

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 658

An Act for the relief of Keith Allen Harward.

[S 1479]

Approved March 20, 2017

Whereas, Keith Allen Harward (Mr. Harward) spent 33 years in prison for crimes he did not commit; and

Whereas, in the early morning hours of September 14, 1982, an unknown assailant broke into a Newport News, Virginia, home, bludgeoned the husband to death with a crowbar and repeatedly raped the wife while the children slept nearby; and

Whereas, the rape victim described her assailant as wearing a white Navy uniform and told police that the assailant had bitten her repeatedly on the legs; and

Whereas, a Newport News Shipyard security guard who, following a suggestive photo array procedure conducted by police investigators, identified Mr. Harward as the sailor he had seen six months earlier entering the shipyard in a blood-spattered uniform during the early morning hours of the day of the crime; and

Whereas, the shipyard security guard was the only individual to identify Mr. Harward at trial; and

Whereas the rape victim was not able to identify Mr. Harward either before or at trial; and

Whereas, Mr. Harward did not know the rape victim and did not match the physical description of the assailant provided by the victim; and

Whereas, no physical evidence linked Mr. Harward to the crime scene; and

Whereas, a Virginia Department of Forensic Science (DFS) employee suppressed critical serological evidence excluding Mr. Harward as the source of body fluids found on the victim following the crime; and

Whereas, the main evidence against Mr. Harward at trial was bite mark identification proffered by two forensic odontologists, a line of evidence that has been discredited as scientifically invalid and rejected by the American Board of Forensic Odontology; and

Whereas, police investigators withheld critical information that the victim and the Newport News Shipyard security guard had been hypnotized and that certain key components of their respective testimonies changed after hypnosis; and

Whereas, because defense counsel was not informed of the hypnosis of the witnesses, counsel was not able to object to the admission of the hypnotically enhanced recollections, which were considered to be unreliable and admissible only to the extent that they were consistent with a pre-hypnotic statement; and

Whereas, on March 6, 1986, Mr. Harward was falsely convicted of first degree murder and sentenced to life in prison; and

Whereas, in late 2015 and early 2016, DFS analyzed DNA evidence from a rape kit collected from the victim after the crime and excluded Mr. Harward as the perpetrator of the crime; and

Whereas, the DNA evidence identified the real perpetrator of the crime as Jerry Crotty, a U.S. Navy sailor stationed on the same naval vessel as Mr. Harward at the time of the crime and a serial criminal who died in prison in Ohio in 2006; and

Whereas, on March 4, 2016, Mr. Harward submitted to the Supreme Court of Virginia a Petition for a Writ of Actual Innocence based on the DNA evidence excluding him as the perpetrator of the crime; and

Whereas, on April 6, 2016, Virginia Attorney General Mark Herring filed a response recommending that the Writ of Actual Innocence be granted as quickly as possible; and

Whereas, on April 7, 2016, the Supreme Court of Virginia granted Mr. Harward's Writ of Actual Innocence, formally exonerating him of all the crimes for which he had been convicted; and

Whereas, Mr. Harward has always maintained his innocence; and

Whereas, Mr. Harward, as a result of his wrongful conviction, suffers from numerous painful physical injuries, systemic health conditions, and severe mental anguish and emotional distress and has lost countless opportunities, including the opportunity to marry and have children; and

Whereas, Mr. Harward, as a further result of his wrongful conviction, is an impoverished man, with no job skills or career prospects and no savings or accumulated pension benefits, and does not qualify for social security benefits; and

Whereas, Mr. Harward 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*

\$1,548,439 for the relief of Mr. Harward, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of any present or future claims Mr. Harward 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 \$309,688 to be paid to Mr. Harward 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 \$1,238,751 to purchase an annuity no later than September 30, 2017, for the primary benefit of Mr. Harward, the terms of such annuity structured in Mr. Harward's best interests based on consultation among Mr. Harward or his representatives, the State Treasurer, and other necessary parties.

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

§ 2. That Mr. Harward shall be entitled to receive career and technical training within the Virginia Community College System free of tuition charges, up to a maximum of \$10,000. The cost for the tuition benefit shall be paid by the community college at which the career or technical training is provided. The tuition benefit provided by this section shall expire on January 1, 2022.