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SENATE BILL NO. 489

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact § 19.2-265.3 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-298.02, relating to authority to defer and dismiss a criminal case.*

Patron—Surovell

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-265.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-298.02 as follows:

§ 19.2-265.3. Nolle prosequi; discretion of court upon good cause shown.

Nolle prosequi shall be entered only in the discretion of the court, upon motion of the Commonwealth with good cause therefor shown. *For purposes of this section, "good cause" means that (i) the particular circumstances relating to the facts of the case, (ii) the general deterrence value of prosecuting a case, or (iii) the limits on agency resources or competing prosecutorial priorities make such case unprosecutable or not in the interests of the Commonwealth to prosecute such case at such time.*

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

A. A trial court presiding in a criminal case may, after any plea or trial, and with or without a determination of guilt, upon consideration of the facts and circumstances of the case including (i) mitigating factors relating to the defendant, (ii) the request of the victim, or (iii) any other appropriate factors, upon its own motion with the consent of the defendant or with the agreement of the defendant and the Commonwealth, defer proceedings or defer entry of a final order of guilt and place the defendant under probation to comply with reasonable terms and conditions as specified by the court, to be placed on the record, that shall include probation and either (a) conviction of the original charge, (b) conviction of an alternative charge, or (c) dismissal of the proceedings.

B. Upon fulfillment of such terms and conditions, the court shall adjudicate the matter consistent with the terms and conditions specified in the record pursuant to subsection A.

C. 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, the defendant waives his right to appeal such entry of a final order of guilt.

Prior to granting a deferral of proceedings or a deferral of entry of a final order of guilt, 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. Any charge that is dismissed pursuant to this section without a finding of guilt shall be eligible for expungement as provided in Chapter 23.1 (§ 19.2-392.1 et seq.) and is not a conviction for the purpose of any disqualification or disability imposed by law because of conviction of a crime.

INTRODUCED

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