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HOUSE BILL NO. 2874

Offered January 20, 1997

A BILL to amend and reenact §§ 8.01-271.1 and 8.01-410 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 8.01-243.2, 8.01-644.1 and 8.01-654.2 and by adding in Article 3 of Chapter 1 of Title 53.1 a section numbered 53.1-17.1, and in Article 1 of Chapter 2 of Title 53.1 a section numbered 53.1-31.1, relating to actions by and on behalf of prisoners; limitations; court costs and fees; court-imposed debt; incarceration costs; and the Commonwealth's right to setoff and restitution.

Patrons—Howell and Orrock

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-271.1 and 8.01-410 of the Code of Virginia are amended and reenacted; that the Code of Virginia is amended by adding sections numbered 8.01-243.2, 8.01-644.1 and 8.01-654.2; and by adding in Article 3 of Chapter 1 of Title 53.1 a section numbered 53.1-17.1 and in Article 1 of Chapter 2 of Title 53.1 a section numbered 53.1-31.1 as follows:

§ 8.01-243.2. Limitations of actions by confined persons; exhaustion .

No judicial action shall be brought by a person confined in a state or local correctional facility until all available administrative remedies are exhausted. An action brought by or on behalf of such person relating to the conditions of his confinement, shall be brought within one year after the cause of action accrues.

§ 8.01-271.1. Signing of pleadings, motions, and other papers; oral motions; sanctions.

Every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, and the attorney's address shall be stated on the first pleading filed by that attorney in the action. A party who is not represented by an attorney, including a person confined in a state or local correctional facility proceeding pro se, shall sign his pleading, motion, or other paper and state his address.

The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper or frivolous purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, written motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

An oral motion made by an attorney or party in any court of the Commonwealth constitutes a representation by him that (i) to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (ii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading, motion, or other paper is signed or made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including a reasonable attorney's fee.

§ 8.01-410. Convicts as witnesses in civil actions.

Whenever any party in a civil action in any circuit court in this Commonwealth shall require as a witness in his behalf, a convict or prisoner in a correctional or penal institution as defined in § 53.1-1, the court, on the application of such party or his attorney may, in his discretion and upon consideration of the importance of the personal appearance of the witness and the nature of the offense for which he is imprisoned, issue an order to the Director of the Department of Corrections to deliver such witness to the sheriff of the county or the city, as the case may be, who shall go where such witness may then be. Under such conditions as shall be prescribed by the superintendent of the institution, such officer shall carry the convict to the court to testify as such witness, and after he shall have so testified and been released as such witness, carry him back to the place whence he came.

If necessary the sheriff may confine the convict for the night in any convenient city or county correctional institution.

Under such rules and regulations as the superintendent of such an institution may prescribe, any

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60 party to a civil action in any circuit court in this Commonwealth may take the deposition of a convict or
61 prisoner in the institution, which deposition, when taken, may be admissible in evidence as other
62 depositions in civil actions.

63 The party seeking the testimony of such prisoner shall advance a sum sufficient to defray the
64 expenses and compensation of the officers, which the court, ~~in its discretion, may~~ shall tax as other
65 costs.

66 § 8.01-644.1. Limitations of actions for petition for mandamus.

67 A petition for extraordinary writ of mandamus, filed by or on behalf of a person confined in a state
68 or local correctional facility, shall be brought within one year after the cause of action accrues.

69 § 8.01-654.2. Limitation of actions for petition for writ of habeas corpus ad subjiciendum.

70 A habeas corpus petition challenging a criminal conviction or sentence, except as provided in
71 § 8.01-654.1 for cases in which a death sentence has been imposed, shall be filed within one year from
72 expiration of the time for filing an appeal of the conviction or sentence or within six months from final
73 disposition of the direct appeal, whichever is later.

74 § 53.1-17.1. Duties of Director in collecting court-imposed debt.

75 Upon receipt of a valid court order or judgment against a person confined in a state or local
76 correctional facility, the Director or his designee shall satisfy, to the extent possible, the amount
77 required to be paid by the order or judgment from the inmate's trust account. The Director shall
78 promulgate regulations governing the process of collecting judgments or orders granting monetary
79 relief, imposing fines or other monetary sanctions, such funds to satisfy and for payment of court costs
80 and fees.

81 § 53.1-31.1. Incarceration costs and Commonwealth's right to setoff and restitution.

82 A. The Director shall establish a per annum cost of incarceration for any person convicted in a state
83 court and committed to the Department. This cost of incarceration shall reflect the average amount of
84 dollars the Commonwealth expended in behalf of a prisoner for one year of incarceration. The
85 Commonwealth shall have the right to set off the cost of incarceration for the remaining sentence after
86 July 1, 1997, calculated at any time and without prior notice against any claim made by or monetary
87 obligation owed to a person for whom a cost of incarceration can be calculated.

88 B. The Commonwealth, in a separate civil action, may seek recovery for the cost of incarceration as
89 set forth in subsection A. For those convicted before July 1, 1997, the Commonwealth may seek
90 recovery for the cost of incarceration for the convicted offender's remaining sentence after July 1, 1997.
91 The Virginia Department of Corrections may place a lien on the inmate's trust account, at the request of
92 the Office of the Attorney General, to collect the moneys awarded in an action brought under this
93 subsection. The Virginia Department of Corrections shall disburse the moneys collected in the manner
94 described above.