

Amanda Wallwin, Innocence Project
Testimony to the Joint Legislative Budget Hearing
On Public Protection
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My name is Amanda Wallwin and I'm a State Policy Advocate with the Innocence Project. The Innocence Project works to free the innocent, prevent wrongful convictions, and create fair, compassionate, and equitable systems of justice for everyone. Our work is guided by science and grounded in anti-racism. Founded in 1992 by Barry C. Scheck and Peter J. Neufeld, the Innocence Project uses DNA and other scientific advancements to prove wrongful conviction. To date, we have helped to free or exonerate more than 250 people who, collectively, spent more than 4,000 years behind bars. Our efforts have led to the passage of more than 250 transformative state laws and federal reforms. Today, the Innocence Project continues to fight for freedom, drive structural change, and advance the innocence movement.

In this year's executive budget proposal, we see a thread though much of the funding proposed for public safety - it's being directed towards modernizing law enforcement equipment. The Governor's budget proposed \$50 million for Law Enforcement Technology grants, \$6.7 million for modernizing forensic science labs, and \$4.5 million for a new Crime Analysis Center in Westchester County. While we understand the Governor's intent to ensure that New York law enforcement officers are not relying on outdated equipment, many of these expenditures could prove disastrous without equally modern oversight. In particular, the Innocence Project is supportive of A3969 (Kelles)/S1274 (Gianaris), a bill which would modernize the current Commission on Forensic Science and ensure appropriate oversight of forensic science in New York. Any funding for science, technology or equipment must include a mechanism for oversight of that specific use to ensure that the tool is validated, reliable and is able to be used ethically, before it is ever used in the field.

We are also heartened to see the Governor has proposed strengthening evidence preservation in New York for sexual offense evidence kits in Part E of the Article VII bill for

Public Protection and General Government, both by extending the length of time that some kits will be preserved for and by creating a commission to make recommendations for a coordinated statewide tracking system. At the Innocence Project, every day we see the value of preserving and tracking evidence. In many cases, having access to the original evidence is critical for demonstrating someone's innocence. At the same time, properly preserved evidence can also confirm a conviction, conserving judicial resources. Perhaps most importantly, properly preserved biological evidence can often be retested with a variety of forensic methods as science develops and tests become more sensitive, precise and probative, offering important new information in cases of wrongful conviction, as well as in cold cases. The kind of electronic, statewide, coordinated tracking system that the Governor is proposing should be expanded beyond sexual offense evidence kits and used for all evidence in New York.

Finally, in response to ongoing civil rights abuses by federal officials, Governor Hochul has proposed the New York State Bivens Act in Part M of the Public Protection and General Government Article VII bill to allow New Yorkers to sue federal officials in state court, creating a legal pathway to hold federal officials accountable for civil rights abuses in state court. However, as currently written, section 86 of that statute would explicitly codify qualified immunity into New York state law for the first time in state history, shielding the very officials the proposal intends to hold responsible.

Qualified immunity is a judge-made doctrine that blocks lawsuits unless a court has already ruled on nearly identical facts. This standard is so demanding that Justice Sotomayor called it an "absolute shield" promoting "shoot first, think later." These proposals give families a day in court while virtually guaranteeing they will lose.

The Innocence Project, in coalition with the Campaign to End Qualified Immunity in New York, has led the effort to eliminate qualified immunity in the state through its push to pass a bill (S176/A1402) that would ban the defense and create real accountability. Removing this barrier would give innocent people a true pathway to seek justice for constitutional violations.

Ensuring police accountability is fundamental to preventing wrongful convictions and creating equitable systems of justice for everyone. To date, police misconduct has played a role in 66% of the 368 exonerations in New York. That is why the Innocence Project has

been part of the fight to end qualified immunity in New York, and why we are speaking out against efforts that would codify qualified immunity.

While we strongly support creating a mechanism in New York to protect individuals from civil rights violations by federal officials, we oppose a proposal that includes any language, directly or indirectly, enacting qualified immunity — which blocks, rather than creates, accountability. Senator Zellnor Myrie and Assemblymember Gabriella Romero have recognized these concerns and amended their own bill, the New York Civil Rights Act (S8500B/A9076B), to remove language that would have adopted qualified immunity. Governor Hochul and the Legislature must remove the defense of qualified immunity from these proposals, and go further by passing S176/A1402 this session to secure meaningful accountability and provide justice to New Yorkers.

As always, we appreciate the opportunity to offer testimony and we look forward to continuing to work productively with the Legislature to enact policy that will prevent and reveal wrongful convictions, creating a more equitable system. Any questions can be directed to me at awallwin@innocenceproject.org.