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HOUSE BILL NO. 1358

Offered January 24, 2022

A BILL for the relief of Jervon Michael Tillman, relating to claims; compensation for wrongful incarceration.

Patron—Sullivan

Unanimous consent to introduce

Referred to Committee on Appropriations

Whereas, Jervon Michael Tillman (Mr. Tillman) was convicted in the Circuit Court of Henrico County on December 9, 2009, of robbery, wearing a mask, and use of a firearm in the commission of a felony; and

Whereas, Mr. Tillman was sentenced to 36 years in custody, with 11 years suspended; and

Whereas, Mr. Tillman served nearly 12 years in the custody of the Virginia Department of Corrections, before being released on January 14, 2022, upon the granting of an absolute pardon; and

Whereas, at least seven years, seven months, and 19 days of Mr. Tillman's time served was for the December 9, 2009, conviction for crimes he did not commit and for which he has received an absolute pardon; and

Whereas, the sole evidence against Mr. Tillman was an identification made by the victim, who only saw his attacker for a few seconds in the dark of night, while the perpetrator was wearing a mask; and

Whereas, the victim identified Mr. Tillman in a highly suggestive way, from a "Crime Stoppers" database on which Mr. Tillman appeared because he was suspected of another crime, for which he has accepted responsibility and has served his sentence; and

Whereas, the victim's identification, which was cross-racial, was not made until many weeks after the crime had taken place; and

Whereas, the victim's initial description of the perpetrator did not match Mr. Tillman; and

Whereas, it does not appear that the prosecutor ever turned over the entirety of the victim's exculpatory, initial description of the perpetrator to defense counsel, including the fact that the victim described his attacker as being between 5'8" and 5'10" with a muscular build, when Mr. Tillman was 6'3" and 165 pounds; and

Whereas, mistaken eyewitness identifications contributed to approximately 69 percent of the more than 375 wrongful convictions in the United States overturned by post-conviction DNA evidence, making them the leading contributing cause of wrongful convictions in those cases; and

Whereas, a post-conviction investigation revealed that prosecutors from various jurisdictions have found the trial proceedings problematic, and one identified "glaring red flags," while another stated that the case was "troubling" and that "no office that reasonably attempts to observe best prosecution practices would take this case to trial"; and

Whereas, on January 13, 2022, Governor Ralph Northam granted Mr. Tillman an absolute pardon. In so doing, Governor Northam noted that the pardon "reflects Jervon Michael Tillman's innocence[.]" and

Whereas, Mr. Tillman was released from state custody on January 14, 2022; and

Whereas, during the course of Mr. Tillman's wrongful incarceration, he lost years with his two young daughters; and

Whereas, Mr. Tillman, as a result of his wrongful incarceration, lost 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. Tillman 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 general fund of the state treasury the sum of \$426,237.09 for the relief of Jervon Michael Tillman, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Tillman may have against the Commonwealth or any agency, instrumentality, office, employee, or political subdivision in connection with the aforesaid occurrence.*

The compensation, subject to the execution of the release described herein, shall be paid in (i) an initial lump sum of \$85,247.42 by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (ii) the sum of \$340,989.67 to

INTRODUCED

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59 *purchase an annuity no later than one year after the effective date of the appropriation for*
60 *compensation, for the primary benefit of Mr. Tillman, the terms of such annuity structured in Mr.*
61 *Tillman's best interests based on consultation among Mr. Tillman or his representatives, the State*
62 *Treasurer, and other necessary parties.*

63 *The State Treasurer shall purchase the annuity at the lowest cost available from any A+ rated*
64 *company authorized to sell annuities in the Commonwealth, including any A+ rated company from*
65 *which the State Lottery Department may purchase an annuity. The annuity shall provide that it shall not*
66 *be sold, discounted, or used as securitization for loans and mortgages. The annuity shall, however,*
67 *contain beneficiary provisions providing for the annuity's continued disbursement in the event of Mr.*
68 *Tillman's death.*

69 *§ 2. That Mr. Tillman shall be entitled to receive career and technical training within the Virginia*
70 *Community College System free of tuition charges, up to a maximum of \$15,000. The cost for the tuition*
71 *benefit shall be paid by the community college at which the career or technical training is provided.*
72 *The tuition benefit provided by this section shall expire on January 1, 2026.*

73 *§ 3. That any amount already paid to Mr. Tillman as a transition assistance grant pursuant to*
74 *subsection C of § 8.01-195.11 of the Code of Virginia shall be deducted from any award received*
75 *pursuant to § 1 of this act.*

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