

043007800

SENATE BILL NO. 271

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Courts of Justice
on January 28, 2004)

(Patron Prior to Substitute—Senator Quayle)

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.

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 intentionally contribute to his 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 intentionally contribute to his 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 final order of 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 incarcerated or (ii) who has been convicted of another felony committed in this Commonwealth or in another state or local jurisdiction or United States territory.

C. Upon a determination that a person has been wrongfully incarcerated for a period of least 24 months for conviction, on or after January 1, 1980, of a felony, the Virginia Parole Board shall, within

60 seven days of such written determination, make a written certification to the State Treasurer with such
61 certification to include the person's name and present mailing address and the number of months the
62 person was wrongfully incarcerated for such felony.

63 D. A person determined to be wrongfully incarcerated for a felony conviction by the Virginia Parole
64 Board shall be awarded compensation in an amount equal to 90 percent of the inflation-adjusted
65 Virginia per capita personal income for each year, or portion thereof, of incarceration for such felony
66 conviction, with Virginia per capita personal income as reported by the Bureau of Economic Analysis of
67 the United States Department of Commerce. The Virginia per capita personal income for each year, or
68 portion thereof, of incarceration shall be inflation-adjusted up through the date of the written
69 certification of the Virginia Parole Board using the Consumer Price Index for all items, all urban
70 consumers (CPI-U). Such computation shall be performed by the Division of Risk Management in the
71 Department of the Treasury. Payment of such compensation award shall be made as provided in
72 subsection E. In no event, however, shall a person be awarded compensation for wrongful incarceration
73 for more than one conviction per year.

74 E. The compensation award computed pursuant to subsection D shall be paid out of the general
75 fund. Within 60 days after the written certification described in subsection C made by the Virginia
76 Parole Board, the Comptroller shall draw his warrant on the State Treasurer in favor of the person
77 found to be wrongfully incarcerated for a felony conviction in an amount equal to 10 percent of the
78 compensation award determined under subsection D. The remaining 90 percent of the principal of the
79 compensation award shall be used by the State Treasurer to purchase an annuity from any A+ rated
80 company, including any A+ rated company from which the State Lottery Department may purchase an
81 annuity, to provide equal monthly payments to such person for a period certain of 25 years commencing
82 no later than one year after the Virginia Parole Board's written certification described in subsection C.
83 The annuity shall contain beneficiary provisions providing for the annuity's continued disbursement in
84 the event of the death of the person awarded compensation.

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

87 F. Any person awarded compensation under this article who is subsequently convicted of a felony
88 shall, immediately upon such conviction, not be eligible to receive any unpaid amounts from any
89 compensation awarded and his beneficiaries shall not be eligible to receive any payments under an
90 annuity purchased pursuant to subsection E. Any unpaid amounts remaining under any annuity shall
91 become the property of the Commonwealth and shall be deposited into the general fund of the state
92 treasury.

93 G. As a condition of receiving any compensation under this article, a person (i) shall execute a
94 release of all claims, both pending and future, he may have against the Commonwealth or any agency,
95 instrumentality, officer, employee, or political subdivision or against any legal counsel appointed
96 pursuant to § 19.2-159 in connection with the conviction for which compensation is being sought under
97 this article; (ii) shall not have been awarded a finally adjudicated judgment in a court of law against
98 any person or entity described in clause (i) for compensation or damages in connection with such
99 conviction; (iii) shall not have entered into any settlement agreement with any person or entity described
100 in clause (i) for compensation or damages in connection with such conviction; and (iv) shall not have
101 been awarded compensation in connection with such conviction pursuant to legislation passed by the
102 General Assembly of Virginia.

103 **2. That the Virginia Parole Board and the State Treasurer shall develop guidelines for purposes of**
104 **implementation of the provisions of this act. The development of such guidelines shall be exempt**
105 **from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Such guidelines shall be**
106 **developed by October 1, 2004, and the Virginia Parole Board and the State Treasurer shall make**
107 **a written report on such guidelines to the Chairmen of the Senate Committee on Finance, House**
108 **Committee on Appropriations, Senate Committee on Courts of Justice, and House Committee on**
109 **Courts of Justice by November 15, 2004.**