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York State Legislature**
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My name is Amanda Wallwin and I'm a State Policy Advocate with the Innocence Project. The Innocence Project is a national organization, founded in New York, that represents wrongfully convicted clients across the country. We also work to enact state-level policy reforms that prevent and reveal wrongful convictions.

The Innocence Project was a leading voice in the fight for discovery reform in 2019 and I'm here today to tell you about how well this reform has worked to prevent wrongful convictions, share some comparisons from the national landscape and impress upon you that you must not repeal this law.

I'm going to start by talking about Texas. Michael Morton is a Texan who was wrongfully convicted in 1987 of murdering his own wife. He served nearly 25 years in a Texas prison until Innocence Project attorneys discovered exculpatory evidence in the case file that had never been shared during the trial. Mr. Morton was exonerated and released in 2011. In response to this devastating miscarriage of justice, the Texas Legislature passed and Governor Rick Perry signed the Michael Morton Act in 2013, requiring open file discovery. Since then, the law has remained unchanged and there has been a significant reduction in wrongful convictions involving withheld exculpatory evidence. Prior to the Michael Morton Act, 38% of Texas convictions that were revealed to be wrongful included withheld exculpatory evidence. Since Texas instituted open-file discovery, that percentage has dropped to 11%.

Michael Morton is now 70 years old. Since his release, he fell in love again, remarried, reconnected with his son and lives in Texas with his family.

I also want to talk to you about a New Yorker: Kalief Browder. In 2010, Kalief, who was 16, was accused of stealing a backpack. He was arrested and charged and sent to Riker's Island

because his family couldn't afford his bail, which was set at \$3000. Kalief refused to plead guilty to a crime he didn't commit, so he spent 3 years on Riker's Island. For two of those years, he was held in solitary confinement. In that time, Kalief was never allowed to see the evidence against him, thanks to what was then known as the blindfold law. At the time, New York prosecutors were permitted to delay evidence sharing until shortly before trial, leaving people accused of crimes with no way to prepare an adequate defense.

Ultimately, after three years of pretrial detention, the Bronx DA dismissed the charges against Kalief and he was released from Rikers. A little more than two years after his release, Kalief died by suicide. In response to this tragedy, the New York State Legislature passed Kalief's Law in 2019, which, like Texas' Michael Morton Act, transitioned New York to an open-file discovery policy. Every year since then, the Legislature has been asked to and has, at times, acquiesced in making changes to the statute. This year marks 10 years since Kalief's death, and this year, the Legislature is being asked to not just repeal Kalief's law, but to actually make our discovery law worse than it was when Kalief Browder languished on Riker's Island for three years without seeing a shred of the evidence the prosecutor was relying on to charge him.

This tale of two states should be eye-opening to you. In Texas, the Legislature took action when a Texan was hurt by bad public policy. Law enforcement changed their practices to conform with the law and Texas has prevented wrongful convictions through their action. In New York, we've also seen a reduction in wrongful convictions due to withheld exculpatory evidence. However, at the same time, prosecutors and law enforcement have dedicated themselves to undoing the Legislature's efforts, rather than using the money that you have allocated to them to engage in the routine sharing of evidence through open file discovery that happens not just in Texas, but in 45 other states across the country. New York is a special place, but we are not so special that our law enforcement can't live up to the standard set by places like Texas, California, New Jersey, North Carolina, Florida and Louisiana.

While Kalief Browder is perhaps the New Yorker best known for how he suffered thanks to the blindfold law, he's not the only one. Prior to the enactment of discovery reforms in 2020, 57% of revealed wrongful convictions in New York included people who had exculpatory evidence withheld from them.

Jason Serrano was one of those New Yorkers. In 2018, Jason was arrested on Staten Island for possession of drugs, resisting arrest and obstruction of governmental administration. When the car he was riding in was stopped for an alleged broken tail light, Jason was ordered out of the car, despite being in recovery from abdominal surgery. Officers claimed to have discovered marijuana and crack cocaine in the car and in Jason's coat. Although the officers were wearing body cameras during the arrest, neither Jason nor his attorney ever saw the footage. Jason pled guilty to misdemeanor resisting arrest to avoid Riker's Island. Later that year, the same officers who arrested Jason were revealed to have turned off their body cameras during another search of a car, turning the camera back on just before "finding" a marijuana joint. That case was dismissed by the prosecutor and prompted Legal Aid attorneys to review other body camera footage from the officers. The footage of Jason's arrest included video of one of the officers planting the drugs that Jason was charged with possessing. Had Jason and his lawyer seen that footage, he never would have pled guilty. Instead, Jason's wrongful conviction stood for three years until it was vacated and the DA dropped the charges in the interest of justice in 2021.

The blindfold law was not only a New York City problem. 75% of the 31 New York counties with an exoneration include cases in which people were denied access to exculpatory evidence in their cases.

In Erie County, Renay Lynch was sentenced to 25 years to life in prison after she was found guilty of being an accomplice to the 1995 robbery and murder of Louise Cicelsky. In 2020, Renay's post-conviction counsel, including Innocence Project attorneys, discovered that police had hidden fingerprint evidence from the crime scene. When the 13 hidden prints were examined, 9 of them matched a tenant of Ms. Cicelsky's who had a prior manslaughter conviction. None of the prints matched Renay Lynch. Renay served 24 years in prison for this crime. She was released on parole in 2022 and finally exonerated just last year. Renay has two children and six grandchildren. During Renay's incarceration, her daughter moved from Atlanta to Buffalo where Renay was in prison so that Renay could see all of her grandkids as often as possible. Renay and her family will never reclaim those 24 years.

These stories illustrate what the numbers tell us. Discovery reform is working. Since January 1, 2020, there has not been a single conviction overturned with withheld exculpatory evidence in New York State. In the five years prior to discovery reform 62% of overturned convictions had withheld exculpatory evidence. This drastic reduction was

exactly what the law was intended to do - to bring New York into the national mainstream on evidence sharing and reduce wrongful convictions. Prosecutors all across the country, in large jurisdictions with high caseloads and in small, remote jurisdictions with few resources, are able to handle this basic constitutional requirement. New York is an exceptional state, but New York exceptionalism should not and cannot extend to being exceptionally unwilling to respect the constitutional rights of people accused of a crime.