

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 19.2-265.6 of the Code of Virginia and to amend the Code of Virginia*
 3 *by adding a section numbered 19.2-298.02, relating to court authority in criminal cases;*
 4 *prosecutorial discretion to dispose of a criminal case.*

5 [S 5033]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**

8 **1. That § 19.2-265.6 of the Code of Virginia is amended and reenacted and that the Code of**
 9 **Virginia is amended by adding a section numbered 19.2-298.02 as follows:**

10 **§ 19.2-265.6. Dismissal of criminal charges on Commonwealth's motion; effect of dismissal of**
 11 **criminal charges.**

12 *A. Upon motion of the Commonwealth to dismiss a charge, whether with or without prejudice, and*
 13 *with the consent of the defendant, a court shall grant the motion unless the court finds by clear and*
 14 *convincing evidence that the motion was made as the result of (i) bribery or (ii) bias or prejudice*
 15 *toward a victim as defined in § 19.2-11.01 because of the race, religious conviction, gender, disability,*
 16 *gender identity, sexual orientation, color, or national origin of the victim.*

17 *B. No dismissal of any criminal charge by a court shall bar subsequent prosecution of the charge*
 18 *unless jeopardy attached at the earlier proceeding or unless the dismissal order explicitly states that the*
 19 *dismissal is with prejudice.*

20 **§ 19.2-298.02. Deferred disposition in a criminal case.**

21 *A. A trial court presiding in a criminal case may, with the agreement of the defendant and the*
 22 *Commonwealth, after any plea or trial, with or without a determination, finding, or pronouncement of*
 23 *guilt, and notwithstanding the entry of a conviction order, upon consideration of the facts and*
 24 *circumstances of the case, including (i) mitigating factors relating to the defendant or the offense, (ii)*
 25 *the request of the victim, or (iii) any other appropriate factors, defer proceedings, defer entry of a*
 26 *conviction order, if none, or defer entry of a final order, and continue the case for final disposition, on*
 27 *such reasonable terms and conditions as may be agreed upon by the parties and placed on the record,*
 28 *or if there is no agreement, as may be imposed by the court. Final disposition may include (a)*
 29 *conviction of the original charge, (b) conviction of an alternative charge, or (c) dismissal of the*
 30 *proceedings.*

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

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

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

41 *D. Upon agreement of all parties, a charge that is dismissed pursuant to this section may be*
 42 *considered as otherwise dismissed for purposes of expungement of police and court records in*
 43 *accordance with § 19.2-392.2, and such agreement of all parties and expungement eligibility shall be*
 44 *indicated in the final disposition order.*