70 in 2017 known as the Eyewitness Identification Reform Act.<sup>116</sup> The statute begins by defining essential terms of the Act and then discusses the eyewitness identification procedures.<sup>117</sup> All lineups must meet the following requirements.<sup>118</sup> First, an independent administrator should be used.<sup>119</sup> If the agency does not use an independent administrator, an alternative method for photo lineups—such as an automated computer program or any other procedure that achieves neutral administration—may be used.<sup>120</sup> Next, the statute sets forth the instructions that an eyewitness must be given prior to the lineup, including a copy of the lineup instructions and a document signed by the eyewitness and lineup administrator, acknowledging the eyewitness's receipt of the lineup instructions.<sup>121</sup> Then the statute discusses remedies available as consequences for noncompliance with the section, including potential suppression of the eyewitness identification.<sup>122</sup>

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<sup>116</sup> See FLA. STAT. ANN. § 92.70 (West, Westlaw through the 2018 Second Regular Session of the 25th Legislature). Florida's statute became effective on October 1, 2017. *Id.*

<sup>117</sup> See *id.* § 92.70(2), (3).

<sup>118</sup> See *id.* § 92.70(3).

<sup>119</sup> See FLA. STAT. ANN. § 92.70(3)(a) (highlighting the use of blind administration). The statute states, "Independent administrator" means a person who is not participating in the investigation of a criminal offense and is unaware of which person in the lineup is the suspect." *Id.* § 91.70(2)(b).

<sup>120</sup> See FLA. STAT. ANN. § 92.70(3)(a) (reiterating that sometimes in an investigation blind administrations cannot be conducted and therefore other methods should be used). The statute states:

Alternative methods may include any of the following:

1. An automated computer program that can automatically administer the photo lineup directly to an eyewitness and prevent the lineup administrator from seeing which photograph the eyewitness is viewing until after the procedure is completed.
2. A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the lineup administrator cannot see or track which photograph is being presented to the eyewitness until after the procedure is completed.
3. Any other procedure that achieves neutral administration and prevents the lineup administrator from knowing which photograph is being presented to the eyewitness during the identification procedure.

*Id.*

<sup>121</sup> *Id.* § 92.70(3)(b).

<sup>122</sup> See FLA. STAT. ANN. § 92.70(4). Noncompliance with the section will be "considered by the court when adjudicating motions to suppress eyewitness identification," as well as used as "admissible [evidence] in support of a claim of eyewitness misidentification, as long as such evidence is otherwise admissible." *Id.*

Illinois, Connecticut, and Florida have all made great strides in amending their criminal statutes to better align with the eyewitness identification reform movement.<sup>123</sup> However, reform requires monitoring and updating.<sup>124</sup> States and organizations, like the Innocence Project and National Institute of Justice, must work to decrease the number of wrongful convictions due to false eyewitness identifications.<sup>125</sup>

### III. ANALYSIS

Concerns about wrongful convictions have “led to an ‘innocence movement’ that has managed to bridge ideological divides, rouse people to action, and achieve unprecedented success in reforming the operation of the death penalty.”<sup>126</sup> There is an overwhelming assumption in the United States that eyewitness identifications will not be made by uncertain witnesses, but a wealth of studies have shown this assumption to be false.<sup>127</sup> Witnesses tend to pick a suspect even when they are uncertain, and while warning the witness that the offender may or may not be in the lineup decreases the chance that the witness will not misidentify, it does not eliminate the tendency.<sup>128</sup>

Illinois must amend its eyewitness procedure law to help reduce the number of eyewitness misidentifications.<sup>129</sup> Since 2014, Illinois has failed to take steps to adjust its law to focus on protecting suspects from eyewitness misidentifications.<sup>130</sup> However, steps can still be taken to protect suspects from eyewitness misidentifications.<sup>131</sup>

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<sup>123</sup> See CONN. GEN. STAT. ANN. § 54-1p; FLA. STAT. ANN. § 92.70; 725 ILL. COMP. STAT. ANN. 5/107A-2.

<sup>124</sup> See *Eyewitness Identification Reform*, *supra* note 16 (specifying reform requires regular updating as studies and scientific evidence find new methods for conducting lineups).

<sup>125</sup> See *About*, INNOCENCE PROJECT (2018), <https://www.innocenceproject.org/about/> [<https://perma.cc/Q9NN-UMPN>] (showing how the Innocence Project is involved in reform). See also *Justice System and Reform*, NAT’L INST. JUST. (2018), <https://www.nij.gov/topics/justice-system/Pages/welcome.aspx> [<https://perma.cc/4TC5-ZYNH>] (offering insights from the National Institute of Justice).

<sup>126</sup> Susan A. Bandes, *Framing Wrongful Convictions*, 2008 UTAH L. REV. 5, 5 (2008).

<sup>127</sup> See Nathan Weber & Tim Perfect, *Why Telling a Witness That It’s Ok to Say They Don’t Know Is Good for Justice*, 25 JURY EXPERT 36, 37 (2013).

<sup>128</sup> See *id.* at 37 (analyzing the pressure eyewitnesses feel to pick an individual even if they are uncertain).

<sup>129</sup> See *infra* Part IV (proposing an amendment to the Illinois statute). Illinois was chosen due to the author’s history with the state, including living there and working with the Illinois Innocence Project. Additionally, Illinois updated its law in 2014 and provided a strong basis from which an amendment can be made.

<sup>130</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2.

<sup>131</sup> See CONN. GEN. STAT. ANN. § 54-1p (providing changes to Connecticut’s eyewitness procedures); FLA. STAT. ANN. § 92.70 (noting the additions Florida has made to eyewitness procedures); Wells, *Systemic Reforms*, *supra* note 28, at 617-18 (underlining changes that can

First, Part III.A analyzes the problems of eyewitness identifications throughout the United States.<sup>132</sup> Second, Part III.B examines the Illinois Pilot Program's failure and its call for reform.<sup>133</sup> Third, Part III.C analyzes the present eyewitness identification legislation in Illinois, Connecticut, and Florida.<sup>134</sup> Finally, Part III.D discusses how a model statute could have changed Angel Gonzalez's case.<sup>135</sup>

#### A. *Problems Among Eyewitness Identifications*

Many problems arise in traditional eyewitness identification practices.<sup>136</sup> The first problem is that no matter the type of lineup, the law enforcement officer in charge of conducting the lineup typically knows the identity of the suspect.<sup>137</sup> Experts suggest that lineup administrators might intentionally or unintentionally give cues to the eyewitness in an attempt to influence the eyewitness's identification of the suspect, which creates problems in administering the lineup.<sup>138</sup> In a standard lineup, without instructions from the lineup administrator, an eyewitness often assumes the perpetrator of the crime is present in the lineup, which flaws the lineup from the outset.<sup>139</sup> This often leads to confusion, making the eyewitness uncertain about her memory of the individual who committed the crime and leading to the eyewitness choosing a person from the lineup despite her uncertainty.<sup>140</sup>

Further, the lineup administrator is able to choose between a live or photo lineup and determine the composition of fillers, which can alter the eyewitness's identification.<sup>141</sup> A lineup administrator may choose to compose the lineup of non-suspect fillers who do not match the eyewitness's description of the perpetrator.<sup>142</sup> When administrators select

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be implemented); Wells et al., *Recommendations for Lineups and Photospreads*, *supra* note 37, at 603 (providing recommendations for lineup reform); Schuster, *supra* note 28, at 6 (specifying the ways to make identifications more reliable); Cicchini & Easton, *supra* note 40, at 381 (giving the reforms for show-ups); Findley, *supra* note 40, at 398 (analyzing eyewitness identification reforms).

<sup>132</sup> See *infra* Part III.A.

<sup>133</sup> See *infra* Part III.B.

<sup>134</sup> See *infra* Part III.C.

<sup>135</sup> See *infra* Part III.D.

<sup>136</sup> See Wells et al., *Recommendations for Lineups and Photospreads*, *supra* note 37, at 604.

<sup>137</sup> See Schuster, *supra* note 28, at 3.

<sup>138</sup> *Id.*

<sup>139</sup> See *Eyewitness Identification Reform*, *supra* note 16 (pointing out the eyewitness's mindset in making a selection).

<sup>140</sup> See *id.* (acknowledging the effect instructions have on the eyewitness's mindset and certainty when making a selection).

<sup>141</sup> See *id.* (expanding on how a lineup administrator can skew the results of the lineup toward the suspect the administrator wants to be chosen).

<sup>142</sup> See *id.* (noting the importance of selecting fillers who match the suspect).

fillers that do not resemble the eyewitness's description, it causes a problem because the suspect can stand out from the others in the lineup.<sup>143</sup> Along with unintentional cues, the suggestion of one participant in a lineup over the others can lead an eyewitness to identify that participant due to the suggestion, rather than allowing the eyewitness to rely on her actual memory of the event.<sup>144</sup>

Finally, another problem occurs when the lineup administrator does not elicit a statement from the eyewitness articulating her level of confidence in the identification.<sup>145</sup> Capturing an eyewitness's level of confidence at the time she makes the identification is a critical investigative step, yet it rarely happens.<sup>146</sup> Without this step, information provided to the witness after her identification—such as even a smile or a nod from the officer after the witness makes her choice—can increase her confidence in the selection, validating an identification of which she was not sure.<sup>147</sup> This confidence level is a factor in misidentifications in the Illinois Pilot Program.<sup>148</sup>

#### B. Failure of the Illinois Pilot Program

Laboratory research has revealed that eyewitnesses make fewer selections from sequential lineups than from simultaneous lineups.<sup>149</sup> Based on these findings, many researchers have advocated for legislatures to implement laws that require sequential lineups instead of simultaneous lineups to help prevent eyewitnesses from identifying innocent suspects.<sup>150</sup> In order to effectively make a policy change backed by scientific evidence, researchers needed to compare the new policy with one that was already established.<sup>151</sup> Without a comparison, researchers, legislators, and the criminal justice system could not know if the new policy was actually better than the old one.<sup>152</sup> However, the data from the

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<sup>143</sup> See *id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> See *Eyewitness Identification Reform*, *supra* note 16.

<sup>147</sup> See *id.* (expanding on how an eyewitness can become more or less sure about her identification as more information is available and time has passed).

<sup>148</sup> See Mecklenburg, *supra* note 66, at 63 (highlighting the way a level of confidence interacts with a lineup procedure).

<sup>149</sup> See Ebbeson & Finklea, *supra* note 72, at 9.

<sup>150</sup> See *id.* (acknowledging the researchers who advocate for sequential lineups).

<sup>151</sup> See *id.* (noting the need for field studies to scientifically prove sequential lineups produce fewer eyewitness misidentifications).

<sup>152</sup> See Ebbeson & Finklea, *supra* note 72, at 9 (explaining the need for scientific field studies in order to make a comparison and prove which lineup method produces the most accurate results).

Illinois Pilot Program has since been marked as unreliable due to questions about the methodology used.<sup>153</sup>

The methodology was flawed because the Pilot Program used double-blind procedures in the sequential lineup but used non-blind procedures in the simultaneous lineups.<sup>154</sup> This fulfilled the purpose of the study, but it did not correctly compare sequential and simultaneous lineups because the same procedure should be used, blind or non-blind, for each type of lineup to determine which lineup works best.<sup>155</sup>

To correctly compare sequential and simultaneous lineups, the Pilot Program should have used simultaneous/non-blind, simultaneous/blind, sequential/non-blind, and sequential/blind lineups.<sup>156</sup> This comparison would have allowed all four types of lineups to be measured against each other, and the results would have set forth which lineup type produced more accurate results, instead of the flawed results the study revealed.<sup>157</sup> The Illinois Pilot Program attempted to establish a lineup procedure that produced more accurate results in order to further eyewitness identification legislation, but its results caused uncertainty among researchers, legislators, and the overall criminal justice system.<sup>158</sup> Instead of the Illinois Pilot Program leading legislation reform, legislators took note of the flaws in the study and began reform throughout the states.<sup>159</sup>

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<sup>153</sup> See Malpass, *Notes on the Illinois Pilot Program*, *supra* note 64, at 7. The study had three potential outcomes: suspect identifications, filler identifications, or non-identifications. *Id.* at 5. An important note on these outcomes is that “suspect identifications cannot be interpreted as either correct or false identifications, and non-identifications cannot be interpreted as missing the offender or as rejecting a lineup that does or does not contain the actual offender.” *Id.* Overall, the results of the study concluded that eyewitnesses who were part of a simultaneous lineup identified the suspect more often than those participating in a sequential lineup, 59.9% and 45% respectively. *Id.* at 6. Fillers were chosen less often in simultaneous lineups at a rate of 2.8% opposed to 9.2% for sequential lineups. *Id.* Lastly, eyewitnesses participating in a simultaneous lineup were found to be less likely to make an identification if she was unsure about her selection than those who participated in a sequential lineup, making the results of no identification rates at 37.6% and 47%. *Id.* at 6. See also Schuster, *supra* note 28, at 6 (expanding on how the results of the Illinois Pilot Program have been marked unreliable).

<sup>154</sup> See Schuster, *supra* note 28, at 6.

<sup>155</sup> See Ebbeson & Finklea, *supra* note 72, at 28.

<sup>156</sup> See *id.* (explaining the need to compare all four types of lineups).

<sup>157</sup> See *id.* (analyzing the need to compare all four lineups in order to produce more reliable results).

<sup>158</sup> See Malpass, *Notes on the Illinois Pilot Program*, *supra* note 64, at 7 (describing the flaws in the study).

<sup>159</sup> See *Eyewitness Identification Reform*, *supra* note 16 (discussing the states that have led eyewitness identification reform).

C. *Distinguishing Eyewitness Identification Legislation in Illinois, Connecticut, and Florida*

Eyewitness identification statutes were intended to prevent misidentifications and wrongful convictions.<sup>160</sup> While Illinois, Connecticut, and Florida have all promulgated and implemented eyewitness identification procedures, the details vary.<sup>161</sup> As an initial matter, Illinois, Connecticut, and Florida all call for blind administration.<sup>162</sup> However, there are other differences in the details of each statute.<sup>163</sup> First, this Part critiques lineup instructions.<sup>164</sup> Second, it analyzes the video and audio recording of lineups.<sup>165</sup> Third, it examines the use of fillers.<sup>166</sup> Fourth, it analyzes the requirement of confidence statements.<sup>167</sup> Fifth, it scrutinizes remedies of noncompliance with legislation.<sup>168</sup> Finally, it analyzes the use of sequential lineups.<sup>169</sup>

1. Instructions

All three laws require lineup instructions, but they all have different requirements.<sup>170</sup> Illinois, Connecticut, and Florida all establish that the witness must be instructed that: the perpetrator may or may not be in the lineup; the eyewitness should not feel compelled to make an identification; it is as important to exclude innocent individuals; and an investigation will continue whether or not an identification is made.<sup>171</sup> Florida and Illinois both include an instruction that the lineup administrator cannot know the suspect's identity if a blind administration

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<sup>160</sup> See *supra* Part II.D (outlining the reason behind eyewitness identification legislation).

<sup>161</sup> See CONN. GEN. STAT. ANN. § 54-1p; FLA. STAT. ANN. § 92.70; 725 ILL. COMP. STAT. ANN. 5/107A-2; *supra* Parts II.D-F (analyzing Illinois, Connecticut, and Florida eyewitness statutes).

<sup>162</sup> See *supra* Parts II.D-F (highlighting the substitutions for independent administration of lineups). All three state laws implement blind administration of lineups and provide practical substitutions for the creation of an independent administration in case blind administration is not possible. See also Wells, *Systemic Reforms*, *supra* note 28, at 630. Blind administrations or independent administrations are vital: "not only to prevent the investigator from unintentionally influencing which person the eyewitness picks, but also are needed to prevent the investigator from influencing the certainty of the eyewitness." *Id.*

<sup>163</sup> See *supra* Parts II.D-F.

<sup>164</sup> See *infra* Section III.C.1.

<sup>165</sup> See *infra* Section III.C.2.

<sup>166</sup> See *infra* Section III.C.3.

<sup>167</sup> See *infra* Section III.C.4.

<sup>168</sup> See *infra* Section III.C.5.

<sup>169</sup> See *infra* Section III.C.6.

<sup>170</sup> See § 54-1p; § 92.70; 5/107A-2.

<sup>171</sup> See § 54-1p; § 92.70; 5/107A-2.

is being conducted and that this must be instructed to the eyewitness.<sup>172</sup> Illinois then includes an instruction on the audio and video recording of the lineup, requiring a recording if it is practical and not refused by the eyewitness.<sup>173</sup> Connecticut has the best lineup instructions of all three laws, adding instructions that: a sequential lineup will be conducted; the suspect may not look exactly as she did on the date of the offense; and the eyewitness shall take as much time as needed in making an identification.<sup>174</sup> Of all the lineup instructions set forth by the three state laws, the four most important are: (1) the perpetrator may or may not be present; (2) the administrator does not know the suspect's identity; (3) the importance of clearing innocent individuals; and (4) the investigation will continue.<sup>175</sup>

All four of these lineup instructions should be present in the Illinois eyewitness identification procedure statute, as research shows that these instructions lower rates of mistaken identifications in offender-absent lineups.<sup>176</sup> For example, Connecticut's requirement that the suspect may not look exactly as he or she did on the date of the offense helps to prevent the witness from feeling as if she is choosing a suspect that she has never seen before.<sup>177</sup> The absence of such a requirement in the Illinois statute creates a stronger possibility that a witness will misidentify the perpetrator.<sup>178</sup> Without these instructions, an eyewitness naturally believes that the police have caught the suspect and are relying on the eyewitness to pick out the suspect.<sup>179</sup>

Illinois should implement all of these instructions, as these instructions are essentially the equivalent of "none of the above" on a multiple-choice test.<sup>180</sup> Without that option, the eyewitness feels compelled to choose A, B, C, or D, without having the option to choose

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<sup>172</sup> See § 92.70; 5/107A-2.

<sup>173</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2 (discussing Illinois' instructions).

<sup>174</sup> See § 54-1p; § 92.70; 5/107A-2.

<sup>175</sup> See Findley, *supra* note 40, at 390 (exploring the four most important lineup instructions).

<sup>176</sup> See *id.* (highlighting the need for these instructions).

<sup>177</sup> See CONN. GEN. STAT. ANN. § 54-1p.

<sup>178</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2 (showing that Illinois leaves out this crucial instruction in its law). See also Findley, *supra* note 40, at 390 (pointing out that without an instruction an eyewitness has a higher likelihood of misidentifying the perpetrator she allegedly saw committing the crime).

<sup>179</sup> See Findley, *supra* note 40, at 390 (analyzing why the four lineup instructions are more important than the others).

<sup>180</sup> See Findley, *supra* note 40, at 390 (arguing for a "none of the above" option). See also Roy S. Malpass and Patricia G. Devine, *Eyewitness Identification: Lineup Instructions and the Absence of the Offender*, 66 J. APP. PSYCHOL. 482, 488 (1981) (adding the confidence of a witness in her identification).



“none.”<sup>181</sup> The four instructions discussed above give the eyewitness option E, to choose to say none of the participants in the lineup are the suspect, rather than feeling forced to choose one.<sup>182</sup> Overall, these instructions are needed in Illinois because they can prevent an eyewitness from identifying a lineup participant because she feels pressured to make a selection and a lineup participant looks similar to the suspect, which will reduce eyewitness misidentifications and wrongful convictions throughout the state.<sup>183</sup>

## 2. Video and Audio Recording

Unlike Connecticut and Florida, Illinois requires the eyewitness identification procedure and lineup to be audio and video recorded, unless it is not practical or the eyewitness objects.<sup>184</sup> Videotaping is important because it creates a record of: (1) the instructions given to the eyewitness; (2) the actual appearance of the photospread or lineup; (3) the possible suggestions that might have flowed from the lineup agent to the eyewitness; and (4) the witness’s reaction to the lineup.<sup>185</sup>

Illinois only requires video and audio recording if it is practical; however, it should be mandatory.<sup>186</sup> Requiring audio and video documentation whenever practical is arbitrary and easily ignored, as lineup administrators can state recording was not practical.<sup>187</sup> There are cases in which there can be no other explanation for the eyewitness’s identification of a suspect other than the agent influenced the choice, and Illinois must implement mandatory audio and video recording to prevent this improper influence.<sup>188</sup>

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<sup>181</sup> See Findley, *supra* note 40, at 390 (comparing a multiple-choice test with the lineup instructions).

<sup>182</sup> See Findley, *supra* note 40, at 389 (specifying that option E on a multiple-choice test allows the eyewitness not to feel forced in her decision to choose a lineup participant or any particular answers).

<sup>183</sup> See *Reevaluating Lineups*, *supra* note 21, at 19 (clarifying the need for lineup instructions).

<sup>184</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(h) (requiring video and audio recording of lineups in Illinois). See also CONN. GEN. STAT. ANN. § 54-1p (showing that Connecticut does not require video or audio recording of lineups); FLA. STAT. ANN. § 92.70 (exposing that Florida does not require video or audio recording of lineups).

<sup>185</sup> See Wells et al., *Recommendations for Lineups and Photospreads*, *supra* note 37, at 640.

<sup>186</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(h) (identifying that Illinois does not have mandatory audio and video recording). See Wells et al., *Recommendations for Lineups and Photospreads*, *supra* note 37, at 640 (noticing the need for mandatory recording).

<sup>187</sup> See Wells et al., *Recommendations for Lineups and Photospreads*, *supra* note 37, at 641.

<sup>188</sup> See *id.* at 628 (providing one example case in which a detective appeared to have facilitated the witness identifying someone the detective mistakenly thought was his suspect).

Additionally, these tapes could be used by the defense during discovery or even presented as evidence to the jury.<sup>189</sup> Mandatory audio and video recording of the lineup procedure in Illinois will provide evidence of an erroneous lineup procedure.<sup>190</sup> Additionally, when the process is recorded and conducted properly, the need for motions to suppress identifications will decrease.<sup>191</sup>

### 3. Fillers

Illinois and Connecticut establish the lineup requirements for fillers, while Florida does not.<sup>192</sup> The laws in Illinois and Connecticut ensure that the lineup is composed in such a way that the suspect does not unduly stand out and only allow one suspect per lineup.<sup>193</sup> Furthermore, unlike Florida, Illinois and Connecticut require different fillers for every lineup in which the eyewitness participates.<sup>194</sup>

These filler requirements are important in Illinois eyewitness identification legislation because the function of a lineup is to determine if the eyewitness will identify the individual she allegedly saw committing the crime as being the offender rather than identifying one of the known-innocent fillers.<sup>195</sup> Proper filler selection requirements force the lineup administrator to ensure that the suspect does not unduly stick out from the other lineup participants, and further allows for a proper identification, or no identification, to be made by the eyewitness, bolstering proper eyewitness procedures.<sup>196</sup>

### 4. Confidence Statements

In Connecticut, a confidence statement from the eyewitness is required.<sup>197</sup> Regardless of whether an identification was made, the eyewitness must make a statement regarding how certain she is of the

<sup>189</sup> See *id.* at 640 (acknowledging how these tapes could be used).

<sup>190</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(h).

<sup>191</sup> See Wells et al., *Recommendations for Lineups and Photospreads*, *supra* note 37, at 641 (noting how these videos can help the sanctity of lineup procedures).

<sup>192</sup> See CONN. GEN. STAT. ANN. § 54-1p; 725 ILL. COMP. STAT. ANN. 5/107A-2(f). *But see* FLA. STAT. ANN. § 92.70 (exposing that Florida does not touch on the use of fillers).

<sup>193</sup> See § 54-1p(c)(5); 5/107A-2(f)(3).

<sup>194</sup> See § 54-1p(c)(6); 5/107A-2(f)(3).

<sup>195</sup> See Wells, *Systemic Reforms*, *supra* note 28, at 617-18 (emphasizing the importance of fillers in lineups).

<sup>196</sup> See Schuster, *supra* note 28, at 3 (explaining the use of fillers).

<sup>197</sup> Compare CONN. GEN. STAT. ANN. § 54-1p(c)(15)(A) (acknowledging the need for confidence statements), with FLA. STAT. ANN. § 92.70 (providing that Florida does not have a requirement for confidence statements), and 725 ILL. COMP. STAT. ANN. 5/107A-2 (confirming Illinois does not use confidence statements).

selection or lack thereof.<sup>198</sup> The eyewitness is not to be provided any information concerning the lineup participant prior to giving her confidence statement.<sup>199</sup> Like Connecticut, Illinois must implement confidence statements into its legislation.<sup>200</sup> Confidence statements from eyewitnesses are powerful not only in determining the reliability of the identification but also in predicting whether the fact finder will accept that the identified participant is the offender.<sup>201</sup>

Without confidence statements, the Illinois statute allows an eyewitness to remember being certain about her identification when, in reality, she was hesitant or uncertain, and then by the time she testifies at trial, she provides very convincing testimony of her identification.<sup>202</sup> Confidence statements do not allow for confidence malleability and contamination in eyewitness identifications and therefore must be implemented into Illinois legislation.<sup>203</sup>

## 5. Remedies

The Illinois and Florida statutes discuss the remedies available to defendants as a consequence of lineup administrators failing to comply with the statute.<sup>204</sup> The court views noncompliance with the statutory procedures when adjudicating motions to suppress eyewitness identifications and uses noncompliance as evidence in a claim of eyewitness misidentification as long as the evidence is admissible.<sup>205</sup>

These remedies are important because they provide remedies for those who were victims of eyewitness misidentifications or improper lineup procedures and ensure more safeguards are in place to prevent

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<sup>198</sup> See § 54-1p(c)(15)(A).

<sup>199</sup> *Id.*

<sup>200</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2 (missing a requirement for confidence statements).

<sup>201</sup> See Wells, *Systemic Reforms*, *supra* note 28, at 620 (describing the use of confidence statements).

<sup>202</sup> See *Reevaluating Lineups*, *supra* note 21, at 13 (pointing out the susceptibility of an eyewitness's confidence).

<sup>203</sup> See Wells et al., *Recommendations for Lineups and Photospreads*, *supra* note 37, at 624 ("The confidence malleability problem is particularly important because actors in the legal system can contaminate the confidence of an eyewitness in ways that can make an eyewitness's in-court expression of confidence a meaningless indicator of the eyewitness's memory.").

<sup>204</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(j) (noting the importance of consequences). See also FLA. STAT. ANN. § 92.70(4) (specifying the importance of having remedies for individuals whose rights are violated due to not following the Eyewitness Identification Reform Act).

<sup>205</sup> See FLA. STAT. ANN. § 92.70(4). The Illinois statute is similar to the Florida statute regarding remedies available to defendants. See 725 ILL. COMP. STAT. ANN. 5/107A-2(j).

wrongful convictions based on eyewitness misidentifications.<sup>206</sup> However, Illinois must implement new remedies to solve the problem of noncompliance with legislation, as the current remedies still allow lineup administrators to improperly conduct lineups without real consequences.<sup>207</sup>

## 6. Sequential Lineups

Of the three legislations, only Connecticut requires sequential lineups to be conducted.<sup>208</sup> Illinois does not establish a preference for sequential or simultaneous lineups, and Florida does not mention the different methods of conducting lineups.<sup>209</sup> A sequential lineup procedure sets a higher standard for an eyewitness to make a positive identification because she cannot be sure if she has viewed all lineup participants.<sup>210</sup> Research comparing the simultaneous and sequential lineup procedures shows that sequential lineups produce fewer mistaken identifications than simultaneous lineups, and sequentially presenting a lineup makes it difficult for eyewitnesses to compare the participants and pushes them to make an absolute judgment based upon memory.<sup>211</sup>

Illinois must implement sequential lineups, as sequential lineups cause eyewitnesses whose memories are weaker to struggle to make an identification, and therefore, allow for more accurate identifications.<sup>212</sup> Along with instructions and blind administration of lineups, the use of sequential lineups allows for fewer wrongful convictions and must be implemented in Illinois.<sup>213</sup>

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<sup>206</sup> See FLA. STAT. ANN. § 92.70(4); 725 ILL. COMP. STAT. ANN. 5/107A-2(j) (elaborating on the remedies available to suspects). See also *Reevaluating Lineups*, *supra* note 21, at 22 (clarifying the need for lineup instructions).

<sup>207</sup> See also *Exonerations by State*, *supra* note 16 (expressing wrongful convictions could be prevented by harsher legislation).

<sup>208</sup> Compare CONN. GEN. STAT. ANN. § 54-1p (acknowledging Connecticut's establishment of sequential lineups), with FLA. STAT. ANN. § 92.70 (noting Florida does not discuss certain lineup procedures), and 725 ILL. COMP. STAT. ANN. 5/107A-2 (confirming Illinois does not establish a preference for lineup procedures).

<sup>209</sup> See FLA. STAT. ANN. § 92.70; 725 ILL. COMP. STAT. ANN. 5/107A-2.

<sup>210</sup> See Wells, *Systemic Reforms*, *supra* note 28, at 626 (discussing the importance of sequential lineups).

<sup>211</sup> See *id.* (highlighting the need for sequential lineups). See also Findley, *supra* note 40, at 395 (exposing the need for sequential lineups).

<sup>212</sup> See Wells, *Systemic Reforms*, *supra* note 28, at 628 (specifying the difficulty of sequential lineups for "weaker" eyewitnesses opposed to "good eyewitnesses").

<sup>213</sup> See *supra* Section III.C.1 (expressing the need for instructions). See also Wells, *Systemic Reforms*, *supra* note 28, at 628 (advocating for sequential lineups); *Reevaluating Lineups*, *supra* note 21, at 21 (noting the need for instructions, blind administration, and sequential lineups).

D. *A Model Statute Could Have Changed Angel Gonzalez's Case*

Angel Gonzalez was wrongfully convicted based on the erroneous eyewitness testimony of a victim.<sup>214</sup> While Gonzalez was convicted in 1995 of a 1994 crime, a model eyewitness identification statute could have helped prevent Gonzalez's wrongful conviction because Gonzalez's show-up was highly suggestive.<sup>215</sup> Often, an eyewitness identifies a suspect while, "the suspect [is] in police custody and may even be handcuffed or locked in a police squad car" – just like Angel Gonzalez.<sup>216</sup>

A model eyewitness procedure statute must not allow for such show-ups but, instead, require proper sequential lineups.<sup>217</sup> When conducted properly, sequential lineups are less suggestive because "the witness will not know which person the officer believes to be the true perpetrator and, therefore, will not be influenced in the identification process."<sup>218</sup> A model statute must also require that the eyewitness is given instructions prior to the lineup.<sup>219</sup> Lineup instructions prevent an eyewitness from identifying a lineup participant because she feels pressured to make a selection and a lineup participant looks similar to the suspect.<sup>220</sup> A sequential lineup conducted with proper instructions likely would have prevented Gonzalez from being identified.<sup>221</sup> The victim would have been instructed that the perpetrator might not be in the lineup, which would have forced the victim to make an absolute judgment based upon memory, and likely, she would not have been able to identify Gonzalez.<sup>222</sup>

In addition, with a live lineup or photo lineup, proper filler selection requirements force the lineup administrator to ensure that the suspect does not unduly stand out from the other lineup participants.<sup>223</sup> Proper filler requirements likely would have prevented Gonzalez from being

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<sup>214</sup> See *supra* Part II.D (expanding on Gonzalez's case). See also *Gonzalez v. City of Waukegan*, 220 F. Supp. 3d 876, 880 (N.D. Ill. 2016) (explaining Gonzalez's civil suit against the City of Waukegan and the facts of his wrongful conviction). See also *Gonzalez, INNOCENCE*, *supra* note 3 (describing Gonzalez's case).

<sup>215</sup> See Cicchini & Easton, *supra* note 40, at 389 (highlighting the suggestiveness of show-ups). See also *Gonzalez*, 220 F. Supp. 3d at 880–81 (analyzing Gonzalez's case).

<sup>216</sup> Cicchini & Easton, *supra* note 40, at 388. See *supra* Part II.D (discussing Gonzalez's case). See also *Gonzalez*, 220 F. Supp. 3d at 881 (pointing out Gonzalez's show-up).

<sup>217</sup> See *supra* Part III.C (providing the need for sequential lineups).

<sup>218</sup> Cicchini & Easton, *supra* note 40, at 389.

<sup>219</sup> See *supra* Part III.C (explaining requirements in a model statute).

<sup>220</sup> See *Reevaluating Lineups*, *supra* note 21, at 19 (identifying the need for lineup instructions).

<sup>221</sup> See *Gonzalez v. City of Waukegan*, 220 F. Supp. 3d 876, 881 (N.D. Ill. 2016).

<sup>222</sup> See *id.* See also Wells, *Systemic Reforms*, *supra* note 28, at 625–26 (highlighting the need for sequential lineups).

<sup>223</sup> See Schuster, *supra* note 28, at 3 (noting the use of fillers).

identified because he did not match many of the descriptive features given to the police.<sup>224</sup>

A model statute must also require audio and video recording along with a confidence statement.<sup>225</sup> Mandatory audio and video recording of the lineup procedure provides evidence of an erroneous lineup procedure, such as the one Gonzalez was part of.<sup>226</sup> In addition, confidence statements do not allow for confidence malleability and contamination in eyewitness identifications.<sup>227</sup> Had police recorded Gonzalez's lineup, as well as obtained a confidence statement from the victim, Gonzalez's attorney could have known the lineup was not conducted properly and that the victim was unlikely confident in her identification.<sup>228</sup>

A model statute requiring sequential lineups would have prevented Gonzalez's conviction, saved him twenty years of his life, and saved the city of Waukegan \$9.5 million dollars.<sup>229</sup> What could have been will never be known. But if Illinois had a proper model statute, then Gonzalez likely would not have been convicted because the show-up would not have been allowed.<sup>230</sup> The police would have been required to conduct a sequential lineup—with proper fillers, instructions, and taping—and the witness would have never identified Gonzalez.<sup>231</sup>

#### IV. CONTRIBUTION

##### A. Proposal

This proposed statute, which would replace the current Illinois statute, combines the *Illinois Compiled Statute* on Lineup Procedure, Connecticut's Eyewitness Identification Procedure, and Florida's Eyewitness Procedure.<sup>232</sup> The proposed statute is as follows:

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<sup>224</sup> See *Gonzalez*, 220 F. Supp. 3d at 881 (disclosing that Gonzalez did not match the features given by the victim). See also *Gonzalez*, INNOCENCE, *supra* note 3 (describing Gonzalez's features).

<sup>225</sup> See *supra* Part III.C (enumerating the video and audio recording requirement in a model statute).

<sup>226</sup> See *supra* Part III.C (analyzing the need for video and audio recording).

<sup>227</sup> See Wells et al., *Recommendations for Lineups and Photospreads*, *supra* note 37, at 624 (identifying confidence malleability).

<sup>228</sup> See *Gonzalez*, 220 F. Supp. 3d at 881.

<sup>229</sup> See *Gonzalez*, 220 F. Supp. 3d at 876, 881 (demonstrating how costly eyewitness misidentifications are not only to those wrongly convicted but also to the police departments involved).

<sup>230</sup> See ILL. COMP. STAT. ANN. 5/107A-2 (lacking adequate eyewitness identification procedures).

<sup>231</sup> See *supra* Part III.C (highlighting requirements in a model statute).

<sup>232</sup> The language in the proposed statute is taken from CONN. GEN. STAT. ANN. § 54-1p; 725 ILL. COMP. STAT. ANN. 5/107A-2; and FLA. STAT. ANN. § 92.70.

(a) Board

- (1) The Board shall jointly develop and promulgate uniform mandatory policies and appropriate guidelines for the conducting of eyewitness identification procedures that shall be based on best practices and be followed by all municipal and state law enforcement agencies. Said Board shall also develop and promulgate a standardized form to be used by municipal and state law enforcement agencies when conducting an identification procedure and making a written record thereof.<sup>233</sup>
- (2) Each municipal police department shall adopt procedures for the conducting of photo lineups and live lineups that are in accordance with the policies and guidelines developed and promulgated by the Board pursuant to subsection (a)(a) of this section and that comply with the requirements of this statute.<sup>234</sup>

(b) Sequential Lineup

- (1) Whenever a specific participant is suspected as the perpetrator of an offense, the photographs included in a photo lineup or the persons participating in a live lineup shall be presented sequentially so that the eyewitness views one photograph or one participant at a time.<sup>235</sup>

(c) Blind Administration

- (1) The identification procedure shall be conducted in such a manner that the person conducting the procedure does not know which participant in the photo lineup or live lineup is suspected as the perpetrator of the offense, except that, if it is not practicable to conduct a photo lineup in such a manner, the photo lineup shall be conducted by the use of a folder shuffle method, computer program, or other comparable method so that the person conducting the procedure does not know which

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<sup>233</sup> See CONN. GEN. STAT. ANN. § 54-1p(b). See also *Agency Information*, ILL. L. ENF'T TRAINING & STANDARDS BD. (2018), <http://www.ptb.illinois.gov/about/agency-information/> [<https://perma.cc/L5MJ-QAAZ>]. The Board is the Illinois Law Enforcement Training and Standards Board. *Id.*

<sup>234</sup> See CONN. GEN. STAT. ANN. § 54-1p(c).

<sup>235</sup> See *id.* § 54-1p(e)(1).

photograph the eyewitness is viewing during the procedure.<sup>236</sup>

(d) Instructions

(1) Before a lineup is conducted the eyewitness shall be instructed that:<sup>237</sup>

- (a) the eyewitness will be asked to view an array of photographs or a group of participants, and that each photograph or participant will be presented one at a time;<sup>238</sup>
- (b) an audio and video recording of the lineup will be made for the purpose of accurately documenting all statements made by the eyewitness, and that if a recording is made it will be of the participants in the lineup and the eyewitness;<sup>239</sup>
- (c) the independent administrator does not know the suspected perpetrator's identity or if the administrator conducting the lineup is not an independent administrator, the eyewitness should not assume that the lineup administrator knows which participant in the lineup is the suspect;<sup>240</sup>
- (d) it is as important to exclude innocent persons as it is to identify a perpetrator;<sup>241</sup>
- (e) that the participants in a photo lineup or live lineup may not look exactly as they did on the date of the offense because features like facial or head hair can change;<sup>242</sup>
- (f) the perpetrator may or may not be among the participants in the photo lineup or live lineup;<sup>243</sup>
- (g) the eyewitness should not feel compelled to make an identification;<sup>244</sup>

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<sup>236</sup> See *id.* § 54-1p(c)(2).

<sup>237</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(e)(1).

<sup>238</sup> See CONN. GEN. STAT. ANN. § 54-1p(c)(3)(A).

<sup>239</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(e)(1)(A).

<sup>240</sup> See 5/107A-2(e)(1)(C).

<sup>241</sup> See 5/107A-2(e)(1)(E).

<sup>242</sup> See CONN. GEN. STAT. ANN. § 54-1p(c)(3)(C).

<sup>243</sup> See *id.* § 54-1p(c)(3)(D).

<sup>244</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(e)(1)(D).



- (h) the eyewitness should take as much time as needed in making a decision; and<sup>245</sup>
- (i) the investigation will continue whether or not an identification is made.<sup>246</sup>
- (2) The eyewitness shall acknowledge in writing the receipt of the instructions required under this subsection.<sup>247</sup>
- (e) Conducting the Lineup
  - (1) There shall not be anyone present during a lineup who knows the suspected perpetrator's identity, except the eyewitness and suspected perpetrator's counsel if required by law.<sup>248</sup>
  - (2) The lineup administrator shall separate all eyewitnesses in order to prevent the eyewitnesses from conferring with one another before and during the lineup procedure. If separating the eyewitnesses is not practicable, the lineup administrator shall ensure that all eyewitnesses are monitored and that they do not confer with one another while waiting to view the lineup and during the lineup.<sup>249</sup>
  - (3) Each eyewitness shall perform the identification procedures without any other eyewitness present. Each eyewitness shall be given instructions regarding the identification procedures without other eyewitnesses present.<sup>250</sup>
  - (4) No writings or information concerning any previous arrest, indictment, or conviction of the suspected perpetrator shall be visible or made known to the eyewitness.<sup>251</sup>
  - (5) Nothing shall be communicated to the eyewitness regarding the suspected perpetrator's position in the lineup or regarding anything that may influence the eyewitness's identification.<sup>252</sup>

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<sup>245</sup> See CONN. GEN. STAT. ANN. § 54-1p(c)(3)(F).

<sup>246</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(e)(1)(F).

<sup>247</sup> 5/107A-2(e)(2).

<sup>248</sup> 5/107A-2(f)(12).

<sup>249</sup> 5/107A-2(f)(1).

<sup>250</sup> 5/107A-2(f)(2).

<sup>251</sup> 5/107A-2(f)(6).

<sup>252</sup> 5/107A-2(f)(5).

- (6) In a live lineup, any identifying actions, such as speaking or making gestures or other movements, shall be performed by all lineup participants.<sup>253</sup>
- (f) Fillers
- (1) The photo or live lineup shall be composed so that the fillers generally fit the description of the person suspected as the perpetrator, and in the case of a photo lineup, so that the photograph of the person suspected as the perpetrator resembles his or her appearance at the time of the offense and does not unduly stand out.<sup>254</sup>
  - (2) Only one suspected perpetrator shall be included in a lineup.<sup>255</sup>
  - (3) At least five fillers shall be included in the photo lineup and at least four fillers shall be included in the live lineup, in addition to the person suspected as the perpetrator.<sup>256</sup>
  - (4) If the eyewitness has previously viewed a photo lineup or live lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the current suspected perpetrator participates shall be different from the fillers used in the prior lineups.<sup>257</sup>
- (g) Confidence Statement
- (1) If the eyewitness identifies a participant as the perpetrator, the eyewitness shall not be provided any information concerning the participant until after the lineup is completed<sup>258</sup> and after obtaining the eyewitness's statement regarding how certain she is of the selection.<sup>259</sup>
- (h) Written Record
- (1) The lineup administrator shall make an official report of all lineups, which shall include:<sup>260</sup>

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<sup>253</sup> See CONN. GEN. STAT. ANN. § 54-1p(c)(9).

<sup>254</sup> See *id.* § 54-1p(c)(5).

<sup>255</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(f)(3)(A).

<sup>256</sup> See CONN. GEN. STAT. ANN. § 54-1p(c)(7).

<sup>257</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2(f)(3)(E).

<sup>258</sup> See 5/107A-2(f)(11).

<sup>259</sup> See § 54-1p(c)(14).

<sup>260</sup> See 5/107A-2(g).

- (a) all identification and non-identification results obtained during the lineup, signed by the eyewitness, including any and all statements made by the eyewitness during the lineup as to the perpetrator's identity;<sup>261</sup>
  - (b) the names of all persons who viewed the lineup;<sup>262</sup>
  - (c) the names of all law enforcement officers and counsel present during the lineup;<sup>263</sup>
  - (d) the date, time, and location of the lineup;<sup>264</sup>
  - (e) whether it was a photo lineup or live lineup and how many participants or photographs were presented in the lineup;<sup>265</sup>
  - (f) the sources of all participants or photographs used as fillers in the lineup;<sup>266</sup>
  - (g) in a photo lineup, the actual photographs shown to the eyewitness;<sup>267</sup>
  - (h) in a live lineup, a photograph or other visual recording of the lineup that includes all persons who participated in the lineup;<sup>268</sup>
  - (i) if applicable, the reason for any impracticability in strict compliance with this statute.<sup>269</sup>
- (i) Audio and Video Recording
    - (1) A video record of all lineup procedures shall be made.<sup>270</sup>
  - (j) Remedies
    - (1) Failure to comply with any of the requirements of this statute makes the eyewitness identification prima facie inadmissible and shifts the burden to the prosecution to prove reliable and legitimate reasoning for failing to comply with the statute.<sup>271</sup>
  - (k) Education

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<sup>261</sup> See 5/107A-2(g)(1).

<sup>262</sup> See 5/107A-2(g)(2).

<sup>263</sup> See 5/107A-2(g)(3).

<sup>264</sup> See 5/107A-2(g)(4).

<sup>265</sup> See 5/107A-2(g)(5).

<sup>266</sup> See 5/107A-2(g)(6).

<sup>267</sup> See 5/107A-2(g)(7).

<sup>268</sup> See 5/107A-2(g)(8).

<sup>269</sup> See 5/107A-2(g)(10).

<sup>270</sup> See 5/107A-2(h).

<sup>271</sup> This is the author's contribution.

- (1) The Board shall create education material and provide training programs on how to conduct lineups in compliance with this section.<sup>272</sup>

*B. Commentary*

Illinois must implement a task force to add needed reinforcement to ensure all police jurisdictions in Illinois are trained and follow the eyewitness procedures in Illinois.<sup>273</sup> Illinois currently has the Illinois Law Enforcement Training and Standards Board, however, adding to the Board's responsibilities will ensure the procedures are followed.<sup>274</sup> The Board's responsibilities will change to include establishing uniform mandatory policies and appropriate guidelines based on the best practices and must be followed by all law enforcement agencies in Illinois.<sup>275</sup> While the Board already provides education materials and training programs, the programs should also include how to conduct lineups in compliance with the new proposed Illinois statute.<sup>276</sup> In addition, instructions must be added.<sup>277</sup> Adding instructions to the Illinois legislation is vital because the instructions will prevent the witness from feeling pressured to make a selection.<sup>278</sup>

Next, proper filler requirements and confidence statements must be added.<sup>279</sup> Requiring proper filler selection requirements in Illinois will force the lineup administrator to correctly fill the lineup, bolstering proper

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<sup>272</sup> See *Agency Information*, *supra* note 233. See also *supra* Part III.C (discussing Illinois, Connecticut, and Florida statutes). See also, *e.g.*, FLA. STAT. ANN. § 92.70(5) (providing language from the Florida statute).

<sup>273</sup> See *Agency Information*, *supra* note 233 (highlighting the role the Board already has). Connecticut and Florida have established task forces for promulgating procedures and education and training. See CONN. GEN. STAT. ANN. § 54-1p(b) (specifying Connecticut established a Board for promulgating and enforcing procedures); FLA. STAT. ANN. § 92.70(5) (pointing out Florida established an entity for training).

<sup>274</sup> See *Agency Information*, *supra* note 233. This board is an agency that promotes and maintains a high level of professional standards for law enforcement and correctional officers throughout Illinois. *Id.* The Board's responsibilities include developing and providing training and education, setting standards, providing financial assistance, and establishing training facilities. *Id.*

<sup>275</sup> See CONN. GEN. STAT. ANN. § 54-1p(b) (noting Connecticut's Police Officer Standards and Training Council and the Division of State Police within the Department of Emergency Services and Public Protection, which develops and sets forth all of Connecticut's eyewitness identification procedures).

<sup>276</sup> See FLA. STAT. ANN. § 92.70(5) (expanding on Florida's education and training requirement).

<sup>277</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2 (showing that Illinois does not have proper instructions).

<sup>278</sup> See *Reevaluating Lineups*, *supra* note 21, at 19 (clarifying the need for lineup instructions).

<sup>279</sup> See, *e.g.*, 725 ILL. COMP. STAT. ANN. 5/107A-2.

eyewitness procedures.<sup>280</sup> Then, confidence statements must be added.<sup>281</sup> Confidence statements are powerful in determining the reliability of the identification and preventing confidence malleability and contamination in eyewitness identifications, and therefore, must be implemented into Illinois legislation.<sup>282</sup>

Next, mandatory audio and video recording is imperative to prevent misidentifications.<sup>283</sup> Mandatory audio and video recording of the lineup procedure in Illinois may provide evidence of an erroneous lineup procedure.<sup>284</sup> Additionally, when the procedure is recorded and conducted properly, the need for motions to suppress identifications due to erroneous identifications will decrease.<sup>285</sup>

Finally, Illinois must implement sequential lineups and not allow simultaneous lineups.<sup>286</sup> Sequential lineups cause eyewitnesses whose memories are weaker struggle to make an identification.<sup>287</sup> Along with instructions and blind administration of lineups, the use of sequential lineups allows for fewer wrongful convictions by relieving the witness from feeling pressured to make a choice, and therefore, must be implemented in Illinois.<sup>288</sup>

Some could argue that the Illinois eyewitness procedure statute regarding the type of lineup, fillers, instructions, and taping is already sufficient.<sup>289</sup> However, eyewitness procedure problems are prevalent, and the law does not provide sufficient instructions or the correct lineup procedure.<sup>290</sup> The proposed statute would apply generally to all lineup procedures and help prevent further eyewitness misidentifications.<sup>291</sup> Further, the Illinois law lacks instructions, such as forbidding the suspect

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<sup>280</sup> See Schuster, *supra* note 28, at 3 (explaining the use of fillers).

<sup>281</sup> See, e.g., 725 ILL. COMP. STAT. ANN. 5/107A-2.

<sup>282</sup> See Wells et al., *Recommendations for Lineups and Photospreads*, *supra* note 37, at 624 (describing confidence malleability).

<sup>283</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2 (demonstrating Illinois lacks the audio and video recording requirement).

<sup>284</sup> See *id.* (specifying Illinois currently does not have a mandatory audio and videoing requirement to provide this evidence).

<sup>285</sup> See Wells et al., *Recommendations for Lineups and Photospreads*, *supra* note 37, at 641 (noting how these videos can help with lineup procedures).

<sup>286</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2 (pointing out Illinois does not use sequential lineups).

<sup>287</sup> See Wells, *Systemic Reforms*, *supra* note 28, at 628 (describing the difficulty with sequential lineups).

<sup>288</sup> See *id.* See also *Reevaluating Lineups*, *supra* note 21, at 21 (highlighting the need for instructions, blind administration, and sequential lineups).

<sup>289</sup> See 725 ILL. COMP. STAT. ANN. 5/107A-2 (identifying that the statute was recently amended and may be viewed as not needing reform).

<sup>290</sup> See also *Reevaluating Lineups*, *supra* note 21, at 5 (stressing the need for reforms).

<sup>291</sup> *Id.*

to appear exactly as she did on the date of the offense and only allowing sequential lineups to be conducted.<sup>292</sup> Even when the law was written for the specific purpose of preventing eyewitness misidentifications, procedures and amendments to the statute often are not at the forefront of legislator's minds or implemented in police jurisdictions.<sup>293</sup> Additionally, legislators must clearly establish that eyewitness misidentifications and wrongful convictions are not something Illinois deems acceptable.<sup>294</sup>

An argument could also be made against the sole usage of sequential lineups over a mixture of sequential and simultaneous lineups.<sup>295</sup> However, research comparing simultaneous and sequential lineup procedures shows that sequential lineups produce fewer mistaken identifications than simultaneous lineups.<sup>296</sup> A sequential lineup procedure sets a higher standard for an eyewitness to make a positive identification because she cannot be sure that all lineup participants have been viewed.<sup>297</sup> Additionally, sequential lineups make it difficult for eyewitnesses to compare the participants and pressures them to make an absolute judgment based upon memory.<sup>298</sup> Thus, sequential lineups should be implemented in all police jurisdictions. Despite the arguments against a more restrictive statute, the seriousness of eyewitness misidentifications and wrongful convictions makes it imperative for Illinois to amend its statute to help stop these problems.

## V. CONCLUSION

The number of wrongful convictions based on erroneous eyewitness identifications demonstrates the need for legislation to reform the laws surrounding eyewitness identification procedures. Had there been a proper Illinois law to protect Angel Gonzalez from a show-up—and the resulting eyewitness misidentification—Gonzalez would not have been convicted and deprived of a large portion of his life.

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<sup>292</sup> See *supra* Sections III.C.1 & III.C.6 (noticing the need for lineup instructions and sequential lineups in the Illinois law).

<sup>293</sup> See CONN. GEN. STAT. ANN. § 54-1p; FLA. STAT. ANN. § 92.70; 725 ILL. COMP. STAT. ANN. 5/107A-2.

<sup>294</sup> See also *Reevaluating Lineups*, *supra* note 21, at 25 (stressing that the United States has a wrongful conviction epidemic that needs to be cured).

<sup>295</sup> See Wells et al., *Recommendations for Lineups and Photospreads*, *supra* note 37, at 639 (comparing sequential and simultaneous lineups).

<sup>296</sup> See Wells, *Systemic Reforms*, *supra* note 28, at 626 (highlighting the need for sequential lineups).

<sup>297</sup> See *supra* Section III.C.6 (describing sequential lineups). See also Wells, *Systemic Reforms*, *supra* note 28, at 626 (discussing sequential lineups).

<sup>298</sup> See *supra* Section III.C.6. See also Wells, *Systemic Reforms*, *supra* note 28, at 626 (explaining the importance and need for sequential lineups).

760 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 53]

A specific law in Illinois is already in place to prevent these types of injustices, but that law needs to be reformed to more accurately protect suspects from eyewitness misidentifications and wrongful convictions. The negative impact of eyewitness misidentifications affects not only the person convicted but also society as a whole.

The Illinois law concerning eyewitness procedures lacks specificity and allows police jurisdictions to choose the type of lineup to be conducted and the procedures surrounding that lineup, leading to eyewitness misidentifications and wrongful convictions that negatively affect society. A specifically tailored Illinois law should be in place to protect suspects from misidentifications—to deal with the problems of eyewitness misidentifications and wrongful conviction—and to protect the freedom of suspects, the integrity of the police, and change society for the better.

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