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SENATE BILL NO. 764

Offered January 21, 2026

A *BILL to amend and reenact §§ 19.2-298.02 and 46.2-398, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to deferred disposition in a criminal case; license suspension; driving while under the influence.*

 Patron—Stanley

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-298.02 and 46.2-398, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 19.2-298.02. Deferred disposition in a criminal case.

A. A trial court presiding in a criminal case may, with the agreement of the defendant and the Commonwealth, after any plea or trial, with or without a determination, finding, or pronouncement of guilt, and notwithstanding the entry of a conviction order, upon consideration of the facts and circumstances of the case, including (i) mitigating factors relating to the defendant or the offense, (ii) the request of the victim, or (iii) any other appropriate factors, defer proceedings, defer entry of a conviction order, if none, or defer entry of a final order, and continue the case for final disposition, on such reasonable terms and conditions as may be agreed upon by the parties and placed on the record, or if there is no agreement, as may be imposed by the court. *The court may suspend the driver's license of the defendant for a period of not less than 10 days nor more than six months in accordance with the provisions of § 46.2-398.* Final disposition may include (a) conviction of the original charge, (b) conviction of an alternative charge, or (c) dismissal of the proceedings.

B. *Notwithstanding the provisions of subsection A, a trial court presiding in a criminal case for a violation of § 18.2-266 may, with the agreement of the defendant, after any plea or trial, with or without a determination, finding, or pronouncement of guilt, and notwithstanding the entry of a conviction order, upon consideration of the facts and circumstances of the case, including mitigating factors relating to the defendant or the offense or any other appropriate factors, defer proceedings or defer entry of a conviction order and continue the case for final disposition, on such reasonable terms and conditions as may be agreed upon by the parties and placed on the record. Such terms and conditions shall include:*

1. Participation in and successful completion of an alcohol safety action program by the defendant in the judicial district in which such charge is brought or in any other judicial district upon such terms and conditions as the court may set forth. In no event shall such defendant be permitted to enter any such program that is not certified as meeting minimum standards and criteria established by the Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to § 18.2-271.2; and

2. Restriction of the defendant from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system for a period of time not less than 12 consecutive months without alcohol-related violations of interlock requirements.

Final disposition may include conviction of an alternative charge or dismissal of the proceedings.

C. Upon violation of a term or condition, the court may enter an adjudication of guilt, if not already entered, and make any final disposition of the case provided by subsection A or B. Upon fulfillment of the terms and conditions, the court shall adjudicate the matter consistent with the agreement of the parties or, if none, by conviction of an alternative charge or dismissal of the case.

~~C.~~ D. By consenting to and receiving a deferral of proceedings or a deferral of entry of a final order of guilt and fulfilling the conditions as specified by the court as provided by subsection A or B, the defendant waives his right to appeal such entry of a final order of guilt.

Prior to granting a deferral of proceedings, a deferral of entry of a conviction order, if none, or a deferral of a final order, the court shall notify the defendant that he would be waiving his rights to appeal any final order of guilt if such deferral is granted.

~~D.~~ E. Upon agreement of all parties, a charge that is dismissed pursuant to this section, including an original charge that was reduced or a charge that is dismissed after a plea or stipulation of the facts that would justify a finding of guilt, may be considered as otherwise dismissed for purposes of expungement of police and court records in accordance with § 19.2-392.2, and such agreement of all parties and expungement eligibility may be indicated in the final disposition order.

§ 46.2-398. (Effective until July 1, 2026) Disposition of surrendered licenses on revocation or suspension.

In any case in which the accused is convicted of an offense, on the conviction of which the law requires or permits revocation or suspension of the driver's license of the person so convicted *or in any case of deferred*

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59 *disposition where a court orders suspension of the driver's license of a defendant pursuant to § 19.2-298.02,*
60 *the court shall order the surrender of such license, which shall remain in the custody of the court during the*
61 *period of revocation or suspension if the period does not exceed 30 days.*

62 If the revocation or suspension period exceeds 30 days, and the conviction was obtained in a court not of
63 record, the license shall remain in the custody of that court (i) until the time allowed by law for an appeal to
64 the circuit court has elapsed, when it shall be forwarded to the Commissioner, or (ii) until an appeal to the
65 circuit court is noted, at which time it shall be returned to the accused.

66 If the revocation or suspension period exceeds 30 days, and the conviction was obtained in the circuit
67 court, the circuit court shall forward the license to the Commissioner forthwith upon the conviction.

68 For any revocation or suspension of a privilege to drive in Virginia of a person who does not have a
69 Virginia driver's license but who does have a valid driver's license from another jurisdiction, the court shall
70 not order the physical surrender of such license.

71 **§ 46.2-398. (Effective July 1, 2026) Disposition of surrendered licenses on revocation or suspension.**

72 In any case in which the accused is convicted of an offense, on the conviction of which the law requires or
73 permits revocation or suspension of the driver's license of the person so convicted *or in any case of deferred*
74 *disposition where a court orders suspension of the driver's license of a defendant pursuant to § 19.2-298.02,*
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78 record, the license shall remain in the custody of that court (i) until the time allowed by law for an appeal to
79 the circuit court has elapsed, when it shall be forwarded to the Commissioner, or (ii) until an appeal to the
80 circuit court is noted, at which time it shall be returned to the accused.

81 If the revocation or suspension period exceeds 30 days, and the conviction was obtained in the circuit
82 court, the circuit court shall forward the license to the Commissioner forthwith upon the conviction.

83 In any case in which a court ordered a person to enroll in the Intelligent Speed Assistance Program
84 established pursuant to § 46.2-507, the court shall forward the license to the Department upon the conviction.

85 For any revocation or suspension of a privilege to drive in Virginia of a person who does not have a
86 Virginia driver's license but who does have a valid driver's license from another jurisdiction, the court shall
87 not order the physical surrender of such license.