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**HOUSE BILL NO. 397**

Offered January 12, 2022

Prefiled January 11, 2022

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

Patron—Sullivan

Committee Referral Pending

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

**1. That §§ 8.01-195.10 through 8.01-195.13 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 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, the wrongfully incarcerated person shall also 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, or 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 State Treasurer shall determine the percentage increase or

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59 decrease in the cost of living for the previous calendar year, based on changes in the Consumer Price  
60 Index for All Urban Consumers, as published by the Bureau of Labor Statistics of the U.S. Department  
61 of Labor. On or before July 1 of the year in which the State Treasurer makes the determination  
62 required by this subdivision, the State Treasurer shall adjust the amounts prescribed under subdivision 2  
63 for the following calendar year by multiplying the amounts applicable to the calendar year in which the  
64 adjustment is made by the percentage amount determined under this subdivision. The adjustment may  
65 not exceed three percent for any year. The State Treasurer shall round the adjusted limitation amount to  
66 the nearest \$100, but the unrounded amount shall be used to calculate the adjustments to the amounts  
67 in subsequent calendar years. The adjusted amounts shall become effective on July 1 of the year in  
68 which the adjustment is made and apply to all claims filed under this section on or after July 1 of that  
69 year 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 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 non-monetary relief sought, including  
95 counseling, housing assistance, employment assistance, health care and dental care, and personal  
96 financial literacy assistance, as appropriate.

97 D. Compensation awarded pursuant to this section is excluded from gross income and is not subject  
98 to taxation.

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

110 **§ 8.01-195.12. Conditions for continued compensation.**

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

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

121 the Commonwealth and shall be deposited into the general fund of the state treasury.

122 B. As a condition of receiving any compensation under this article, a person shall execute a release  
123 and waiver forever releasing (i) the Commonwealth or any agency, instrumentality, officer, employee, or  
124 political subdivision thereof, (ii) any legal counsel appointed pursuant to § 19.2-159, and (iii) all other  
125 parties of interest, from any present or future claims the person receiving compensation may have  
126 against such enumerated parties and arising out of the factual situation in connection with the conviction  
127 for which compensation is being sought under this article. In addition, the person receiving  
128 compensation shall not have been awarded a finally adjudicated judgment in a court of law against or  
129 received any funds pursuant to a settlement agreement with any person or entity described in this  
130 subsection for compensation or damages arising out of the factual situation in connection with the  
131 conviction.

132 **§ 8.01-195.13. Compensation for certain intentional acts.**

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

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