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HOUSE BILL NO. 888**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee for Courts of Justice
on January 23, 2006)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend and reenact § 8.01-695 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 27 of Title 8.01 sections numbered 8.01-696 and 8.01-697, relating to prisoner civil litigation; subpoenas; summary judgment; access to records.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-695 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 27 of Title 8.01 sections numbered 8.01-696 and 8.01-697 as follows:

§ 8.01-695. When argument held; when discovery permitted.

Oral argument on any motion in any prisoner civil action shall be heard orally only at the request of the court; whenever possible, the court shall rule upon the record before it. No prisoner shall be permitted to request subpoenas for witnesses or documents, or file discovery requests, until the court has ruled upon any demurrer, plea or motion to dismiss. Where a case proceeds past the initial dispositive motions, the court shall require the prisoner seeking discovery to demonstrate that his requests are relevant and material to the issues in the case. *No subpoena for witnesses or documents shall issue unless a judge of the court has reviewed the subpoena request and specifically authorized a subpoena to issue. The court shall exercise its discretion in determining the scope of the subpoena and may condition its issuance on such terms as the court finds appropriate. The court shall take into account the burden placed upon the object of the subpoena in relation to the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation.*

§ 8.01-696. Summary judgment; pro se prisoner civil action.

Notwithstanding the provisions of § 8.01-420, any time after commencement of a pro se prisoner civil action, a party may move for summary judgment on all issues based upon the pleadings, any admissions, depositions, and supporting affidavits. The adverse party may serve supporting affidavits within 10 days after service of the motion. The judgment sought shall be rendered forthwith if the pleadings, admissions, depositions, and affidavits show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.

§ 8.01-697. Access to Department of Corrections records.

All records maintained by the Department of Corrections in the name of individual prisoners, including prisoner medical records, shall be the property of the Department, and the prisoner shall have no legal interest in those records. Notwithstanding the provisions of § 32.1-127.1:03, in any civil suit subject to this chapter, where the Commonwealth, an agency of the Commonwealth, an employee of the Commonwealth, or a private contractor providing services to the Department of Corrections is named as a defendant, the Director of the Department may share any records maintained by the Department in the name of the prisoner filing suit with counsel representing the above-named defendants. The Director maintains broad discretion to limit the access to agency records when doing so may compromise security or cause an unnecessary burden on the operations of the Department of Corrections.