

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 554

An Act to amend and reenact § 8.01-658 of the Code of Virginia, relating to service of writ of habeas corpus; dismissal of petition.

[S 1156]

Approved March 23, 2015

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-658 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-658. How writ served; dismissal of habeas petition without prejudice.

A. The writ shall be served on the person to whom it is directed, or, in his absence from the place where the petitioner is confined, on the person having the immediate *or potential* custody of him.

1. *If the petitioner is in jail, prison, or other actual physical restraint due to the conviction or sentence he is attacking, the named respondent shall be (i) the Director of the Department of Corrections or the warden or superintendent of the state correctional facility where the petitioner is detained if the sentence is one year or more or (ii) the sheriff or superintendent of a local or regional jail facility if the sentence is less than one year.*

2. *If the petitioner is on probation or parole due to the conviction or sentence he is attacking, the named respondent shall be the probation or parole officer responsible for supervising the applicant or the official in charge of the parole or probation agency.*

3. *If a petitioner has a suspended sentence and is not under supervision by a probation or parole officer, the respondent shall be (i) the local sheriff if the judgment of conviction the petitioner challenges has a suspended sentence of less than one year or (ii) the Director of the Department of Corrections if the judgment of conviction the petitioner challenges has a suspended sentence of one year or more.*

B. *The petitioner shall name a proper party respondent, and if he fails to do so, the court shall allow amendment of the petition. If the petitioner fails to amend the petition by naming a proper party respondent in the time provided by the court, the court in which the petition is filed shall dismiss the habeas petition without prejudice.*