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HOUSE BILL NO. 247
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Delegate Watts)

A BILL to amend and reenact § 19.2-303.6 of the Code of Virginia, relating to deferred disposition in a criminal case; persons with autism, intellectual disabilities, or developmental disabilities; expungement.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-303.6 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-303.6. Deferred disposition in a criminal case; persons with autism, intellectual disabilities, or developmental disabilities.

A. In any criminal case, except a violation of § 18.2-31, an act of violence as defined in § 19.2-297.1, or any crime for which a deferred disposition is provided for by statute *other than* § 19.2-298.02, upon a plea of guilty, or after a plea of not guilty, and the facts found by the court would justify a finding of guilt, the court may, if the defendant has been diagnosed by a psychiatrist or clinical psychologist with (i) an autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or (ii) an intellectual disability *or developmental disability* as those terms are defined in § 37.2-100 and the court finds by clear and convincing evidence that the criminal conduct was caused by or had a direct and substantial relationship to the person's disorder or disability, without entering a judgment of guilt and with the consent of the accused, after giving due consideration to the position of the attorney for the Commonwealth and the views of the victim, defer further proceedings and place the accused on probation subject to terms and conditions set by the court. *The defendant may request a hearing at which the facts may be proffered by the parties to determine the appropriateness of a deferred disposition at any time before or after any plea. If such a hearing occurs before a plea of guilty and the court determines that a deferred disposition is appropriate, the defendant shall stipulate to sufficient facts to justify a finding of guilt prior to the entry of any deferred disposition.* Upon violation of a term or condition, the court may enter an adjudication of guilt; or upon fulfillment of the terms and conditions, the court may discharge the person and dismiss the proceedings against him without an adjudication of guilt. This section shall not limit the authority of any juvenile and domestic relations *district* court granted to it in Title 16.1.

B. Deferred disposition shall be available to the defendant even though he has previously been convicted

32 of a criminal offense, been adjudicated delinquent as a juvenile, or had proceedings deferred and dismissed
33 under this section or under any other provision of law, unless, after having considered the position of the
34 attorney for the Commonwealth, the views of the victims, and any evidence offered by the defendant, the
35 court finds that deferred disposition is inconsistent with the interests of justice.

36 *C. A charge that is dismissed pursuant to this section, including an original charge that was reduced or a*
37 *charge that is dismissed after a plea or stipulation of the fact that would justify a finding of guilt, may be*
38 *considered as otherwise dismissed for the purposes of expungement of police and court records in*
39 *accordance with § 19.2-392.2.*

40 *D. No statement made by the defendant at a hearing pursuant to this section or during an examination*
41 *conducted for the purposes of establishing the criteria listed in subsection A shall be admissible in any*
42 *criminal proceeding, except that any such statement (i) made under oath may be admissible in a criminal*
43 *proceeding for perjury or (ii) may be used for the purpose of impeaching the defendant in the trial of any*
44 *other criminal matter, provided the testimony or evidence being used for impeachment was produced by the*
45 *defendant voluntarily.*