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HOUSE BILL NO. 5

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 12, 2010)

(Patron Prior to Substitute—Delegate Loupassi)

A BILL for the relief of Victor Anthony Burnette.

Whereas, in August 1979, Victor Anthony Burnette (Mr. Burnette) was charged in an indictment with rape and breaking and entering with the intent to commit rape; and

Whereas, at trial the victim testified that on August 3, 1979, a male entered her apartment and raped her; and

Whereas, the victim described the individual as being five feet eight inches tall, with long blond hair, a mustache and beard and wearing blue jeans; and

Whereas, the victim did not contact law-enforcement officials until August 5, 1979, two days later, despite reportedly seeing the individual outside of her apartment again the night after the alleged rape; and

Whereas, as a result of the rape reported by the victim, a physical evidence recovery kit (PERK) was performed on her; and

Whereas, in addition to the PERK test, a bed sheet and other physical evidence from the scene were submitted to the Virginia Bureau of Forensic Science for analysis; and

Whereas, forensic testing produced three pubic hairs, two of which were consistent with that of the victim, and one of which was consistent with an individual of the characteristics similar to Mr. Burnette's; and

Whereas, it was subsequently determined by Bureau personnel that Mr. Burnette does not secrete the blood type factor in bodily secretions and was therefore a nonsecretor; and

Whereas, since Mr. Burnette is a nonsecretor, technology available in 1979 could not eliminate him as a contributor of the seminal fluid found on the vaginal swab recovered from the victim; and

Whereas, at trial Mr. Burnette produced evidence that on the night of August 3, 1979, he was socializing with two other individuals at the Rainbow Inn located in the Oregon Hill neighborhood of Richmond, Virginia; and

Whereas, upon leaving the establishment, Mr. Burnette went home to care for his invalid grandmother and prepare for work in the morning; and

Whereas, despite consistently maintaining his innocence throughout the trial, on October 23, 1979, Mr. Burnette was convicted in the Circuit Court for the City of Richmond of rape in violation of § 18.2-61 of the Code of Virginia and burglary in violation of § 18.2-90 of the Code of Virginia; and

Whereas, Mr. Burnette was sentenced to a total of twenty years in the state penitentiary and was subsequently incarcerated; and

Whereas, on August 22, 1980, the Supreme Court of Virginia denied Mr. Burnette's Petition for Appeal; and

Whereas, Mr. Burnette proceeded to serve the sentence and in November 1987, he was released on parole; and

Whereas, on July 25, 1993, Mr. Burnette was discharged from parole; and

Whereas, in 2006, the Commonwealth's Attorney for the City of Richmond conducted a review of the 1979 convictions for rape and burglary; and

Whereas, using previously unavailable forensic testing technology Mr. Burnette was excluded as a contributor to the seminal fluid found in the vaginal swabs recovered from the victim; and

Whereas, the results of this completely reliable scientific method of testing corroborates Mr. Burnette's consistent claims of innocence; and

Whereas, Mr. Burnette has unsuccessfully pursued vindication through the Courts; and

Whereas, on November 1, 2006, the Court of Appeals issued an order stating, in pertinent part, that it lacked jurisdiction because subsection A of § 19.2-327.11 of the Code of Virginia provides that human biological evidence may not be used as the sole basis for seeking relief; and

Whereas, on April 17, 2007, the Virginia Supreme Court issued an opinion rejecting Mr. Burnette's petition for relief based only on the fact that Mr. Burnette was no longer incarcerated; and

Whereas, Mr. Burnette subsequently filed a Petition for Absolute Clemency with the Governor; and

Whereas, on April 6, 2009, the Governor granted Mr. Burnette an absolute pardon; and

Whereas, Mr. Burnette spent eight years of his life incarcerated for crimes that he did not commit during which time he lost the opportunity to earn potential income from employment and participate in other pursuits; and

Whereas, in addition, the effects of being branded a convicted felon and rapist for over twenty years

HOUSE
SUBSTITUTE

HB5H1

60 still reside with him daily; and

61 Whereas, Victor Anthony Burnette has suffered severe physical, emotional, and psychological damage
62 as a result of this wrongful incarceration and has no other means to obtain adequate relief except by
63 action of this body; now, therefore,

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

65 1. § 1. *That there is hereby appropriated from the general fund of the state treasury a compensation*
66 *award in the amount of \$226,065 for the relief of Victor Anthony Burnette upon execution of a release*
67 *by Mr. Burnette from any present or future claims he may have against the Commonwealth or any*
68 *agency, instrumentality, officer, employee, or political subdivision thereof and any legal counsel*
69 *appointed pursuant to § 19.2-159 of the Code of Virginia.*

70 *The award shall be paid as follows: (i) an initial lump sum of \$45,213 paid to Victor Anthony*
71 *Burnette on or before August 1, 2010, by check issued by the State Treasurer on warrant of the*
72 *Comptroller and (ii) the sum of \$180,852 to purchase an annuity for the primary benefit of Victor*
73 *Anthony Burnette providing for equal monthly payments, for a period certain of 25 years commencing*
74 *on or before August 1, 2011. The State Treasurer shall purchase the annuity at the lowest cost available*
75 *from any A+ rated company authorized to sell annuities in the Commonwealth, including any A+ rated*
76 *company from which the State Lottery Department may purchase an annuity. The annuity shall provide*
77 *that it shall not be sold, discounted, or used as securitization for loans and mortgages. The annuity*
78 *shall, however, contain beneficiary provisions providing for the annuity's continued disbursement in the*
79 *event of the death of the person awarded compensation.*

80 § 2. *That Victor Anthony Burnette shall be entitled to receive career and technical training within the*
81 *Virginia Community College System free of tuition charges, up to a maximum of \$10,000. The cost for*
82 *the tuition benefit shall be paid by the community college at which the career or technical training is*
83 *provided. The tuition benefit provided by this section shall expire on July 1, 2016.*

84 § 3. *That Victor Anthony Burnette shall immediately be ineligible to receive any unpaid amounts*
85 *from the compensation award and his beneficiaries shall be ineligible to receive any payments under the*
86 *annuity purchased pursuant to § 1 of this act upon any subsequent conviction by Mr. Burnette of any*
87 *felony. Any unpaid amounts remaining under any annuity shall become the property of the*
88 *Commonwealth and shall be deposited into the general fund of the state treasury. In addition, Victor*
89 *Anthony Burnette shall be ineligible to receive any unused portion of the tuition for career and technical*
90 *training provided pursuant to § 2 of this act within the Virginia Community College System free of*
91 *tuition charges, up to a maximum of \$10,000.*