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HOUSE BILL NO. 222

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 27, 1996)

(Patron Prior to Substitute—Delegate Woodrum)

A Bill for the relief of Edward William Honaker.

Whereas, Edward William Honaker was brought to trial in the Circuit Court of Nelson County on February 6, 1985, on seven different charges, including two counts of rape, forcible sodomy, aggravated sexual battery, abduction, use or display of a firearm in the commission of rape, and use or display of a firearm in the commission of abduction; and

Whereas, on February 7, 1985, Mr. Honaker, having pled not guilty to all charges, nevertheless was found guilty by a jury of his peers of all of the crimes charged; and

Whereas, on April 10, 1985, the presiding judge imposed the sentence recommended by the jury which totaled three life terms plus 34 years; and

Whereas, conclusive new forensic DNA testing conducted at the request of the Commonwealth's Attorney for Nelson County by the Commonwealth of Virginia's Division of Forensic Science and at the request of Mr. Honaker's counsel by an independent laboratory, produced consistent results proving Edward Honaker could not have been the person who committed this crime; and

Whereas, evidence that Mr. Honaker had an effective vasectomy provides additional strong proof of his innocence; and

Whereas, the prosecution's case consisted primarily of eyewitness testimony from the victim and her boyfriend who gave descriptions of the rapist and information to produce composite sketches; and

Whereas, four months later the Roanoke police provided the Nelson County police with a photograph of Mr. Honaker because it was thought he resembled one of the sketches; and

Whereas, Mr. Honaker's photograph was placed with five other photographs, which did not substantially resemble either each other or the descriptions given of the rapist; and

Whereas, new exculpatory evidence, unknown by the defense or the jury at the time of trial, shows that the victim and her boyfriend were secretly and improperly hypnotized four days after the incident, and that the victim initially said she was not allowed to clearly see her attacker during the entire incident and could only recall seeing her attacker's face after hypnosis; and

Whereas, testimony concerning hypnotically enhanced recollections has been considered inadmissible and unreliable evidence in Virginia since 1974; and

Whereas, on June 24, 1994, Mr. Honaker, through counsel, petitioned the Governor for a grant of Executive Clemency; and

Whereas, on October 21, 1994, after a thorough review of the contentions made in the clemency petition, Governor George Allen, granted Edward William Honaker an absolute pardon from all the offenses for which he was convicted; and

Whereas, Edward William Honaker has been wrongfully incarcerated for ten years at the Nottoway Correctional Center, a maximum security prison, and has suffered mental and emotional trauma, in addition to substantial lost wages, as a result of his incarceration; and

Whereas, Edward William Honaker has no other means to obtain reimbursement for his expenses except by the action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. *That there shall be paid for the relief of Edward William Honaker from the state insurance reserve trust fund administered by the Division of Risk Management of the Department of General Services, upon execution of a release of all claims he may have against the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision in connection with the aforesaid occurrence, (i) the sum of \$150,000 to be paid to Edward William Honaker by check issued by the State Treasurer on warrant of the Comptroller and (ii) an annuity for the primary benefit of Edward William Honaker providing for equal monthly payments, for a period certain of ten years commencing on or about the effective date of this act, in the cumulative amount of \$350,000. The Division of Risk Management of the Department of General Services shall purchase the annuity at the lowest cost available from any A+ rated company, including any A+ rated company from which the Lottery Department may purchase an annuity.*