

HOUSE BILL NO. 640

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Sullivan)

A BILL to amend and reenact §§ 8.01-195.10 through 8.01-195.13 of the Code of Virginia, relating to wrongful incarceration; compensation.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-195.10 through 8.01-195.13 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-195.10. Purpose; action by the General Assembly required; definitions.

A. The purpose of this article is to provide directions and guidelines for the compensation of persons who have been wrongfully incarcerated in the Commonwealth. Compensation for wrongful incarceration is governed by Article IV, § 14 of the Constitution of Virginia, which prohibits the General Assembly from granting relief in cases in which the courts or other tribunals may have jurisdiction ~~and any individual seeking payment of state funds for wrongful incarceration shall be deemed to have waived all other claims.~~ The payment and receipt of any compensation for wrongful incarceration shall be contingent upon the General Assembly appropriating funds for that purpose. This article shall not provide an entitlement to compensation for persons wrongfully incarcerated or require the General Assembly to appropriate funds for the payment of such compensation. ~~No estate of or personal representative for a decedent shall be entitled to seek a claim for compensation for wrongful incarceration.~~

B. As used in this article:

"Incarceration" or "incarcerated" means confinement in a local or regional correctional facility, juvenile correctional center, state correctional facility, residential detention center, or facility operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.).

26 "Wrongful incarceration" or "wrongfully incarcerated" means incarceration for a felony conviction
27 for which ~~(i) the conviction has been vacated pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) or 19.3 (§~~
28 ~~19.2-327.10 et seq.) of Title 19.2, or the person incarcerated has been granted an absolute pardon for the~~
29 ~~commission of a crime that he did not commit; (ii) the person incarcerated shall have entered a final plea~~
30 ~~of not guilty or an Alford plea, or, regardless of the plea, the person incarcerated was convicted of a Class~~
31 ~~1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life; and (iii)~~
32 ~~the person incarcerated did not by any act or omission on his part intentionally contribute to his conviction~~
33 ~~for the felony for which he was incarcerated.~~

34 **§ 8.01-195.11. Compensation for wrongful incarceration.**

35 A. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth
36 and is wrongfully incarcerated for such felony ~~may~~ shall be awarded compensation for each year of
37 incarceration, or portion thereof. The amount of compensation per year shall be ~~\$55,000, adjusted annually~~
38 ~~by the percentage increase in the Chained Consumer Price Index for All Urban Consumers (C-CPI-U), as~~
39 ~~published by the Bureau of Labor Statistics of the U.S. Department of Labor, or any predecessor or~~
40 ~~successor index, compared with the prior calendar year equal to the Commonwealth's most recent annual~~
41 median household income as published in the American Community Survey of the U.S. Census Bureau.
42 Calculations made pursuant to this section shall be made by the State Treasurer.

43 The wrongfully incarcerated person shall also receive not less than \$30,000, adjusted annually by
44 the percentage increase in the Chained Consumer Price Index for all Urban Consumers (C-CPI-U), as
45 published by the Bureau of Labor Statistics of the U.S. Department of Labor, or any predecessor or
46 successor index, compared with the prior calendar year, for each year or fraction thereof (i) of
47 imprisonment after being sentenced to death; (ii) served on parole or postrelease supervision; or (iii) that
48 such person was required to register with the Sex Offender and Crimes Against Minors Registry pursuant
49 to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

50 B. Any compensation computed pursuant to subsection A and approved by the General Assembly
51 shall be paid by the Comptroller by his warrant on the State Treasurer in favor of the person found to have
52 been wrongfully incarcerated. The person wrongfully incarcerated shall be paid ~~an initial~~ a lump sum

53 equal to 25 percent of the compensation award with the remaining 75 percent of the principal of the
54 compensation award to be used by the State Treasurer to purchase an annuity from any A+ rated company,
55 including any A+ rated company from which the Virginia Lottery may purchase an annuity, to provide
56 equal monthly payments to such person for a period certain of 10 years commencing no later than one
57 year after the effective date of the appropriation; however, if such person's life expectancy, as calculated
58 pursuant to the provisions of § 8.01-419 based on his age on the effective date of the appropriation, is less
59 than 10 years, then, upon his election, the annuity period shall be equal to his life expectancy. The annuity
60 shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages by the
61 person awarded compensation. The annuity shall, however, contain beneficiary provisions providing for
62 the annuity's continued disbursement in the event of the death of the person awarded compensation. All
63 payments or costs of annuities under this section shall be made by check issued by the State Treasurer on
64 warrant of the Comptroller.

65 Notwithstanding the foregoing, in the event that the person wrongfully incarcerated is 60 years of
66 age or older or is terminally ill, the General Assembly may (i) pay 100 percent of the compensation
67 computed pursuant to subsection A as a lump sum to the person wrongfully incarcerated or (ii) purchase
68 an annuity for a period certain that is less than 10 years. For the purposes of this section, "terminally ill"
69 means that the individual has a medical prognosis, as certified by a licensed physician, that his life
70 expectancy is five years or less if the illness runs its normal course.

71 C. In addition to the compensation awarded pursuant to subsection A, the General Assembly may
72 shall pay to the person wrongfully incarcerated the amount of any unreimbursed fine, fee, court cost, or
73 restitution imposed and paid and reasonable attorney fees and costs incurred to receive an award pursuant
74 to this section. The wrongfully incarcerated person may also be awarded other nonmonetary relief sought,
75 including counseling, housing assistance, employment assistance, health care and dental care, and
76 personal financial literacy assistance, as appropriate.

77 D. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth
78 and is wrongfully incarcerated for such felony shall receive a transition assistance grant of \$15,000 to be
79 paid from the Criminal Fund, which amount shall be deducted from any award received pursuant to

80 subsection B, within 30 days of receipt of the written request for the disbursement of the transition
81 assistance grant to the Executive Secretary of the Supreme Court of Virginia. Payment of the transition
82 assistance grant from the Criminal Fund shall be made by the State Treasurer on warrants issued by the
83 Comptroller upon written request signed by the Executive Secretary of the Supreme Court of Virginia. In
84 addition, such person shall be entitled to receive reimbursement up to \$10,000 for tuition for career and
85 technical training within the Virginia Community College System contingent upon successful completion
86 of the training. Reimbursement for tuition shall be provided by the comprehensive community college at
87 which the career or technical training was completed.

88 E. If an individual eligible for compensation and benefits under this section is deceased, the
89 individual's estate has standing to be compensated under this section.

90 **§ 8.01-195.12. Conditions for continued compensation.**

91 ~~A. Any person awarded compensation under this article who is subsequently convicted of a felony~~
92 ~~shall, immediately upon such conviction, not be eligible to receive any unpaid amounts from any~~
93 ~~compensation awarded and his beneficiaries shall not be eligible to receive any payments under an annuity~~
94 ~~purchased pursuant to subsection B of § 8.01-195.11. Any unpaid amounts remaining under any annuity~~
95 ~~shall become the property of the Commonwealth and shall be deposited into the general fund of the state~~
96 ~~treasury.~~

97 ~~A1. Any person awarded compensation under this article who is subsequently incarcerated upon~~
98 ~~the revocation of parole or probation resulting from the commission of an act that constitutes a crime shall,~~
99 ~~during the period of such incarceration, forfeit any payments under an annuity purchased pursuant to~~
100 ~~subsection B of § 8.01-195.11. Any forfeited amounts under any annuity shall become the property of the~~
101 ~~Commonwealth and shall be deposited into the general fund of the state treasury.~~ If, at the time of the
102 award of compensation pursuant to § 8.01-195.11, the person wrongfully incarcerated has previously won
103 a monetary award against the Commonwealth or any political subdivision thereof in a civil action arising
104 out of the factual situation in connection with the conviction for which the compensation was awarded, or
105 has entered into a settlement agreement with the Commonwealth or any political subdivision thereof
106 arising out of such situation, the amount of the award in such action or such settlement agreement, less

107 any sums paid to attorneys or for costs in litigating such other civil action or obtaining such settlement
108 agreement, shall be deducted from the sum of money to which the person wrongfully incarcerated is
109 entitled pursuant to § 8.01-195.11. The court shall include in the judgment entry an award to the
110 Commonwealth of any amount deducted pursuant to this subsection.

111 B. As a condition of receiving any compensation under this article, a person shall execute a release
112 and waiver forever releasing (i) the Commonwealth or any agency, instrumentality, officer, employee, or
113 political subdivision thereof, (ii) any legal counsel appointed pursuant to § 19.2-159, and (iii) all other
114 parties of interest, from any present or future claims the person receiving compensation may have against
115 such enumerated parties and arising out of the factual situation in connection with the conviction for which
116 compensation is being sought under this article. ~~In addition, the person receiving compensation shall not~~
117 ~~have been awarded a finally adjudicated judgment in a court of law against or received any funds pursuant~~
118 ~~to a settlement agreement with any person or entity described in this subsection for compensation or~~
119 ~~damages arising out of the factual situation in connection with the conviction.~~

120 **§ 8.01-195.13. Compensation for certain intentional acts.**

121 A. In any matter resulting in compensation for wrongful incarceration pursuant to this article, if a
122 court of competent jurisdiction over the matter determines, or the court record clearly demonstrates, that
123 the Commonwealth or any agency, instrumentality, officer or employee, or political subdivision thereof
124 (i) intentionally and wrongfully fabricated evidence that was used to obtain the wrongful conviction in
125 such manner and (ii) intentionally, willfully, and continuously suppressed or withheld evidence
126 establishing the innocence of the person wrongfully incarcerated, including but not limited to suppression
127 or withholding of evidence to the Governor for the purpose of clemency, the Commonwealth ~~may~~ shall
128 compensate the person wrongfully incarcerated for such intentional acts. Such amount shall be in addition
129 to any compensation awarded pursuant to § 8.01-195.11 and may be up to or equal to the amount of such
130 compensation. The additional compensation shall be added to any amount awarded pursuant to § 8.01-
131 195.11, and the total compensation shall be paid pursuant to ~~subdivision~~ subsection B of § 8.01-195.11.
132 Nothing provided in this section shall be interpreted to supplant, revoke, or supersede any other provision

133 of this article applicable to the award of compensation for wrongful incarceration, and the additional
134 compensation shall be subject to any conditions set forth in this article.

135 B. Any compensation awarded pursuant to this article that includes the additional compensation
136 for intentional acts as set forth in subsection A shall not become effective and payable by the
137 Commonwealth unless and until (i) the person wrongfully incarcerated executes the release and waiver
138 pursuant to subsection B of § 8.01-195.12 and (ii) the instrumentality, or political subdivision thereof,
139 employing any individual committing the intentional acts set forth in clauses (i) and (ii) of subsection A
140 enters into an agreement with the person wrongfully incarcerated requiring such instrumentality or
141 political subdivision to compensate the person with a sum at least equal to the total compensation provided
142 pursuant to § 8.01-195.11 and this section.

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