

2003 SESSION

INTRODUCED

032532668

HOUSE BILL NO. 2662

Offered January 13, 2003

A BILL for the relief of Earl Washington, Jr.

Patrons—Christian, Almand, Amundson, Barlow, Baskerville, Bland, Brink, Crittenden, Darner, Hull, Jones, D.C., Melvin, Miles, Plum, Pollard, Scott, Spruill, Van Landingham, Watts and Woodrum

Unanimous consent to introduce

Referred to Committee on Appropriations

Whereas, Earl Washington, Jr., (Mr. Washington) was indicted on July 19, 1983, by the Grand Jury of Culpeper County for murder subsequent to the commission of a rape, a capital offense, and for breaking and entering with the intent to commit rape; and

Whereas, Earl Washington, Jr., was brought to trial in the Circuit Court of Culpeper County on January 18, 1984; and

Whereas, on January 20, 1984, having pled not guilty to all charges, Earl Washington, Jr., was convicted by a jury of capital murder subsequent to the commission of rape; and

Whereas, on January 20, 1984, the penalty phase of the trial was conducted, and the jury recommended that Earl Washington, Jr., be sentenced to death; and

Whereas, on March 12, 1984, a sentencing hearing was conducted, and the trial court imposed the death penalty; and

Whereas, on March 20, 1984, the trial court entered an order imposing the death penalty, and set an execution date of July 27, 1984, which execution date was subsequently stayed by the Virginia Supreme Court pending appeal; and

Whereas, on May 9, 1984, Earl Washington, Jr., was sent to Virginia's death row at Mecklenburg Correctional Center; and

Whereas, on November 30, 1984, the Virginia Supreme Court affirmed capital conviction and death sentence; and

Whereas, on May 13, 1985, the United States Supreme Court denied review; and

Whereas, on July 3, 1985, the trial court set an execution date of September 5, 1985; and denied a motion by trial counsel for appointment of state habeas counsel; and

Whereas, on August 19, 1985, Earl Washington, Jr., was transferred to the execution site, the Virginia State Penitentiary in Richmond, and was being prepared to be executed by the Commonwealth of Virginia; and

Whereas, on August 27, 1985, a team of pro bono lawyers filed a state habeas petition and application for stay of execution, which was granted by the trial court 9 days before his scheduled execution; and

Whereas, on December 23, 1986, the trial court denied the state habeas petition without an evidentiary hearing; and

Whereas, on February 26, 1988, the Virginia Supreme Court denied petition for appeal; and

Whereas, on July 28, 1988, a federal habeas petition was filed in the Eastern District of Virginia; and

Whereas, on October 25, 1989, the United States District Court denied petition for federal habeas corpus relief without an evidentiary hearing; and

Whereas, on December 19, 1991, the United States Court of Appeals for the Fourth Circuit remanded the case back to the United States District Court for an evidentiary hearing on issue of ineffective assistance of counsel for failure to investigate and introduce exculpatory evidence; and

Whereas, on April 6, 1992, the United States District Court conducted an evidentiary hearing; and

Whereas, on July 29, 1992, the United States District Court again denied petition for federal habeas corpus relief; and

Whereas, on September 17, 1993, the United States Court of Appeals for the Fourth Circuit, by a 2-1 vote, affirmed the district court ruling; and

Whereas, on October 8, 1993, the United States Court of Appeals for the Fourth Circuit, by a 2-1 vote, denied petition for rehearing, and a new execution date was imminent; and

Whereas, on October 25, 1993, the Virginia Division of Forensic Science conducted a DNA test on biological evidence that revealed a genetic marker that could not have come from Earl Washington, Jr. However, Virginia's 21-day rule prohibited a return to court for relief on the grounds of newly discovered evidence; and

Whereas, on December 20, 1993, Earl Washington, Jr., filed a petition for pardon with Governor L.

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58 Douglas Wilder; and

59 Whereas, on January 14, 1994, hours before the expiration of his term, Governor Wilder commuted
60 Earl Washington, Jr.'s sentence to life imprisonment; and

61 Whereas, Earl Washington, Jr., spent 9-1/2 years on Virginia's death row and came within 9 days of
62 execution; and

63 Whereas, on January 27, 2000, Earl Washington, Jr., requested that Governor James Gilmore, III
64 conduct further DNA testing on the biological evidence previously tested by the Virginia Division of
65 Forensic Science in 1993; and

66 Whereas, on June 1, 2000, Governor Gilmore granted request and ordered additional DNA testing;
67 and

68 Whereas, on September 7, 2000, Earl Washington, Jr., filed a petition for pardon with Governor
69 Gilmore; and

70 Whereas, new DNA testing conducted by the Virginia Division of Forensic Science produced results
71 providing that Earl Washington, Jr., could not have been the person who committed the crimes for
72 which he was convicted; and

73 Whereas, on October 2, 2000, Governor Gilmore granted Earl Washington, Jr., an absolute pardon
74 from the convictions of rape and capital murder; and

75 Whereas, Earl Washington, Jr., suffered severe physical, emotional, and psychological damage as a
76 result of this wrongful conviction, and has no other means to obtain adequate relief except by action of
77 this body; now, therefore,

78 **Be it enacted by the General Assembly of Virginia:**

79 *1. § 1. That there shall be paid for the relief of Earl Washington, Jr., from the general fund of the state*
80 *treasury, upon execution of a release of all claims he may have against the Commonwealth or any*
81 *agency, instrumentality, officer, employee, or political subdivision in connection with the aforesaid*
82 *occurrence, (i) the sum of \$450,000 to be paid to Earl Washington, Jr., on or before August 1, 2003, by*
83 *check issued by the State Treasurer on warrant of the Comptroller and (ii) an annuity for the primary*
84 *benefit of Earl Washington, Jr., providing for equal monthly payments, for a period certain of 10 years*
85 *commencing on or before September 1, 2003, in the cumulative amount of \$550,000. The State*
86 *Treasurer shall purchase the annuity at the lowest cost available from any A+ rated company, including*
87 *any A+ rated company from which the State Lottery Department may purchase an annuity, and such*
88 *annuity shall contain beneficiary provisions providing for the annuity's continued disbursement in the*
89 *event of the death of Earl Washington, Jr.*