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HOUSE BILL NO. 1914
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee on Appropriations
 on _____)

(Patron Prior to Substitute—Delegate Sullivan)

A BILL to amend and reenact §§ 8.01-195.11, 8.01-195.12, and 8.01-195.13 of the Code of Virginia, relating to compensation for wrongful incarceration; compensation for certain intentional acts.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-195.11, 8.01-195.12, and 8.01-195.13 of the Code of Virginia are amended and reenacted as follows:

§ 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 for each year of incarceration, or portion thereof. The amount of compensation per year shall be \$55,000, adjusted on July 1 of each fiscal year by the year-over-year 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. Calculations made pursuant to this section shall be made by the State Treasurer and rounded up to the nearest dollar.

2. For compensation awarded pursuant to this section on or after January 1, 2024, a wrongfully incarcerated person who is awarded compensation pursuant to subdivision 1 shall also receive not less than \$30,000, adjusted on July 1 of each fiscal year by the year-over-year 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, for each year or fraction thereof (i) of imprisonment after being sentenced to death or (ii) that such person 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 *after release from incarceration*.

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. The person wrongfully incarcerated shall be paid a lump sum.

C. In addition to the compensation awarded pursuant to subsection A, the General Assembly shall pay to the person wrongfully incarcerated the amount of any unreimbursed fine, fee, court cost, or restitution imposed and paid and reasonable attorney fees and costs incurred to receive an award pursuant to this section. The wrongfully incarcerated person may also be awarded other nonmonetary relief sought, including counseling, housing assistance, employment assistance, health care and dental care, and personal financial literacy assistance, as appropriate.

D. 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 shall receive a transition assistance grant of \$15,000 to be paid from the Criminal Fund, which amount shall be deducted from any award received pursuant to subsection B, within 30 days of receipt of the written request for the disbursement of the transition assistance grant to the Executive Secretary of the Supreme Court of Virginia. Payment of the transition assistance grant from the Criminal Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Executive Secretary of the Supreme Court of Virginia. In addition, such person shall be entitled to receive 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.

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

§ 8.01-195.12. Conditions for continued compensation.

A. If, at the time of the award of compensation pursuant to § 8.01-195.11, the person wrongfully incarcerated has previously won a monetary award against the Commonwealth or any political subdivision thereof in a civil action arising out of the factual situation in connection with the conviction for which the compensation was awarded, or has entered into a settlement agreement with the Commonwealth or any political subdivision thereof arising out of such situation, the amount of the award in such action or such settlement agreement, less any sums paid to attorneys or for costs in litigating such other civil action or obtaining such settlement agreement, shall be deducted from the sum of money to which the person wrongfully incarcerated is entitled pursuant to § 8.01-195.11.

B. 1. As a condition of receiving any compensation under this article, a person shall execute a release and waiver forever releasing (i) the Commonwealth or any agency, instrumentality, officer, employee, or political

60 subdivision thereof, (ii) any legal counsel appointed pursuant to § 19.2-159, and (iii) all other parties of
61 interest, from any present or future claims the person receiving compensation may have against such
62 enumerated parties and arising out of the factual situation in connection with the conviction for which
63 compensation is being sought under this article.

64 *2. Notwithstanding the provisions of subdivision B 1, no person who is eligible to receive additional*
65 *compensation for wrongful incarceration as the result of an intentional act committed by an officer or*
66 *employee employed by a political subdivision of the Commonwealth as described by § 8.01-195.13 shall be*
67 *required to execute a release and waiver of (i) such officer or employee or (ii) the political subdivision that*
68 *employs such officer or employee, from any present or future claims the person receiving compensation may*
69 *have against such enumerated parties and arising out of the factual situation in connection with the*
70 *conviction for which compensation is being sought under this article.*

71 **§ 8.01-195.13. Compensation for certain intentional acts.**

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

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