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The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo,

Human Rights Watch strongly supports passage of Senate Bill S2421d, which would create an independent commission to investigate and, when appropriate, sanction prosecutors accused of official misconduct. Prosecutorial misconduct is a persistent and widespread problem in New York and throughout the country.

Human Rights Watch is an international non-governmental organization committed to upholding principles of human rights law throughout the world, including in the United States. A basic tenet of human rights law is that all people accused of crimes have the right to a fair hearing before an impartial tribunal.¹ The government may not deprive an accused person of liberty, except through proper procedures², and courts must respect rights and protect people from acts of authorities that violate rights.³ When prosecutors withhold evidence, especially evidence that could exonerate the accused, knowingly present false evidence or perjured testimony, or use others of their powers to unfairly obtain advantage in their cases, they are violating these rights to a fair trial.

New York has a long history of unchecked prosecutorial misconduct. The 2009 Final Report of the New York State Bar Association's Task Force on Wrongful Convictions identified prosecutorial misconduct as one of the primary factors responsible for wrongful convictions, with government practices (prosecutors and law enforcement) linked to over 30 percent of identified cases.⁴ Across the country, the National Registry of Exonerations estimates that 43 percent of overturned convictions were caused by official, including prosecutorial, misconduct. Because prosecutors themselves control access to the evidence in criminal cases, and because the vast majority of cases end in guilty pleas, it is difficult for the accused

¹ Universal Declaration of Human Rights, Art. 10, http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf; International Covenant on Civil and Political Rights, Art. 14, Section 1, <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>.

² Inter-American Commission on Human Rights, American Declaration of the Rights and Duties of Man, Art. 25, <http://www.oas.org/en/iachr/mandate/Basics/declaration.asp>.

³ Inter-American Commission on Human Rights, American Declaration of the Rights and Duties of Man, Art. 18.

⁴ *Final Report of the New York State Bar Association's Task Force on Wrongful Conviction*, April 4, 2009, <https://www.nysba.org/wcreport/> p. 6-7

to even know if the prosecutor has withheld exculpatory evidence or committed some other misconduct.

However, there are many recent examples of people in New York, convicted of serious crimes and facing life imprisonment, having their convictions overturned and being found actually innocent, because subsequent investigations uncovered prosecutorial wrongdoing that caused their guilty verdicts.

- In 2010, Wayne Martin was convicted of a double murder in Brooklyn and sentence to life in prison. Six years later, he was exonerated when investigators discovered that the prosecutor handling the case had not disclosed to the defense reports that a key eyewitness had identified someone other than Mr. Martin. Some believe that the real killer has killed others while Mr. Martin stayed in prison.⁵
- In Vance Haskell's 1998 murder trial, the prosecutor's key witness falsely testified that she had not received any compensation in exchange for testifying against him. In fact, she had been rewarded with a no prison time sentence in her own criminal case. Erie County Assistant District Attorney Matthew R. Hayes, well aware of the incentive and did nothing to correct the witness, leaving the jury with the impression that she was unbiased. In 2017, a judge reversed the conviction based on this misconduct, saying the false testimony was reasonably likely to have influenced the jury.⁶
- Jabbar Collins served sixteen years of a life sentence following conviction for a 1994 murder he did not commit. His investigators discovered that the prosecutors in his case had threatened witnesses, given perks to another witness and withheld exculpatory evidence from the defense. The government paid a total of \$13 million to Mr. Collins in compensation.⁷

New York currently has no effective system in place to hold prosecutors who violate their legal and ethical duties accountable. Occasionally, as in the above cases, the misconduct is exposed and the victim is released from prison. Sometimes the government pays compensation following a lawsuit. However, the individual prosecutor and the prosecutor's office are not held civilly liable.⁸ A review of studies of prosecutorial misconduct nationwide by the Center for Prosecutorial Integrity revealed that, of 3,625 identified instances from 1963 through 2013, only 63 prosecutors received any public discipline and only 14 were suspended or disbarred.⁹ Trial court judges rarely take action, and prosecutors do not

⁵ "Another Wrongful Conviction Comes to Light in Brooklyn: Case of Wayne Martin," *Innocence Project*, September 16, 2016, <https://www.innocenceproject.org/wrongful-conviction-brooklyn-wayne-martin/>.

⁶ "New York Man's Conviction Overturned Due to Prosecutorial Misconduct," *Innocence Project*, August 3, 2017, <https://www.innocenceproject.org/new-york-mans-conviction-overturned-prosecutorial-misconduct/>.

⁷ Stephanie Clifford, "Exonerated Man Reaches \$10 Million Deal With New York City," *New York Times*, August 19, 2014, <https://www.nytimes.com/2014/08/20/nyregion/jabbar-collins-wrongfully-convicted-man-reaches-10-million-settlement-with-new-york-city.html>.

⁸ Frederic Block, "Let's Put an End to Prosecutorial Immunity," *The Marshall Project*, March 13, 2018, <https://www.themarshallproject.org/2018/03/13/let-s-put-an-end-to-prosecutorial-immunity>.

⁹ Center for Prosecutorial Integrity, "An Epidemic of Prosecutor Misconduct," December 2013, p. 8, <http://www.prosecutorintegrity.org/wp-content/uploads/EpidemicofProsecutorMisconduct.pdf>.

discipline themselves adequately. New York's court run disciplinary system operates in secret and does not appear to be any kind of deterrent to prosecutors who bend and break rules to obtain convictions.

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S. 2421d would establish an independent commission that would investigate complaints of prosecutorial misconduct. It will not be a cure for the problem, but it will go a long way towards holding those who abuse their powers accountable, and towards deterring those who may be tempted to break the rules. The commission would be made up of legal professionals from the defense bar, the prosecution and the bench. It would have subpoena power to enable its investigations. It would hold hearings with witnesses under oath and would retain the right to grant witnesses immunity to facilitate their testimony. The hearings would have established procedures, including review by a court of appeal, to insure the accused is treated fairly. The commission would have the power to impose a range of sanctions from admonishment and public censure to removal from office.

Most prosecutors handle themselves with honor and integrity. However, it is a position invested with great power, and with that power, there is great temptation for abuse and taking short-cuts, particularly in the competitive culture of many district attorney offices. Currently, there is no effective oversight and disciplinary procedure to deter those faced with such temptation and to punish those who give in to it. This bill will create such a procedure and is greatly needed.

Sincerely,



John Raphling
Senior Researcher, US Program
Human Rights Watch