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HOUSE BILL NO. 460**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Appropriations
on January 29, 2020)

(Patron Prior to Substitute—Delegate Sullivan)

A BILL to amend and reenact § 8.01-195.11 of the Code of Virginia and for the relief of Winston Lamont Scott, relating to compensation for wrongful incarceration.

Whereas, Winston Lamont Scott (Mr. Scott) spent more than five years in prison within the Virginia Department of Corrections for crimes he did not commit; and

Whereas, on July 24, 1975, the Fairfax County Police Department responded to a rape that occurred at an apartment in Reston, Virginia; and

Whereas, the victim erroneously identified Mr. Scott as her assailant based upon a composite sketch and photo lineup conducted more than two months after the incident took place; and

Whereas, Mr. Scott denied committing the rape and testified at trial that he was at other locations at the time the incident took place; and

Whereas, Mr. Scott testified that he did not own a car and that he spent the night of July 24, 1975, at a friend's house, that of Bobby Reid (Mr. Reid), that was nearly five miles away from the victim's apartment; and

Whereas, both Mr. Reid and Beverly Reid, Mr. Reid's mother, testified that Mr. Scott spent the night at their house and they saw Mr. Scott the next morning; and

Whereas, forensic examination of bodily secretions found on the victim's jeans did not match Mr. Scott's blood type; and

Whereas, on January 26, 1976, Mr. Scott was convicted of rape, carnal knowledge, and burglary and was sentenced to a combined 14 years' incarceration for the crimes; and

Whereas, on May 26, 1981, Mr. Scott was granted parole, and on February 18, 1986, Mr. Scott was discharged from parole; and

Whereas, in 2005, Governor Mark Warner ordered the Department of Forensic Science (DFS) to test biological evidence collected and retained by DFS relating to criminal cases tried between 1973 and 1988, using DNA testing that was not available when those cases were tried; and

Whereas, in 2010, pursuant to this order, DFS conducted tests on biological evidence samples it retained from Mr. Scott's case, specifically DNA testing of the victim's vaginal swabs and a semen stain on the victim's jeans; and

Whereas, in 2017, DFS performed DNA testing on a buccal swab from Mr. Scott, which concluded that "Scott is eliminated as a contributor of the DNA profile" of the stain found on the victim's jeans; and

Whereas, Mr. Scott filed a petition for a writ of actual innocence, pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) of Title 19.2, on September 28, 2017, based on previously unavailable DNA evidence; and

Whereas, the Supreme Court of Virginia found that Mr. Scott had proven his actual innocence claim by clear and convincing evidence as required by § 19.2-327.5; and

Whereas, on March 7, 2019, the Supreme Court of Virginia granted Mr. Scott's petition, vacated his convictions, and issued a writ of actual innocence; and

Whereas, Mr. Scott, as a result of his wrongful incarceration, lost more than five years of his freedom and countless life experiences and opportunities, including family relations, the opportunity to further his education, and the opportunity to earn potential income from gainful employment during his years of incarceration; and

Whereas, Mr. Scott 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. That § 8.01-195.11 of the Code of Virginia is amended and reenacted as follows:****§ 8.01-195.11. Compensation for wrongful incarceration.**

A. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth and is wrongfully incarcerated for such felony may be awarded compensation in an amount equal to 90 percent of the inflation adjusted Virginia per capita personal income as reported by the Bureau of Economic Analysis of the U.S. Department of Commerce for each year of incarceration, or portion thereof.

B. Any compensation computed pursuant to subsection A and approved by the General Assembly shall be paid by the Comptroller by his warrant on the State Treasurer in favor of the person found to have been wrongfully incarcerated. The person wrongfully incarcerated shall be paid an initial lump sum

60 equal to 20 percent of the compensation award with the remaining 80 percent of the principal of the
61 compensation award to be used by the State Treasurer to purchase an annuity from any A+ rated
62 company, including any A+ rated company from which the Virginia Lottery may purchase an annuity, to
63 provide equal monthly payments to such person for a period certain of 25 years commencing no later
64 than one year after the effective date of the appropriation. The annuity shall provide that it shall not be
65 sold, discounted, or used as securitization for loans and mortgages by the person awarded compensation.
66 The annuity shall, however, contain beneficiary provisions providing for the annuity's continued
67 disbursement in the event of the death of the person awarded compensation. All payments or costs of
68 annuities under this section shall be made by check issued by the State Treasurer on warrant of the
69 Comptroller.

70 *Notwithstanding the foregoing, in the event that the person wrongfully incarcerated is 60 years of*
71 *age or older or is terminally ill, the General Assembly may (i) pay 100 percent of the compensation*
72 *computed pursuant to subsection A as a lump sum to the person wrongfully incarcerated or (ii)*
73 *purchase an annuity for a period certain that is less than 25 years. For the purposes of this section,*
74 *"terminally ill" means that the individual has a medical prognosis, as certified by a licensed physician,*
75 *that his life expectancy is five years or less if the illness runs its normal course.*

76 C. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth
77 and is wrongfully incarcerated for such felony shall receive a transition assistance grant of \$15,000 to be
78 paid from the Criminal Fund, which amount shall be deducted from any award received pursuant to
79 subsection B, within 30 days of receipt of the written request for the disbursement of the transition
80 assistance grant to the Executive Secretary of the Supreme Court of Virginia. Payment of the transition
81 assistance grant from the Criminal Fund shall be made by the State Treasurer on warrants issued by the
82 Comptroller upon written request signed by the Executive Secretary of the Supreme Court of Virginia.
83 In addition, such person shall be entitled to receive reimbursement up to \$10,000 for tuition for career
84 and technical training within the Virginia Community College System contingent upon successful
85 completion of the training. Reimbursement for tuition shall be provided by the comprehensive
86 community college at which the career or technical training was completed.

87 2. § 1. *That there is hereby appropriated from the general fund of the state treasury the sum of*
88 *\$159,535 for the relief of Winston Lamont Scott, to be paid by check issued by the State Treasurer on*
89 *warrant of the Comptroller upon execution of a release of all claims Mr. Scott may have against the*
90 *Commonwealth or any agency, instrumentality, office, employee, or political subdivision in connection*
91 *with the aforesaid occurrence.*

92 *The compensation, subject to the execution of the release described herein, shall be paid as a single*
93 *lump sum of \$159,535 to be paid to Mr. Scott by check issued by the State Treasurer on warrant of the*
94 *Comptroller within 60 days immediately following the execution of such release.*

95 § 2. *That Mr. Scott shall be entitled to receive career and technical training within the Virginia*
96 *Community College System free of tuition charges, up to a maximum of \$10,000. The cost for the tuition*
97 *benefit shall be paid by the community college at which the career or technical training is provided.*
98 *The tuition benefit provided by this section shall expire on January 1, 2025.*

99 § 3. *That upon written request as provided in subsection C of § 8.01-195.11 of the Code of Virginia,*
100 *Mr. Scott shall be entitled to a transition assistance grant of \$15,000 to be paid from the Criminal*
101 *Fund, which amount shall be deducted from any award received pursuant to § 1 of this act.*

102 2. **That the provisions of § 8.01-195.12 of the Code of Virginia shall apply to any compensation**
103 **awarded under this act.**