

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

5 [S 764]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That §§ 19.2-298.02 and 46.2-398, as it is currently effective and as it shall become effective, of the**  
 9 **Code of Virginia are amended and reenacted as follows:**10 **§ 19.2-298.02. Deferred disposition in a criminal case.**

11 A. A trial court presiding in a criminal case may, with the agreement of the defendant ~~and the~~  
 12 ~~Commonwealth~~, after any plea or trial, with or without a determination, finding, or pronouncement of guilt,  
 13 and notwithstanding the entry of a conviction order, upon consideration of the facts and circumstances of the  
 14 case, including (i) mitigating factors relating to the defendant or the offense, (ii) the request of the victim, or  
 15 (iii) any other appropriate factors, defer proceedings, defer entry of a conviction order, if none, or defer entry  
 16 of a final order, and continue the case for final disposition, on such reasonable terms and conditions as may  
 17 be agreed upon by the parties and placed on the record, or if there is no agreement, as may be imposed by the  
 18 court. *The court may suspend the driver's license of the defendant for a period of not less than 10 days nor*  
 19 *more than six months in accordance with the provisions of § 46.2-398. Final disposition may include (a)*  
 20 *conviction of the original charge, (b) conviction of an alternative charge, or (c) dismissal of the proceedings.*  
 21 *A court may proceed under this section only with the agreement of the Commonwealth if the charge is*  
 22 *ineligible for sealing pursuant to § 19.2-392.12.*

23 B. *Notwithstanding the provisions of subsection A, a trial court presiding in a criminal case for a*  
 24 *violation of § 18.2-266 may, with the agreement of the defendant, after any plea or trial, with or without a*  
 25 *determination, finding, or pronouncement of guilt, and notwithstanding the entry of a conviction order, upon*  
 26 *consideration of the facts and circumstances of the case, including mitigating factors relating to the*  
 27 *defendant or the offense or any other appropriate factors, defer proceedings or defer entry of a conviction*  
 28 *order and continue the case for final disposition, on such reasonable terms and conditions as may be agreed*  
 29 *upon by the parties or, if there is not an agreement, as imposed by the court. Such terms and conditions shall*  
 30 *include:*

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

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

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

40 *The provisions of this subsection shall not apply to any person who (i) possesses a commercial driver's*  
 41 *license or commercial learner's permit, as those terms are defined in § 46.2-341.4, or (ii) was operating a*  
 42 *commercial motor vehicle, as defined in § 46.2-341.4, during the alleged violation.*

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

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

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

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

57 eligibility may be indicated in the final disposition order.

58 **§ 46.2-398. (Effective until July 1, 2026) Disposition of surrendered licenses on revocation or**  
59 **suspension.**

60 In any case in which the accused is convicted of an offense, on the conviction of which the law requires or  
61 permits revocation or suspension of the driver's license of the person so convicted *or in any case of deferred*  
62 *disposition where a court orders suspension of the driver's license of a defendant pursuant to § 19.2-298.02,*  
63 the court shall order the surrender of such license, which shall remain in the custody of the court during the  
64 period of revocation or suspension if the period does not exceed 30 days.

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

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

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

74 **§ 46.2-398. (Effective July 1, 2026) Disposition of surrendered licenses on revocation or suspension.**

75 In any case in which the accused is convicted of an offense, on the conviction of which the law requires or  
76 permits revocation or suspension of the driver's license of the person so convicted *or in any case of deferred*  
77 *disposition where a court orders suspension of the driver's license of a defendant pursuant to § 19.2-298.02,*  
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80 If the revocation or suspension period exceeds 30 days, and the conviction was obtained in a court not of  
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82 the circuit court has elapsed, when it shall be forwarded to the Commissioner, or (ii) until an appeal to the  
83 circuit court is noted, at which time it shall be returned to the accused.

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

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

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