

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 8.01-217 of the Code of Virginia, relating to application for change of name; person required to register on the Sex Offender and Crimes Against Minors Registry; victim notification.

[H 1846]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-217 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-217. How name of person may be changed.

A. Any person desiring to change his own name, or that of his child or ward, may apply therefor to the circuit court of the county or city in which the person whose name is to be changed resides, or if no place of abode exists, such person may apply to any circuit court which shall consider such application if it finds that good cause exists therefor under the circumstances alleged. An incarcerated person may apply to the circuit court of the county or city in which such person is incarcerated. In case of a minor who has no living parent or guardian, the application may be made by his next friend. In case of a minor who has both parents living, the parent who does not join in the application shall be served with reasonable notice of the application pursuant to § 8.01-296 and, should such parent object to the change of name, a hearing shall be held to determine whether the change of name is in the best interest of the minor. It shall not be necessary to effect service upon any parent who files an answer to the application. If, after application is made on behalf of a minor and an ex parte hearing is held thereon, the court finds by clear and convincing evidence that such notice would present a serious threat to the health and safety of the applicant, the court may waive such notice.

B. Every application shall be under oath and shall include the place of residence of the applicant, the names of both parents, including the maiden name of his mother, the date and place of birth of the applicant, the applicant's felony conviction record, if any, whether the applicant is a person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, whether the applicant is presently incarcerated or a probationer with any court, and if the applicant has previously changed his name, his former name or names.

C. On any such application and hearing, if such be demanded, the court, shall, unless the evidence shows that the change of name is sought for a fraudulent purpose or would otherwise infringe upon the rights of others or, in a case involving a minor, that the change of name is not in the best interest of the minor, order a change of name.

D. No application shall be accepted by a court for a change of name of a probationer, person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, or incarcerated person unless the court finds that good cause exists for consideration of such application under the reasons alleged in the application for the requested change of name. If the court accepts the application, the court shall mail or deliver a copy of the application to the attorney for the Commonwealth for the jurisdiction where the application was filed and the attorney for the Commonwealth for any jurisdiction in the Commonwealth where a conviction occurred that resulted in the applicant's probation, registration with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, or incarceration. The attorney for the Commonwealth where the application was filed shall be entitled to respond and represent the interests of the Commonwealth by filing a response within 30 days after the mailing or delivery of a copy of the application. *The attorney for the Commonwealth shall make a reasonable effort to provide notice to the victim of the offense for which such person was required to register with the Sex Offender and Crimes Against Minors Registry or such victim's immediate family member if the victim has died. Such victim or immediate family member may appear personally or by counsel to address the court or may provide a written statement regarding the reasons the court should deny such application for a change of name.* The court shall conduct a hearing on the application and may order a change of name if, after receiving and considering evidence concerning the circumstances regarding the requested change of name, the court determines that the change of name (i) would not frustrate a legitimate law-enforcement purpose, (ii) is not sought for a fraudulent purpose, and (iii) would not otherwise infringe upon the rights of others. Such order shall contain written findings stating the court's basis for granting the order.

E. The provisions of subsection D are jurisdictional and any order granting a change of name pursuant to subsection D that fails to comply with any provision of subsection D is void ab initio. The attorney for the Commonwealth for the jurisdiction where such an application was filed has the authority to bring an independent action at any time to have such order declared void. If the attorney for the Commonwealth brings

an independent action to have the order declared void, notice of the action shall be served upon the person who was granted a change of name who shall have 30 days after service to respond. If the person whose name was changed files a response objecting to having the order declared void, the court shall hold a hearing. If an order granting a change of name is declared void pursuant to this subsection, or if a person is convicted of perjury pursuant to § 18.2-434 for unlawfully changing his name pursuant to § 18.2-504.1 based on conduct that violates this section, the clerk of the court entering the order or the order of conviction shall transmit a certified copy of the order to (i) the State Registrar of Vital Records, (ii) the Department of Motor Vehicles, (iii) the State Board of Elections, (iv) the Central Criminal Records Exchange, and (v) any agency or department of the Commonwealth that has issued a license to the person where such license utilizes the person's changed name, if known to the court and identified in the court order.

F. The order shall contain no identifying information other than the applicant's former name or names, new name, and current address. The clerk of the court shall spread the order upon the current deed book in his office, index it in both the old and new names, and transmit a certified copy of the order and the application to the State Registrar of Vital Records and the Central Criminal Records Exchange. Transmittal of a copy of the order and the application to the State Registrar of Vital Records and the Central Criminal Records Exchange shall not be required of a person who changed his ~~or her~~ former name by reason of marriage and who makes application to resume a former name pursuant to § 20-121.4.

G. If the applicant shall show cause to believe that in the event his change of name should become a public record, a serious threat to the health or safety of the applicant or his immediate family would exist, the chief judge of the circuit court may waive the requirement that the application be under oath or the court may order the record sealed and direct the clerk not to spread and index any orders entered in the cause, and a certified copy shall not be transmitted to the State Registrar of Vital Records or the Central Criminal Records Exchange. At such time as a name change order is received by the State Registrar of Vital Records, for a person born in the Commonwealth, together with a proper request and payment of required fees, the Registrar shall issue certifications of the amended birth record which do not reveal the former name or names of the applicant unless so ordered by a court of competent jurisdiction. Such certifications shall not be marked "amended" and show the effective date as provided in § 32.1-272. Such order shall set forth the date and place of birth of the person whose name is changed, the full names of his parents, including the maiden name of the mother and, if such person has previously changed his name, his former name or names.