

24101418D

HOUSE BILL NO. 641

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact § 8.01-195.11 of the Code of Virginia and for the relief of David Wayne Kingrea, relating to compensation for wrongful incarceration; sex offender registry.

 Patron—Sullivan

Referred to Committee for Courts of Justice

Whereas, David Wayne Kingrea (Mr. Kingrea) was convicted in 2014 in the Montgomery County Circuit Court of the felony offense of taking indecent liberties with Mr. Smith, the minor son of his then-girlfriend, a crime that he did not commit; and

Whereas, Mr. Kingrea was sentenced to 12 months in jail for such conviction and was required to register as a sex offender; and

Whereas, Mr. Kingrea served 12 months in the custody of the Virginia Department of Corrections; and

Whereas, Mr. Kingrea spent over 8 years as a registered sex offender; and

Whereas, Mr. Smith testified at Mr. Kingrea's trial that Mr. Kingrea sexually abused him on multiple occasions; and

Whereas, Mr. Smith recanted his testimony in October 2020; and

Whereas, Mr. Kingrea began pursuing exoneration at that time; and

Whereas, Mr. Kingrea pursued a writ of actual innocence in the Virginia Court of Appeals on August 19, 2021; and

Whereas, the Virginia Court of Appeals granted Mr. Kingrea's petition and issued a writ of actual innocence, vacating his convictions on June 6, 2022, pursuant to Chapter 19.3 (§ 19.2-327.10 et seq.) of Title 19.2 of the Code of Virginia; and

Whereas, Mr. Kingrea, as a result of his wrongful registration on the sex offender registry, lost countless life experiences and opportunities, including relationships with friends and family, and suffered unjustified discrimination as a result of such registration; and

Whereas, Mr. Kingrea 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. That § 8.01-195.11 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-195.11. Compensation for wrongful incarceration.

A. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth and is wrongfully incarcerated for such felony *or, pursuant to such wrongful incarceration, was wrongfully required to register for the sex offender registry* may be awarded compensation for each year of incarceration *or registration*, or portion thereof. *A person who was both wrongfully incarcerated and, pursuant to such wrongful incarceration, was required to register for the sex offender registry, may be awarded compensation for (i) the time spent wrongfully incarcerated and (ii) the time spent wrongfully registering for the sex offender registry.* The amount of compensation per year shall be \$55,000, adjusted annually by the percentage increase in the Chained Consumer Price Index for All Urban Consumers (C-CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or any predecessor or successor index, compared with the prior calendar year. Calculations made pursuant to this section shall be made by the State Treasurer.

B. Any compensation computed pursuant to subsection A and approved by the General Assembly shall be paid by the Comptroller by his warrant on the State Treasurer in favor of the person found to have been wrongfully incarcerated *or included on the sex offender registry*. The person wrongfully incarcerated *or registered* shall be paid an initial lump sum equal to 25 percent of the compensation award with the remaining 75 percent of the principal of the compensation award to be used by the State Treasurer to purchase an annuity from any A+ rated company, including any A+ rated company from which the Virginia Lottery may purchase an annuity, to provide equal monthly payments to such person for a period certain of 10 years commencing no later than one year after the effective date of the appropriation; however, if such person's life expectancy, as calculated pursuant to the provisions of § 8.01-419 based on his age on the effective date of the appropriation, is less than 10 years, then, upon his election, the annuity period shall be equal to his life expectancy. The annuity shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages by the person awarded compensation. The annuity shall, however, contain beneficiary provisions providing for the annuity's

INTRODUCED

HB641

59 continued disbursement in the event of the death of the person awarded compensation. All payments or
60 costs of annuities under this section shall be made by check issued by the State Treasurer on warrant of
61 the Comptroller.

62 Notwithstanding the foregoing, in the event that the person wrongfully incarcerated *or registered* is
63 60 years of age or older or is terminally ill, the General Assembly may (i) pay 100 percent of the
64 compensation computed pursuant to subsection A as a lump sum to the person wrongfully incarcerated
65 or (ii) purchase an annuity for a period certain that is less than 10 years. For the purposes of this
66 section, "terminally ill" means that the individual has a medical prognosis, as certified by a licensed
67 physician, that his life expectancy is five years or less if the illness runs its normal course.

68 C. In addition to the compensation awarded pursuant to subsection A, the General Assembly may
69 pay to the person wrongfully incarcerated *or registered* the amount of any unreimbursed fine, fee, court
70 cost, or restitution imposed and paid and reasonable attorney fees and costs incurred to receive an award
71 pursuant to this section.

72 D. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth
73 and is wrongfully incarcerated for such felony shall receive a transition assistance grant of \$15,000 to be
74 paid from the Criminal Fund, which amount shall be deducted from any award received pursuant to
75 subsection B, within 30 days of receipt of the written request for the disbursement of the transition
76 assistance grant to the Executive Secretary of the Supreme Court of Virginia. Payment of the transition
77 assistance grant from the Criminal Fund shall be made by the State Treasurer on warrants issued by the
78 Comptroller upon written request signed by the Executive Secretary of the Supreme Court of Virginia.
79 In addition, such person shall be entitled to receive reimbursement up to \$10,000 for tuition for career
80 and technical training within the Virginia Community College System contingent upon successful
81 completion of the training. Reimbursement for tuition shall be provided by the comprehensive
82 community college at which the career or technical training was completed.

83 2. § 1. *That there is hereby appropriated from the general fund of the state treasury the sum of an*
84 *amount to be provided in the appropriation act for the relief of David Wayne Kingrea, to be paid by*
85 *check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all*
86 *claims Mr. Kingrea may have against the Commonwealth or any agency, instrumentality, office,*
87 *employee, or political subdivision in connection with the aforesaid occurrence.*

88 *The compensation, subject to the execution of the release described herein, shall be paid in (i) an*
89 *initial lump sum of 25 percent of the amount provided in the appropriation act by check issued by the*
90 *State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of*
91 *such release and (ii) the sum of 75 percent of the amount provided in the appropriation act to purchase*
92 *an annuity no later than one year after the effective date of the appropriation for compensation, for the*
93 *primary benefit of Mr. Kingrea, the terms of such annuity structured in Mr. Kingrea's best interests*
94 *based on consultation among Mr. Kingrea or his representatives, the State Treasurer, and other*
95 *necessary parties.*

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

102 3. **That the provisions of § 8.01-195.12 of the Code of Virginia shall apply to any compensation**
103 **awarded under this act.**