

22106994D

HOUSE BILL NO. 397

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 23, 2022)

(Patron Prior to Substitute—Delegate Sullivan)

A BILL to amend and reenact §§ 8.01-195.10 through 8.01-195.13, 19.2-389, and 58.1-322.02 of the Code of Virginia, relating to compensation for wrongful incarceration.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-195.10 through 8.01-195.13, 19.2-389, and 58.1-322.02 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-195.10. Purpose; action by the General Assembly required; definitions.

A. The purpose of this article is to provide directions and guidelines for the compensation of persons who have been wrongfully incarcerated in the Commonwealth. Compensation for wrongful incarceration is governed by Article IV, Section 14 of the Constitution of Virginia, which prohibits the General Assembly from granting relief in cases in which the courts or other tribunals may have jurisdiction and any individual seeking payment of state funds for wrongful incarceration shall be deemed to have waived all other claims. The payment and receipt of any compensation for wrongful incarceration shall be contingent upon the General Assembly appropriating funds for that purpose. This article shall not provide an entitlement to compensation for persons wrongfully incarcerated or require the General Assembly to appropriate funds for the payment of such compensation. No estate of or personal representative for a decedent shall be entitled to seek a claim for compensation for wrongful incarceration.

B. As used in this article:

"Incarceration" or "incarcerated" means confinement in a local or regional correctional facility, juvenile correctional center, state correctional facility, residential detention center, or facility operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.).

"Wrongful incarceration" or "wrongfully incarcerated" means incarceration for a felony conviction for which (i) the conviction has been vacated pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) or 19.3 (§ 19.2-327.10 et seq.) of Title 19.2, or the person incarcerated has been granted an absolute pardon for the commission of a crime that he did not commit; (ii) the person incarcerated shall have entered a final plea of not guilty, or, regardless of the plea, the person incarcerated was convicted of a Class 1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life; and (iii) the person incarcerated did not by any act or omission on his part intentionally contribute to his conviction for the felony for which he was incarcerated.

§ 8.01-195.11. Compensation for wrongful incarceration.

A. 1. 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 may shall be awarded compensation in an amount equal to 90 percent of the inflation adjusted Virginia per capita personal income as reported by the Bureau of Economic Analysis of the U.S. Department of Commerce for each year of incarceration, or portion thereof the product of the total number of days that the individual was wrongfully incarcerated following a wrongful conviction multiplied by a daily rate of the Commonwealth's most recent annual median household income as published in the American Community Survey of the United States Census Bureau in the year the court finds the person wrongfully incarcerated eligible for compensation and divided by 365 days to the nearest whole cent, except as provided by subdivision 3.

2. In addition to the compensation awarded under subdivision 1, a wrongfully incarcerated person shall receive:

a. \$25,000 for each year of imprisonment after being sentenced to death; and

b. \$25,000 for each year served on parole or postrelease supervision and for each year the claimant was required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

3. A person wrongfully incarcerated shall not receive compensation for any period of incarceration during which the person was concurrently serving a sentence for a conviction for another crime for which the person was lawfully incarcerated.

4. If an individual eligible for compensation and benefits under this subsection is deceased, the individual's estate has standing to be compensated under this section.

5. On or before July 1 of each year, the Department of Planning and Budget shall determine the percentage increase or decrease in the cost of living for the previous calendar year, based on changes in the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics

60 of the U.S. Department of Labor. On or before July 1 of the year in which the Department of Planning
61 and Budget makes the determination required by this subdivision, the Department of Planning and
62 Budget shall adjust the amounts prescribed under subdivision 2 for the following calendar year by
63 multiplying the amounts applicable to the calendar year in which the adjustment is made by the
64 percentage amount determined under this subdivision. The adjustment shall not exceed three percent for
65 any year. The Department of Planning and Budget shall round the adjusted limitation amount to the
66 nearest \$100, but the unrounded amount shall be used to calculate the adjustments to the amounts in
67 subsequent calendar years. The adjusted amounts shall become effective on July 1 of the year in which
68 the adjustment is made and apply to all claims filed under this section on or after July 1 of that year
69 and before July 1 of the subsequent year.

70 B. Any compensation computed pursuant to subsection A and approved by the General Assembly
71 shall be paid by the Comptroller by his warrant on the State Treasurer in favor of the person found to
72 have been wrongfully incarcerated. The person wrongfully incarcerated shall be paid an initial *a* lump
73 sum equal to 20 percent of the total compensation award with the remaining 80 percent of the principal
74 of the compensation award to be used by the State Treasurer to purchase an annuity from any A+ rated
75 company, including any A+ rated company from which the Virginia Lottery may purchase an annuity, to
76 provide equal monthly payments to such person for a period certain of 25 years commencing no later
77 than one year after the effective date of the appropriation; however, if such person's life expectancy, as
78 calculated pursuant to the provisions of § 8.01-419 based on his age on the effective date of the
79 appropriation, is less than 25 years, then, upon his election, the annuity period shall be equal to his life
80 expectancy. The annuity shall provide that it shall not be sold, discounted, or used as securitization for
81 loans and mortgages by the person awarded compensation. The annuity shall, however, contain
82 beneficiary provisions providing for the annuity's continued disbursement in the event of the death of the
83 person awarded compensation. All payments or costs of annuities under this section shall be made by
84 check issued by the State Treasurer on warrant of the Comptroller.

85 Notwithstanding the foregoing, in the event that the person wrongfully incarcerated is 60 years of
86 age or older or is terminally ill, the General Assembly may (i) pay 100 percent of the compensation
87 computed pursuant to subsection A as a lump sum to the person wrongfully incarcerated or (ii) purchase
88 an annuity for a period certain that is less than 25 years. For the purposes of this section, "terminally
89 ill" means that the individual has a medical prognosis, as certified by a licensed physician, that his life
90 expectancy is five years or less if the illness runs its normal course.

91 C. In addition to the compensation awarded pursuant to subsection A, the person wrongfully
92 incarcerated (i) shall be entitled to receive the amount of any unreimbursed fine, fee, court cost, or
93 restitution imposed and paid and reasonable attorney fees and costs incurred to receive an award
94 pursuant to this section and (ii) may also be awarded other nonmonetary relief sought, including
95 counseling, housing assistance, employment assistance, health care and dental care, and personal
96 financial literacy assistance, as appropriate.

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

108 **§ 8.01-195.12. Conditions for compensation.**

109 A. Any person awarded compensation under this article who is subsequently convicted of a felony
110 shall, immediately upon such conviction, not be eligible to receive any unpaid amounts from any
111 compensation awarded and his beneficiaries shall not be eligible to receive any payments under an
112 annuity purchased pursuant to subsection B of § 8.01-195.11. Any unpaid amounts remaining under any
113 annuity shall become the property of the Commonwealth and shall be deposited into the general fund of
114 the state treasury.

115 A1. Any person awarded compensation under this article who is subsequently incarcerated upon the
116 revocation of parole or probation resulting from the commission of an act that constitutes a crime shall,
117 during the period of such incarceration, forfeit any payments under an annuity purchased pursuant to
118 subsection B of § 8.01-195.11. Any forfeited amounts under any annuity shall become the property of
119 the Commonwealth and shall be deposited into the general fund of the state treasury.

120 B. As a condition of receiving any compensation under this article, a person shall execute a release
121 and waiver forever releasing (i) the Commonwealth or any agency, instrumentality, officer, employee, or

political subdivision thereof, (ii) any legal counsel appointed pursuant to § 19.2-159, and (iii) all other parties of interest, from any present or future claims the person receiving compensation may have against such enumerated parties and arising out of the factual situation in connection with the conviction for which compensation is being sought under this article. In addition, the person receiving compensation shall not have been awarded a finally adjudicated judgment in a court of law against or received any funds pursuant to a settlement agreement with any person or entity described in this subsection for compensation or damages arising out of the factual situation in connection with the conviction. *The State Treasurer shall be responsible for determining whether a person meets the criteria described in this section.*

§ 8.01-195.13. Compensation for certain intentional acts.

A. In any matter resulting in compensation for wrongful incarceration pursuant to this article, if a court of competent jurisdiction over the matter determines, or the court record clearly demonstrates, that the Commonwealth or any agency, instrumentality, officer or employee, or political subdivision thereof (i) intentionally and wrongfully fabricated evidence that was used to obtain the wrongful conviction in such manner and (ii) intentionally, willfully, and continuously suppressed or withheld evidence establishing the innocence of the person wrongfully incarcerated, including but not limited to suppression or withholding of evidence to the Governor for the purpose of clemency, the Commonwealth may compensate the person wrongfully incarcerated for such intentional acts. Such amount shall be in addition to any compensation awarded pursuant to § 8.01-195.11 and may be up to or equal to the amount of such compensation. The additional compensation shall be added to any amount awarded pursuant to § 8.01-195.11, and the total compensation shall be paid pursuant to subdivision B of § 8.01-195.11. Nothing provided in this section shall be interpreted to supplant, revoke, or supersede any other provision of this article applicable to the award of compensation for wrongful incarceration, and the additional compensation shall be subject to any conditions set forth in this article.

B. Any compensation awarded pursuant to this article that includes the additional compensation for intentional acts as set forth in subsection A shall not become effective and payable by the Commonwealth unless and until (i) the person wrongfully incarcerated executes the release and waiver pursuant to ~~subsection B~~ of § 8.01-195.12 and (ii) the instrumentality, or political subdivision thereof, employing any individual committing the intentional acts set forth in clauses (i) and (ii) of subsection A enters into an agreement with the person wrongfully incarcerated requiring such instrumentality or political subdivision to compensate the person with a sum at least equal to the total compensation provided pursuant to § 8.01-195.11 and this section.

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and

183 security of the data;

184 5. Agencies of state or federal government that are authorized by state or federal statute or executive
185 order of the President of the United States or Governor to conduct investigations determining
186 employment suitability or eligibility for security clearances allowing access to classified information;

187 6. Individuals and agencies where authorized by court order or court rule;

188 7. Agencies of any political subdivision of the Commonwealth, public transportation companies
189 owned, operated or controlled by any political subdivision, and any public service corporation that
190 operates a public transit system owned by a local government for the conduct of investigations of
191 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is
192 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a
193 conviction record would be compatible with the nature of the employment, permit, or license under
194 consideration;

195 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of
196 Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a
197 position of employment whenever, in the interest of public welfare or safety and as authorized in the
198 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
199 with a conviction record would be compatible with the nature of the employment under consideration;

200 8. Public or private agencies when authorized or required by federal or state law or interstate
201 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the
202 adult members of that individual's household, with whom the agency is considering placing a child or
203 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
204 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that
205 the data shall not be further disseminated to any party other than a federal or state authority or court as
206 may be required to comply with an express requirement of law;

207 9. To the extent permitted by federal law or regulation, public service companies as defined in
208 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
209 personal contact with the public or when past criminal conduct of an applicant would be incompatible
210 with the nature of the employment under consideration;

211 10. The appropriate authority for purposes of granting citizenship and for purposes of international
212 travel, including, but not limited to, issuing visas and passports;

213 11. A person requesting a copy of his own criminal history record information as defined in
214 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
215 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
216 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
217 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
218 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
219 Solvers or Crime Line program as defined in § 15.2-1713.1;

220 12. Administrators and board presidents of and applicants for licensure or registration as a child
221 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
222 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
223 volunteers at such facilities, caretakers, and foster and adoptive parent applicants of private child-placing
224 agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data
225 shall not be further disseminated by the facility or agency to any party other than the data subject, the
226 Commissioner of Social Services' representative or a federal or state authority or court as may be
227 required to comply with an express requirement of law for such further dissemination; however, nothing
228 in this subdivision shall be construed to prohibit the Commissioner of Social Services' representative
229 from issuing written certifications regarding the results of a background check that was conducted before
230 July 1, 2021, in accordance with subsection J of § 22.1-289.035 or § 22.1-289.039;

231 13. The school boards of the Commonwealth for the purpose of screening individuals who are
232 offered or who accept public school employment and those current school board employees for whom a
233 report of arrest has been made pursuant to § 19.2-83.1;

234 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
235 (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1,
236 and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth
237 in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

238 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations
239 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital
240 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to
241 the limitations set out in subsection E;

242 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of
243 investigations of applicants for compensated employment in licensed assisted living facilities and
244 licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) interventions with first offenders under § 18.2-251 or (ii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public institutions of higher education and nonprofit private institutions of higher education for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the community services board to serve in a direct care position on behalf of the community services board pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the behavioral health authority to serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position or requests approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the provider to serve in a direct care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The Chairman of the Senate Committee on the Judiciary or the Chairman of the House Committee for Courts of Justice for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department

306 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

307 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under
308 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually
309 Violent Predators Act (§ 37.2-900 et seq.);

310 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,
311 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary
312 companies, for the conduct of investigations of applications for employment or for access to facilities,
313 by contractors, leased laborers, and other visitors;

314 35. Any employer of individuals whose employment requires that they enter the homes of others, for
315 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

316 36. Public agencies when and as required by federal or state law to investigate (i) applicants as
317 providers of adult foster care and home-based services or (ii) any individual with whom the agency is
318 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,
319 subject to the restriction that the data shall not be further disseminated by the agency to any party other
320 than a federal or state authority or court as may be required to comply with an express requirement of
321 law for such further dissemination, subject to limitations set out in subsection G;

322 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening
323 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,
324 or have accepted a position related to the provision of transportation services to enrollees in the
325 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other
326 program administered by the Department of Medical Assistance Services;

327 38. The State Corporation Commission for the purpose of investigating individuals who are current
328 or proposed members, senior officers, directors, and principals of an applicant or person licensed under
329 Chapter 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of
330 Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in
331 part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19,
332 or 26 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such
333 information to the applicant or its designee;

334 39. The Department of Professional and Occupational Regulation for the purpose of investigating
335 individuals for initial licensure pursuant to § 54.1-2106.1;

336 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
337 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
338 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
339 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

340 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

341 ~~42. The State Treasurer for the purpose of determining whether a person receiving compensation for~~
342 ~~wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;~~

343 ~~43. The Department of Education or its agents or designees for the purpose of screening individuals~~
344 ~~seeking to enter into a contract with the Department of Education or its agents or designees for the~~
345 ~~provision of child care services for which child care subsidy payments may be provided;~~

346 ~~44. 43. The Department of Juvenile Justice to investigate any parent, guardian, or other adult~~
347 ~~members of a juvenile's household when completing a predispositional or postdispositional report~~
348 ~~required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;~~

349 ~~45. 44. The State Corporation Commission, for the purpose of screening applicants for insurance~~
350 ~~licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;~~

351 ~~46. 45. Administrators and board presidents of and applicants for licensure or registration as a child~~
352 ~~day program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the~~
353 ~~Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of~~
354 ~~investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034~~
355 ~~through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the~~
356 ~~facility or agency to any party other than the data subject, the Superintendent of Public Instruction's~~
357 ~~representative, or a federal or state authority or court as may be required to comply with an express~~
358 ~~requirement of law for such further dissemination; however, nothing in this subdivision shall be~~
359 ~~construed to prohibit the Superintendent of Public Instruction's representative from issuing written~~
360 ~~certifications regarding the results of prior background checks in accordance with subsection J of~~
361 ~~§ 22.1-289.035 or § 22.1-289.039; and~~

362 ~~47. 46. Other entities as otherwise provided by law.~~

363 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
364 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
365 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons
366 designated in the order on whom a report has been made under the provisions of this chapter.

367 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to

before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further, except as otherwise provided in subdivision A 46 45.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

§ 58.1-322.02. Virginia taxable income; subtractions.

In computing Virginia taxable income pursuant to § 58.1-322, to the extent included in federal adjusted gross income, there shall be subtracted:

1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission, or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States, including, but not limited to, stocks, bonds, treasury bills, and treasury notes but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

2. Income derived from obligations, or on the sale or exchange of obligations, of the Commonwealth or of any political subdivision or instrumentality of the Commonwealth.

3. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.

4. Up to \$20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of § 58.1-322.03 may not also claim a subtraction under this subdivision.

5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.

6. The amount of wages or salaries eligible for the federal Work Opportunity Credit which was not deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

429 7. Any amount included therein less than \$600 from a prize awarded by the Virginia Lottery.

430 8. The wages or salaries received by any person for active and inactive service in the National Guard
431 of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar days
432 of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of O3
433 and below shall be entitled to the deductions specified in this subdivision.

434 9. Amounts received by an individual, not to exceed \$1,000 for taxable years beginning on or before
435 December 31, 2019, and \$5,000 for taxable years beginning on or after January 1, 2020, as a reward for
436 information provided to a law-enforcement official or agency, or to a nonprofit corporation created
437 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of
438 perpetrators of crimes. This subdivision shall not apply to the following: an individual who is an
439 employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime
440 for which the reward was paid, or any person who is compensated for the investigation of crimes or
441 accidents.

442 10. The amount of "qualified research expenses" or "basic research expenses" eligible for deduction
443 for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the
444 Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and
445 members of limited liability companies to the extent and in the same manner as other deductions may
446 pass through to such partners, shareholders, and members.

447 11. Any income received during the taxable year derived from a qualified pension, profit-sharing, or
448 stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account
449 or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as
450 defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the
451 contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the
452 extent the contributions to such plan or program were subject to taxation under the income tax in
453 another state.

454 12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract
455 or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7
456 (§ 23.1-700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be
457 limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a
458 scholarship.

459 13. All military pay and allowances, to the extent included in federal adjusted gross income and not
460 otherwise subtracted, deducted, or exempted under this section, earned by military personnel while
461 serving by order of the President of the United States with the consent of Congress in a combat zone or
462 qualified hazardous duty area that is treated as a combat zone for federal tax purposes pursuant to § 112
463 of the Internal Revenue Code.

464 14. For taxable years beginning before January 1, 2015, the gain derived from the sale or exchange
465 of real property or the sale or exchange of an easement to real property which results in the real
466 property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230,
467 for a period of time not less than 30 years. To the extent that a subtraction is taken in accordance with
468 this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed
469 for three years following the year in which the subtraction is taken.

470 15. Fifteen thousand dollars of military basic pay for military service personnel on extended active
471 duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar
472 by the amount by which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero
473 if such military basic pay amount is equal to or exceeds \$30,000.

474 16. The first \$15,000 of salary for each federal and state employee whose total annual salary from all
475 employment for the taxable year is \$15,000 or less.

476 17. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

477 18. Any amount received as military retirement income by an individual awarded the Congressional
478 Medal of Honor.

479 19. Items of income attributable to, derived from, or in any way related to (i) assets stolen from,
480 hidden from, or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii)
481 damages, reparations, or other consideration received by a victim or target of Nazi persecution to
482 compensate such individual for performing labor against his will under the threat of death, during World
483 War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such
484 items of income or with the proceeds from the sale of assets stolen from, hidden from, or otherwise lost
485 to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The
486 provisions of this subdivision shall only apply to an individual who was the first recipient of such items
487 of income and who was a victim or target of Nazi persecution, or a spouse, surviving spouse, or child
488 or stepchild of such victim.

489 As used in this subdivision:

490 "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those

European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of Nazi invasion.

"Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath, (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution, or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual forced into labor against his will, under the threat of death, during World War II and its prelude and direct aftermath.

20. The military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to 10 U.S.C. Chapter 75; however, the subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.

21. The death benefit payments from an annuity contract that are received by a beneficiary of such contract, provided that (i) the death benefit payment is made pursuant to an annuity contract with an insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under this subdivision shall be allowed only for that portion of the death benefit payment that is included in federal adjusted gross income.

22. Any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

23. Any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.

24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income taxed as investment services partnership interest income (otherwise known as investment partnership carried interest income) for federal income tax purposes. To qualify for a subtraction under this subdivision, such income shall be attributable to an investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business approved by the Secretary of Administration, provided that the business has its principal office or facility in the Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.

25. For taxable years beginning on and after January 1, 2014, any income of an account holder for the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's first-time home buyer savings account established pursuant to Chapter 12 (§ 36-171 et seq.) of Title 36 and (ii) interest income or other income for federal income tax purposes attributable to such person's first-time home buyer savings account.

Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys or funds withdrawn from the first-time home buyer savings account were used for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under § 36-174. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable year that was used for other than the payment of eligible costs, computed by multiplying the amount withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in the account at the time of the withdrawal to the total balance in the account at such time.

However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the qualified beneficiary's death or disability; (ii) a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 through 1330; or (iii) transferred from an account established pursuant to Chapter 12 (§ 36-171 et seq.) of Title 36 into another account established pursuant to such chapter for the benefit of another qualified beneficiary.

For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings account," and "qualified beneficiary" mean the same as those terms are defined in § 36-171.

26. For taxable years beginning on and after January 1, 2015, any income for the taxable year attributable to the discharge of a student loan solely by reason of the student's death. For purposes of this subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal

552 Revenue Code.

553 27. a. Income, including investment services partnership interest income (otherwise known as
554 investment partnership carried interest income), attributable to an investment in a Virginia venture
555 capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or
556 after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this
557 subdivision for an investment in a company that is owned or operated by a family member or an
558 affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has
559 claimed a subtraction under subdivision 24 or a tax credit under § 58.1-339.4 for the same investment.

560 b. As used in this subdivision 27:

561 "Qualified portfolio company" means a company that (i) has its principal place of business in the
562 Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or
563 service other than the management or investment of capital; and (iii) provides equity in the company to
564 the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company"
565 does not include a company that is an individual or sole proprietorship.

566 "Virginia venture capital account" means an investment fund that has been certified by the
567 Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital
568 account, the operator of the investment fund shall register the investment fund with the Department prior
569 to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed
570 to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one
571 investor who has at least four years of professional experience in venture capital investment or
572 substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to,
573 an undergraduate degree from an accredited college or university in economics, finance, or a similar
574 field of study. The Department may require an investment fund to provide documentation of the
575 investor's training, education, or experience as deemed necessary by the Department to determine
576 substantial equivalency. If the Department determines that the investment fund employs at least one
577 investor with the experience set forth herein, the Department shall certify the investment fund as a
578 Virginia venture capital account at such time as the investment fund actually invests at least 50 percent
579 of the capital committed to its fund in qualified portfolio companies.

580 28. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a
581 subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before
582 December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by a
583 family member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for
584 a taxpayer who has claimed a subtraction under subdivision 24 or 27 or a tax credit under § 58.1-339.4
585 for the same investment.

586 b. As used in this subdivision 28:

587 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of
588 § 2.2-115.

589 "Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3
590 of § 2.2-115.

591 "Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C.
592 § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be
593 certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department
594 prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in
595 Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double
596 distressed. If the Department determines that the trust satisfies the preceding criteria, the Department
597 shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests
598 at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in
599 localities that are distressed or double distressed.

600 29. For taxable years beginning on and after January 1, 2019, any gain recognized from the taking of
601 real property by condemnation proceedings.

602 30. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, up to
603 \$100,000 of all grant funds received by the taxpayer under the Rebuild Virginia program established by
604 the Governor and administered by the Department of Small Business and Supplier Diversity.

605 31. *For taxable years beginning on and after January 1, 2022, any compensation for wrongful*
606 *incarceration awarded pursuant to the procedures established under Article 18.2 (§ 8.01-195.10 et seq.)*
607 *of Chapter 3 of Title 8.01.*