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HOUSE BILL NO. 1358

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on March 2, 2022)

(Patron Prior to Substitute—Delegate Sullivan)

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

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 \$608,203.90 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 one lump sum of \$608,203.90 by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release.

§ 2. *That Mr. Tillman shall be entitled to reimbursement up to \$10,000 for tuition for career and technical training within the Virginia Community College System contingent upon successful completion of the training. Reimbursement for tuition shall be provided by the comprehensive community college at which the career or technical training was completed. The tuition benefit provided by this section shall*

60 *expire on January 1, 2027.*

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

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