

VIRGINIA ACTS OF ASSEMBLY -- 2009 SPECIAL SESSION I

CHAPTER 2

An Act for the relief of Arthur Lee Whitfield.

[S 5004]

Approved August 21, 2009

Whereas, on January 19, 1982, Arthur Lee Whitfield (Mr. Whitfield) was convicted of rape, sodomy and robbery in the Circuit Court for the City of Norfolk and sentenced to serve 45 years; and

Whereas, on June 18, 1982, Mr. Whitfield pled guilty to a second rape indictment because of the recent rape conviction and on the advice of legal counsel; and

Whereas, pursuant to the plea agreement, Mr. Whitfield was sentenced to serve 18 years for the second conviction; and

Whereas, Mr. Whitfield filed a Petition for Appeal with the Virginia Supreme Court for the first conviction and on August 8, 1983, the Virginia Supreme Court entered an Order refusing the Petition; and

Whereas, Mr. Whitfield did not subsequently file any state or federal habeas corpus petitions in either case; and

Whereas, on October 31, 2003, Mr. Whitfield filed a motion requesting post-trial DNA testing; and

Whereas, on June 28, 2004, the Circuit Court for the City of Norfolk ordered that DNA testing be conducted of certain items included in the two files that were still in the custody of the Virginia Division of Forensic Science; and

Whereas, The Virginia Division of Forensic Science submitted seven Certificates of Analysis exonerating Mr. Whitfield of the crimes for which he was convicted and sentenced; and

Whereas, based on the results of these tests, on August 23, 2004, the Commonwealth's Attorney for the City of Norfolk sent a letter by fax to the Virginia Parole Board requesting Mr. Whitfield's immediate release stating, in pertinent part, "My careful analysis of these [DNA] results and the evidence from the trial of this matter convinces me beyond any question that these results exonerate Mr. Whitfield from involvement in these offenses"; and

Whereas, on the same day of the request the Virginia Parole Board granted Mr. Whitfield discretionary parole and he was released; and

Whereas, Mr. Whitfield subsequently filed Petitions for Writs of Actual Innocence in both cases with the Virginia Supreme Court; and

Whereas, on October 21, 2005, the Virginia Supreme Court dismissed the Petitions for Writs of Actual Innocence citing that the Court did not have the statutory authority to consider the petitions due to Mr. Whitfield no longer being incarcerated and having been placed on parole status; and

Whereas, Mr. Whitfield petitioned the Governor for a grant of Executive Clemency on the principle ground that the DNA testing demonstrated that Mr. Whitfield could not have committed the crimes for which he was convicted on January 19, 1982, and June 18, 1982; and

Whereas, on April 3, 2009, the Governor granted Mr. Whitfield an Absolute Pardon; and

Whereas, Mr. Whitfield has always maintained his innocence and entered a plea of guilty in the second case only after having been convicted by a jury of the first set of charges and on advice of counsel; and

Whereas, Arthur Lee Whitfield has suffered severe physical, emotional, and psychological damage as a result of this wrongful incarceration and has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. *That there is hereby appropriated from the balance of the general fund a compensation award in the amount of \$632,867 for the relief of Arthur Lee Whitfield (Mr. Whitfield) upon execution of a release by Mr. Whitfield from any present or future claims he may have against the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof and any legal counsel appointed pursuant to § 19.2-159 of the Code of Virginia.*

The award shall be paid as follows: (i) an initial lump sum of \$126,573 to be paid to Mr. Whitfield by check issued by the State Treasurer on warrant of the Comptroller within the 30 business days immediately following the date that this act becomes law, and (ii) \$506,294 to purchase an annuity on or after July 1, 2010, but before September 30, 2010, for the primary benefit of Mr. Whitfield with the terms of such annuity structured in Mr. Whitfield's best interests based on consultation between Mr. Whitfield or his representatives, the Office of the Attorney General, the State Treasurer, and other necessary parties.

The State Treasurer shall purchase the annuity at the lowest cost available from any A+ rated company authorized to sell annuities in the Commonwealth, including any A+ rated company from

which the State Lottery Department may purchase an annuity. The annuity shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages. The annuity shall, however, contain beneficiary provisions providing for the annuity's continued disbursement in the event of Mr. Whitfield's death.

§ 2. That Mr. Whitfield shall be entitled to receive career and technical training within the Virginia Community College System free of tuition charges, up to a maximum of \$10,000. The cost for the tuition benefit shall be paid by the community college at which the career or technical training is provided. The tuition benefit provided by this section shall expire on December 15, 2014.

§ 3. That Mr. Whitfield shall immediately be ineligible to receive any unpaid amounts from the compensation award and his beneficiaries shall be ineligible to receive any payments under the annuity purchased pursuant to § 1 of this act upon any subsequent conviction on or after August 19, 2009, by Mr. Whitfield of any felony. Any unpaid amounts remaining under the annuity shall become the property of the Commonwealth and shall be deposited into the general fund of the state treasury. In addition, Mr. Whitfield shall be ineligible to receive any unused portion of the tuition for career and technical training provided pursuant to § 2 of this act within the Virginia Community College System.

2. That an emergency exists and this act is in force from its passage.