

18108164D

HOUSE BILL NO. 762**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Joint Conference Committee
on March 10, 2018)

(Patron Prior to Substitute—Delegate Jones, S.C.)

A BILL to amend the Code of Virginia by adding in Article 18.2 of Chapter 3 of Title 8.01 a section numbered 8.01-195.13 and for the relief of Danial J Williams, Joseph Jesse Dick, Jr., Eric Cameron Wilson, and Derek Elliot Tice, relating to compensation for wrongful incarceration for a felony conviction.

Whereas, Danial J Williams (Mr. Williams), Joseph Jesse Dick, Jr. (Mr. Dick), Eric Cameron Wilson (Mr. Wilson), and Derek Elliot Tice (Mr. Tice) spent nearly four decades in prison collectively for crimes they did not commit, and another collective 30 years after release from prison under highly restrictive parole and sex offender registry conditions that imposed onerous barriers to their reentry to society; and

Whereas, in the early morning hours of July 8, 1997, Omar Ballard (Ballard) entered the Norfolk, Virginia, apartment of Michelle Moore Bosko (Ms. Bosko) and brutally raped her and strangled and stabbed her to death; and

Whereas, in 1997, Mr. Williams, Mr. Dick, Mr. Wilson, and Mr. Tice were young men serving our country through military service with the United States Navy, none of whom had a criminal record; and

Whereas, investigating Norfolk police crime scene officers recorded a crime scene that strongly suggested Ms. Bosko was killed by a single assailant, and the officers collected several samples of DNA material; and

Whereas, a neighbor of Ms. Bosko provided police with the name of Ballard, a person with a long criminal history, as a suspect of Ms. Bosko's rape and murder; and

Whereas, Norfolk police officers investigated another rape that took place in the same complex where Ms. Bosko resided, and the victim provided information that fit the description of Ballard as her likely assailant; and

Whereas, the same evening as the neighbor provided Ballard's name as a suspect of Ms. Bosko's rape and murder, Norfolk police officers secured a warrant for Ballard's arrest for the assault of another woman in the same complex where Ms. Bosko resided; and

Whereas, instead of focusing on Ballard as a suspect in Ms. Bosko's rape and murder, Norfolk police officers interrogated and focused exclusively on Mr. Williams, a neighbor of Ms. Bosko; and

Whereas, police learned from Mr. Williams's ailing wife, who had just returned home from the hospital after cancer surgery, that Mr. Williams had been with her the entire evening of July 7 and morning hours of July 8; and

Whereas, while no evidence linked Mr. Williams to the crime, he fully cooperated with interrogating officers and repeatedly denied any involvement in or knowledge of the crime over the course of many hours; and

Whereas, after more than nine hours of interrogation during which Norfolk police officers falsely told Mr. Williams that he had failed a polygraph examination and suggested to Mr. Williams that he had raped Ms. Bosko and killed her by beating her with a shoe, Mr. Williams continued to declare his innocence; and

Whereas, Norfolk police brought into the interrogation Detective Robert Glen Ford (Ford), an aggressive and determined interrogator with a history of eliciting false confessions who has subsequently been convicted of federal felonies related to his police work; and

Whereas, Ford, through illegal and improper means and contrary to accepted police practices, obtained a false confession from an exhausted and traumatized Mr. Williams that he had assaulted and killed Ms. Bosko with a shoe; and

Whereas, Ford and other Norfolk police officers knew that Mr. Williams's statement was based on a false scenario provided to Mr. Williams by an interrogator and did not conform to the medical and forensic evidence; and

Whereas, when the medical examiner determined that Ms. Bosko had been strangled and stabbed to death, Norfolk police returned to Mr. Williams and insisted he change his confession to match the crime by saying that he stabbed and strangled Ms. Bosko; and

Whereas, Mr. Williams was a young man who had been taught by the Navy to comply with authority figures and was completely overwhelmed, and so he did as demanded by the police; and

Whereas, the Norfolk police accepted Mr. Williams's altered confession, told the public the case was solved, and did not further investigate the crime; and

Whereas, Mr. Williams was held without bail and charged with capital murder and rape; and

60 Whereas, in December 1997, Commonwealth crime lab DNA testing determined that Mr. Williams
61 was not the source of the DNA evidence recovered from the crime scene; and

62 Whereas, Ford, who decided to continue to investigate Mr. Williams as a suspect, had previously
63 secured false confessions after using aggressive interrogation techniques, and as a result had been
64 demoted out of the homicide squad; and

65 Whereas, the Norfolk police did not turn the investigation to Ballard, even though he was now in
66 prison for the violent assault of two young women, but instead sought to find a co-defendant to Mr.
67 Williams who might be the contributor of the DNA evidence recovered at the crime scene; and

68 Whereas, Norfolk police decided to interrogate Mr. Williams's roommate, Mr. Dick, even though
69 they had no evidence that he was involved in the crime; and

70 Whereas, Mr. Dick was a highly suggestible, immature young man of limited cognitive functioning;
71 and

72 Whereas, on January 12, 1998, police picked up Mr. Dick from the naval base, placed him in a
73 Norfolk police interrogation room, and sought to have him implicate himself and Mr. Williams in the
74 crime; and

75 Whereas, Mr. Dick repeatedly told police that he had no involvement in the crime and had been on
76 duty on the USS *Saipan* the week beginning on July 7; and

77 Whereas, Ford, through illegal and improper means and contrary to accepted police practices,
78 obtained a false confession from Mr. Dick, who broke down after hours of steadfastly asserting his
79 innocence; and

80 Whereas, Mr. Dick gave a statement in which he said that he and Mr. Williams had jointly assaulted
81 and stabbed Ms. Bosko; and

82 Whereas, numerous facts in Mr. Dick's statement were glaringly inconsistent with both the known
83 crime scene evidence and Mr. Williams's coerced statement; and

84 Whereas, Mr. Dick was held without bail and charged with capital murder and rape; and

85 Whereas, in March 1998, Commonwealth crime lab DNA testing confirmed that Mr. Dick was not
86 the source of the DNA evidence recovered at the Bosko crime scene, and no evidence linked him to the
87 crime; and

88 Whereas, Norfolk police again chose not to investigate Ballard as a suspect in the rape and murder
89 of Ms. Bosko, and instead chose to look for another co-defendant to Mr. Williams and Mr. Dick, despite
90 the fact that the crime scene evidence was inconsistent with a multiple-offender crime theory; and

91 Whereas, the Norfolk police turned their attention to Mr. Wilson, an acquaintance of Mr. Williams;
92 and

93 Whereas, in early April 1998, Norfolk police brought Mr. Wilson to an interrogation room and,
94 through illegal and improper means and contrary to accepted police practices, obtained a false
95 confession; and

96 Whereas, Mr. Wilson had, for hours, denied any knowledge or involvement in the crime but like Mr.
97 Williams and Mr. Dick had become exhausted and traumatized and gave into pressure from the police;
98 and

99 Whereas, Mr. Wilson's confession matched neither the known crime scene evidence nor Mr.
100 Williams's nor Mr. Dick's prior statements to the police, and no forensic evidence linked Mr. Wilson to
101 the crime; and

102 Whereas, Mr. Wilson was held without bail and charged with capital murder and rape; and

103 Whereas, shortly thereafter, Commonwealth crime lab DNA testing also excluded Mr. Wilson as the
104 source of the DNA recovered from the crime scene; and

105 Whereas, in June 1998, Norfolk police again ignored the overwhelming evidence that Ballard might
106 have committed this crime and sought to identify a fourth potential DNA contributor through continued
107 questioning of the highly malleable and submissive Mr. Dick; and

108 Whereas, undeterred by Mr. Dick's then-obvious prior false and inconsistent statements, Ford and his
109 partner demanded that Mr. Dick provide the name of another suspect; and

110 Whereas, despite Mr. Dick giving the Norfolk police officers a made-up name and description of
111 someone that did not match Navy records, Ford persisted and pressured Mr. Dick to pick out Mr. Tice
112 from a Navy yearbook from Mr. Wilson's ship; and

113 Whereas, again, Ford, through illegal and improper means and contrary to accepted police practices,
114 obtained a false confession from Mr. Tice, who after two days in police custody, hours of interrogation,
115 and repeatedly professing his innocence to no avail finally told Ford that he committed the crime along
116 with Mr. Williams, Mr. Dick, and Mr. Wilson; and

117 Whereas, Mr. Tice's confession was inconsistent in numerous respects with the known crime scene
118 evidence and the statements of Mr. Williams, Mr. Dick, and Mr. Wilson; and

119 Whereas, Mr. Tice was held on bail and charged with capital murder and rape; and

120 Whereas, shortly thereafter, Commonwealth crime lab DNA testing also excluded Mr. Tice as a
121 contributor of the DNA evidence recovered from the crime scene; and

Whereas, in the fall of 1998, in a misdirected search for a co-defendant whose DNA would match the Bosko crime scene evidence, Ford and other Norfolk police officers interrogated and charged three additional former members of the U.S. Navy with participating in the assault and murder of Ms. Bosko; despite forceful interrogations, none of these men gave incriminating statements but each was held for several months even though two of the three had very strong alibis that were known to the police; and

Whereas, in February 1999, Ballard, incarcerated for a sexual assault he had committed unrelated to the Bosko case, wrote to a friend and admitted responsibility for killing Ms. Bosko; and

Whereas, this letter was promptly shared with Norfolk police; and

Whereas, Ford and another Norfolk police officer met with Ballard, who confessed to Ms. Bosko's murder after a brief questioning and told police that he alone committed the crime; and

Whereas, Ballard's statement matched the known crime scene evidence in all respects; and

Whereas, Commonwealth crime lab DNA testing confirmed that the DNA evidence recovered from Ms. Bosko's body, from under her fingernails, and from a blanket near her body belonged to Ballard; and

Whereas, Ballard was charged with capital murder and rape; and

Whereas, Ford was involved before, during, and after his investigation of the rape and murder of Ms. Bosko in a fraudulent scheme to urge judges to allow certain offenders to remain out on bail; these offenders paid thousands of dollars to Ford as bribes, and in return Ford committed perjury so they could retain their freedom; and

Whereas, Ford has subsequently been convicted and is serving a 150-month sentence in federal prison related to this felonious scheme; and

Whereas, in order for Ford to conceal that the confessions of Mr. Williams, Mr. Dick, Mr. Wilson, and Mr. Tice were coerced and false so that he could continue to be employed with the homicide squad, as well as so that he could continue his enrichment scheme to accept bribes, Ford told Ballard that he could avoid the death penalty only by asserting that Mr. Williams, Mr. Dick, Mr. Wilson, and Mr. Tice committed the crime with him; and

Whereas, even though the statement that the other four men were involved in the assault and murder of Ms. Bosko was a lie, Ballard agreed to go along with Ford in order to obtain the life-sentence deal; and

Whereas, fearing the death penalty, Mr. Williams reluctantly entered a guilty plea in order to receive a sentence of life without parole; and

Whereas, Mr. Williams sought to withdraw his guilty plea after he learned of Ballard's confession, but the prosecution successfully opposed the motion; and

Whereas, also fearing for his life and in a fragile state of mind, Mr. Dick also entered a plea of guilty and was sentenced to life in prison; and

Whereas, Mr. Wilson insisted on going to trial and testified at the trial that he was not guilty; the jury acquitted him of murder but convicted him of rape, based solely on his false, coerced confession, and sentenced him to eight and one-half years in prison; and

Whereas, Mr. Tice also fought the charges against him and was tried twice. His first conviction was overturned on appeal due to defective jury instructions, but solely on the basis of his false, coerced confession he was convicted at a second trial of both capital murder and rape and received life sentences; and

Whereas, Norfolk police withheld from each of these wrongfully charged men evidence that, had it been disclosed, would have prevented Mr. Williams and Mr. Dick from entering guilty pleas to avoid the death penalty and would have led juries to acquit Mr. Wilson and Mr. Tice of all charges; and

Whereas, each of these four men were imprisoned and experienced assaults and other horrific experiences during the imprisonment that irreparably broke them in a manner that no time or money will ever fix; and

Whereas, in 2005, the four men sought absolute pardons due to their innocence; and

Whereas, Norfolk officials vigorously opposed these petitions and continued to withhold evidence from the Governor of Virginia that would have confirmed their innocence; and

Whereas, in 2009, Governor Tim Kaine granted conditional pardons to Mr. Williams, Mr. Dick, and Mr. Tice, concluding that they had made a very strong case that they, and Mr. Wilson, were innocent; however, Governor Kaine did not disturb their convictions and required that they each accept parole supervision for 20 years and register as sex offenders; and

Whereas, Mr. Wilson had previously been released from prison in 2005 after serving his full sentence and was also required to register as a sex offender; and

Whereas, all four men have struggled to rebuild their lives and have lived vastly reduced lives due to the strong stigma of their wrongful convictions for violent crimes and due further to the stringent conditions of parole and sex offender registry requirements; and

Whereas, many job training programs and promising employment opportunities have not been

183 available due to these limitations; and

184 Whereas, the four men have been restricted from living in certain areas, subject to strict curfews, and
185 unable to be in the vicinity of certain public facilities; and

186 Whereas, numerous family relations were shattered, and other friends and acquaintances have wanted
187 nothing to do with them; and

188 Whereas, federal habeas review overturned Mr. Tice's convictions; that relief was affirmed by a
189 unanimous three-judge panel of the United States Court of Appeals for the Fourth Circuit, and thereafter
190 all state charges were dismissed without prejudice (with the Commonwealth reserving the right to
191 recharge him later); and

192 Whereas, in 2016, federal habeas review brought relief to Mr. Williams and Mr. Dick when a district
193 court judge, after conducting a two-day hearing on innocence, ruled that Mr. Williams, Mr. Dick, Mr.
194 Tice, and Mr. Wilson were absolutely innocent, and that the only guilty party was Ballard; and

195 Whereas, all charges were dismissed against Mr. Williams and Mr. Dick in November 2016; and

196 Whereas, Mr. Wilson could not receive any state or federal judicial relief due to procedural
197 technicalities; however, in late 2016, he, Mr. Williams, Mr. Dick, and Mr. Tice filed for absolute
198 pardons from Governor Terry McAuliffe; and

199 Whereas, in March 2017, Governor McAuliffe issued full, absolute pardons to each man due to their
200 factual innocence; and

201 Whereas, had Norfolk officials not purposefully fabricated evidence to make each man appear guilty
202 and deliberately withheld exonerating evidence during the trials, appeals, clemency proceedings, and
203 state and federal habeas proceedings that would have proven their innocence, these men would not have
204 been charged with or convicted of these horrific crimes and would not have suffered for nearly two
205 decades with shame, humiliation, and loss of liberty as convicted rapists and murderers; and

206 Whereas, Danial J Williams, Joseph Jesse Dick, Jr., Eric Cameron Wilson, and Derek Elliot Tice
207 have no other means to obtain adequate relief except by action of this body; now, therefore,

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

209 **1. That the Code of Virginia is amended by adding in Article 18.2 of Chapter 3 of Title 8.01 a**
210 **section numbered 8.01-195.13 as follows:**

211 **§ 8.01-195.13. Compensation for certain intentional acts.**

212 *A. In any matter resulting in compensation for wrongful incarceration pursuant to this article, if a*
213 *court of competent jurisdiction over the matter determines, or the court record clearly demonstrates,*
214 *that the Commonwealth or any agency, instrumentality, officer or employee, or political subdivision*
215 *thereof (i) intentionally and wrongfully fabricated evidence that was used to obtain the wrongful*
216 *conviction in such manner and (ii) intentionally, willfully, and continuously suppressed or withheld*
217 *evidence establishing the innocence of the person wrongfully incarcerated, including but not limited to*
218 *suppression or withholding of evidence to the Governor for the purpose of clemency, the Commonwealth*
219 *may compensate the person wrongfully incarcerated for such intentional acts. Such amount shall be in*
220 *addition to any compensation awarded pursuant to § 8.01-195.11 and may be up to or equal to the*
221 *amount of such compensation. The additional compensation shall be added to any amount awarded*
222 *pursuant to § 8.01-195.11, and the total compensation shall be paid pursuant to subdivision B of*
223 *§ 8.01-195.11. Nothing provided in this section shall be interpreted to supplant, revoke, or supersede*
224 *any other provision of this article applicable to the award of compensation for wrongful incarceration,*
225 *and the additional compensation shall be subject to any conditions set forth in this article.*

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

234 **2. § 1. That there is hereby appropriated from the general fund of the state treasury the sum of**
235 **\$895,299 for the relief of Danial J Williams, to be paid by check issued by the State Treasurer on**
236 **warrant of the Comptroller upon execution of a release of all claims Mr. Williams may have against (i)**
237 **the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii)**
238 **any legal counsel appointed pursuant to § 19.2-159 of the Code of Virginia; and (iii) all other parties of**
239 **interest in connection with the aforesaid occurrence.**

240 *The compensation, subject to the execution of the release described herein, shall be paid as follows:*
241 *(a) an initial lump sum of \$179,060 to be paid to Mr. Williams by check issued by the State Treasurer*
242 *on warrant of the Comptroller within 60 days immediately following the execution of such release and*
243 *(b) the sum of \$716,239 to purchase an annuity within 90 days of receipt of the signed agreement*
244 *pursuant to the third enactment of this act, for the primary benefit of Mr. Williams, the terms of such*

annuity structured in Mr. Williams's best interests based on consultation among Mr. Williams or his representatives, the State Treasurer, and other necessary parties.

§ 2. That there is hereby appropriated from the general fund of the state treasury the sum of \$875,845 for the relief of Joseph Jesse Dick, Jr., to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Dick may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii) any legal counsel appointed pursuant to § 19.2-159 of the Code of Virginia; and (iii) all other parties of interest in connection with the aforesaid occurrence.

The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$175,169 to be paid to Mr. Dick by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$700,676 to purchase an annuity within 90 days of receipt of the signed agreement pursuant to the fourth enactment of this act, for the primary benefit of Mr. Dick, the terms of such annuity structured in Mr. Dick's best interests based on consultation among Mr. Dick or his representatives, the State Treasurer, and other necessary parties.

§ 3. That there is hereby appropriated from the general fund of the state treasury the sum of \$866,456 for the relief of Eric Cameron Wilson, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Wilson may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii) any legal counsel appointed pursuant to § 19.2-159 of the Code of Virginia; and (iii) all other parties of interest in connection with the aforesaid occurrence.

The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$173,291 to be paid to Mr. Wilson by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$693,165 to purchase an annuity within 90 days of receipt of the signed agreement pursuant to the fifth enactment of this act, for the primary benefit of Mr. Wilson, the terms of such annuity structured in Mr. Wilson's best interests based on consultation among Mr. Wilson or his representatives, the State Treasurer, and other necessary parties.

§ 4. That there is hereby appropriated from the general fund of the state treasury the sum of \$858,704 for the relief of Derek Elliot Tice, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Tice may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii) any legal counsel appointed pursuant to § 19.2-159 of the Code of Virginia; and (iii) all other parties of interest in connection with the aforesaid occurrence.

The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$171,741 to be paid to Mr. Tice by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$686,963 to purchase an annuity within 90 days of receipt of the signed agreement pursuant to the sixth enactment of this act, for the primary benefit of Mr. Tice, the terms of such annuity structured in Mr. Tice's best interests based on consultation among Mr. Tice or his representatives, the State Treasurer, and other necessary parties.

3. That notwithstanding the provisions of subsection B of § 8.01-195.12, the provisions of § 1 of the second enactment of this act shall not become effective until such time as Danial J Williams and the City of Norfolk enter into an agreement in connection with the aforesaid factual situation requiring the City of Norfolk to compensate Mr. Williams the sum of at least \$895,299. In order for the provisions of § 1 of the second enactment of this act to become effective, such agreement shall be entered into prior to a final verdict in a court of law related to the aforesaid factual situation. The City of Norfolk shall forward a copy of the signed agreement to the Treasurer of Virginia within five days of its execution.

4. That notwithstanding the provisions of subsection B of § 8.01-195.12, the provisions of § 2 of the second enactment of this act shall not become effective until such time as Joseph Jesse Dick, Jr., and the City of Norfolk enter into an agreement in connection with the aforesaid factual situation requiring the City of Norfolk to compensate Mr. Dick the sum of at least \$875,845. In order for the provisions of § 2 of the second enactment of this act to become effective, such agreement shall be entered into prior to a final verdict in a court of law related to the aforesaid factual situation. The City of Norfolk shall forward a copy of the signed agreement to the Treasurer of Virginia within five days of its execution.

5. That notwithstanding the provisions of subsection B of § 8.01-195.12, the provisions of § 3 of the second enactment of this act shall not become effective until such time as Eric Cameron Wilson and the City of Norfolk enter into an agreement in connection with the aforesaid factual situation requiring the City of Norfolk to compensate Mr. Wilson the sum of at least \$866,456. In order for

306 the provisions of § 3 of the second enactment of this act to become effective, such agreement shall
307 be entered into prior to a final verdict in a court of law related to the aforesaid factual situation.
308 The City of Norfolk shall forward a copy of the signed agreement to the Treasurer of Virginia
309 within five days of its execution.
310 6. That notwithstanding the provisions of subsection B of § 8.01-195.12, the provisions of § 4 of the
311 second enactment of this act shall not become effective until such time as Derek Elliot Tice and
312 the City of Norfolk enter into an agreement in connection with the aforesaid factual situation
313 requiring the City of Norfolk to compensate Mr. Tice the sum of at least \$858,704. In order for
314 the provisions of § 4 of the second enactment of this act to become effective, such agreement shall
315 be entered into prior to a final verdict in a court of law related to the aforesaid factual situation.
316 The City of Norfolk shall forward a copy of the signed agreement to the Treasurer of Virginia
317 within five days of its execution.
318 7. That the provisions of § 8.01-195.12 of the Code of Virginia shall apply to any compensation
319 awarded under this act.