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**SENATE BILL NO. 271**

Offered January 14, 2004

Prefiled January 14, 2004

*A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 8.01 an article numbered 18.2, consisting of sections numbered 8.01-195.10 and 8.01-195.11, relating to compensation for wrongful incarceration for a felony conviction.*

\_\_\_\_\_  
Patron—Quayle

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Referred to Committee for Courts of Justice

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

**1. That the Code of Virginia is amended by adding in Chapter 3 of Title 8.01 an article numbered 18.2, consisting of sections numbered 8.01-195.10 and 8.01-195.11, as follows:**

*Article 18.2.**Compensation for Wrongful Incarceration for a Felony Conviction.**§ 8.01-195.10. Definitions.*

*As used in this article, unless the context clearly shows otherwise, the term:*

*"Incarcerated or incarceration" means confinement in a diversion incarceration center, local or regional correctional facility, juvenile correctional center, state correctional facility, residential detention center, facility operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.), or home incarceration with or without electronic monitoring or confinement as part of a work release program established pursuant to § 53.1-60 or § 53.1-131, or any combination thereof.*

*"Wrongful incarceration or wrongfully incarcerated" means incarcerated for a felony conviction (i) for which such conviction has been vacated or reversed and a circuit court has ordered all charges arising out of the same occurrence or event dismissed with prejudice on grounds consistent with innocence, (ii) for which the person incarcerated must have entered a final plea of not guilty to such felony charge and all other charges arising out of the same occurrence or event, and (iii) for which the person incarcerated did not by any act or omission on his part, whether intentionally or negligently, contribute to his arrest or conviction for the felony for which he was convicted.*

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

*A. Any person who is (i) convicted of a felony on or after January 1, 1980, by a county or city circuit court of the Commonwealth and (ii) wrongfully incarcerated for such felony for a period of at least 24 months shall be compensated for his period of incarceration for such felony as set forth in this section provided that such person meets and complies with all conditions and requirements of this section and the Virginia Parole Board finds that the person has been wrongfully incarcerated. For purposes of determining the number of months for wrongful incarceration for a felony conviction, the total period of incarceration for consecutive sentences for criminal convictions arising out of the same occurrence or event shall be considered the period of wrongful incarceration, provided that (a) at least one of the convictions is a felony conviction, (b) all such convictions have been vacated or reversed and a circuit court has ordered all charges arising out of the occurrence or event dismissed with prejudice on grounds consistent with innocence, (c) the person incarcerated must have entered a final plea of not guilty to such felony charge and all charges arising out of the same occurrence or event, and (d) the person incarcerated did not by any act or omission on his part, whether intentionally or negligently, contribute to his arrest or conviction for any of such criminal convictions arising out of the same occurrence or event.*

*B. A person or a person's agent may apply to the Virginia Parole Board for compensation for wrongful incarceration for a felony conviction. Such application shall be in a format as prescribed by the Virginia Parole Board and shall contain such information as required by the Virginia Parole Board.*

*Such application shall be filed with the Virginia Parole Board within two years after the circuit court's dismissal of charges with prejudice or by June 30, 2006, whichever is later. The Virginia Parole Board shall make a written determination of whether a person was wrongfully incarcerated for a felony conviction as defined under this article within 120 days of such application. The determination shall include the findings of the Virginia Parole Board and the basis for its determination. The applicant or his agent shall have the burden of proving that the applicant was wrongfully incarcerated for a felony conviction. Such determination shall not be subject to appeal. The Commonwealth or any agency, instrumentality, officer, employee, or political subdivision shall not be held liable for any act, or omission of an act, related to the making of such determination.*

*The Virginia Parole Board shall not act upon any application of a person (i) who is currently*

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59 incarcerated or (ii) who has been convicted of another felony committed in this Commonwealth or in  
60 another state or local jurisdiction or United States territory.

61 C. Upon a determination that a person has been wrongfully incarcerated for a period of least 24  
62 months for conviction, on or after January 1, 1980, of a felony, the Virginia Parole Board shall, within  
63 seven days of such written determination, make a written certification to the State Treasurer with such  
64 certification to include the person's name and present mailing address and the number of months the  
65 person was wrongfully incarcerated for such felony.

66 D. A person determined to be wrongfully incarcerated for a felony conviction by the Virginia Parole  
67 Board shall be compensated in an amount equal to the present value of 90 percent of the Virginia per  
68 capita personal income for each year, or portion thereof, of incarceration for such felony conviction,  
69 with Virginia per capita personal income as reported by the Bureau of Economic Analysis of the United  
70 States Department of Commerce. In no event, however, shall a person be compensated for wrongful  
71 incarceration for more than one conviction per year. Such computation shall be performed by the  
72 Division of Risk Management in the Department of the Treasury.

73 E. The compensation computed pursuant to subsection D shall be paid out of the general fund,  
74 except as provided herein, in equal monthly payments to such person over the remainder of his expected  
75 life commencing no later than one year after the Virginia Parole Board's written determination of a  
76 wrongful incarceration for a felony conviction under subsection B. For the purpose of making such  
77 payments, the State Treasurer is authorized to purchase an annuity at the lowest cost available from any  
78 A+ rated company, including any A+ rated company from which the State Lottery Department may  
79 purchase an annuity, with the cost thereof to be paid from the general fund, or may provide for such  
80 payments directly from the general fund, or a combination thereof.

81 Such person shall also complete a form identifying a beneficiary or beneficiaries, but no more than  
82 three, to be paid any remaining balance if such person should die before receiving the full amount  
83 computed under subsection D and such person has not been subsequently convicted of a felony as  
84 provided in subsection F. Such balance shall be paid in the same equal monthly payments that were  
85 paid to such person wrongfully incarcerated, but shall be apportioned to such beneficiaries as provided  
86 in the completed beneficiary form.

87 All payments or costs of annuities under this section shall be made by check issued by the State  
88 Treasurer on warrant of the Comptroller.

89 F. Any person awarded compensation under this article who is subsequently convicted of a felony  
90 shall, immediately upon such conviction, not be eligible to receive any unpaid amounts from any  
91 compensation awarded.

92 G. As a condition of receiving any compensation under this article, a person (i) shall execute a  
93 release of all claims, both pending and future, he may have against the Commonwealth or any agency,  
94 instrumentality, officer, employee, or political subdivision in connection with the incarceration for which  
95 compensation is being sought under this article, (ii) shall not have been awarded a finally adjudicated  
96 judgment in a court of law for compensation or damages for such incarceration, and (iii) shall not have  
97 entered into any settlement agreement for compensation or damages for such incarceration.

98 **2. That the Virginia Parole Board and the State Treasurer shall develop guidelines for purposes of**  
99 **implementation of the provisions of this act. The development of such guidelines shall be exempt**  
100 **from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).**