

# Civil

## HB1845 Appeal Bond from GDC to Circuit Court

16.1-107 No appeal bond is required if the defendant's insurance company provides written, irrevocable confirmation of coverage sufficient to satisfy judgement.

## HB1534 Jurisdictional Amount in Actions of Unlawful Entry or Detainer (GDC)

8.01-128(A) The part of the statute limiting the amount which can be awarded for damages in an unlawful detainer to that of the the court's jurisdiction is removed.

16.1-77(3) Makes all unlawful detainer actions in general district court not subject to a jurisdictional amount (previously only applied to business and agricultural properties).

## HB1590 / SB774 Jurisdictional Limits (GDC)

8.01-195.4 & 16.1-77 & 43-34 & 46.2-644.03 - The maximum jurisdiction of general district court is raised to \$25,000.

## HB2055 Websites for Official Publications

8.01-385(5)(6)(7) The definition of "Official Publication" is changed to include publication on an official website.

## SB1068 Fees NOT to be Collected by Clerks

17.1-275(A)(26) Clerks are not to collect any fee for "the filing of a counterclaim or any other responsive pleading in any annulment, divorce, or separate maintenance proceeding."

## SB1209 Waiving Objections to Personal Jurisdiction or Defective Process

8.01-277.1 Problems with personal jurisdiction and process are waived when the party engages in any conduct adjudicating the merits. (Statute contains specific examples)

# Cases

JDB v. North Carolina, JUN11, USSC No. 09-11121:

A minor's age must be taken into account in determining whether the is in custody for Miranda purposes.

Henderson v. Commonwealth, JUN11, VaApp No. 0688-10-4:

(1) In a probation violation hearing, the Commonwealth must establish "good cause" to use hearsay statements before they can be admitted into evidence. (2) Statements taken from victims of crimes cannot be introduced by the officer who took them if the primary purpose of the statements was for the officer to use them in investigating and/or prosecuting a crime.

Taylor v. Commonwealth, JUN11, VaApp No. 2236-09-1:

A trial court has no authority to reduce a crime or dismiss it once it has found the evidence proved the charge beyond a reasonable doubt.

## New Ethics Rule

### Rule 1.18. Duties To Prospective Client.

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter; the disqualified lawyer reasonably believes that the screen would be effective to sufficiently protect information that could be significantly harmful to the prospective client; and

(ii) written notice that includes a general description of the subject matter about which the lawyer was consulted and the screening procedures employed is promptly given to the prospective client.

## **Legal Ethics Opinion 1857**

It is unethical for a prosecutor to require or a defense attorney to recommend a section in a plea agreement which waives the defendant's right to raise the issue of ineffective assistance of counsel in an appeal or habeas.

# Procedure

## HB1650 / SB782 Issuance of Felony Warrant by Magistrate

19.2-71 & 72 A magistrate cannot issue a felony warrant based upon a citizen complaint without approval from the Commonwealth Attorney or a law enforcement agency with jurisdiction.

## HB2060 Capias Bond

19.2-130.1 A magistrate must set bond as ordered by the court as part of the capias, but can set more restrictive terms if needed.

## HB1713 Presumption Against Bond Witness Tampering

19.2-120 Obstruction of Justice for threatening a witness is added to the crimes for which no bond is presumed.

## HB2158 Revoked Bond Paid to Locality

19.2-136 All bonds which are revoked are to be paid to the locality where the bond was given.

## HB2437 Amount Bondsmen Can Charge

9.1-185.8(l) A bondsman cannot charge less than 10% or more than 15% of the bond amount. A bondsman cannot lend money with interest to someone so the lendeer can make a bond.

## HB2363 Multijurisdictional Grand Jury: Insurance Fraud

19.2-215.1(1)(t) A multijurisdictional grand jury can investigate insurance fraud.

## HB1695 / SB756 Destruction of Unserved Warrants

19.2-76.1 (1) The Commonwealth may move the court to dismiss **and destroy** any unexecuted warrant a magistrate has sworn. (2) The court shall not dismiss or destroy (a) any warrant for capital murder or (b) any warrant the court deems justifiable to preserve.

## HB2033 Prepayment of Fines

16.2-69.40:1(D) & 16.1-69.40:2(D) Allows the Chief Judge of a circuit to allow prepayment of offenses. (previously all judges of a circuit had to agree)

## HB2090 Time to Serve Emergency Custody Order

16.1-340(K) & 37.2-808(K) An emergency custody order must be served within

6 hours.

HB2095 Loss of Retirement Because of Felony Conviction

Entitlement to retirement under Virginia's state system is lost upon conviction of a felony if "the felony arose from misconduct occurring on or after July 1, 2011, in any position in which the person was a member covered for retirement purposes under any retirement system administered by the Board."

SB854 Permit Refusal because of Felony Conviction

59.1-118 A chief of police or sheriff can refuse a permit to buy secondhand building materials if the applicant has a felony conviction or one of moral turpitude within the last 3 years.

HB2438 Delayed Appeal

19.2-321.1(A) & 19.2-321.2(A) If an appeal is rejected for lack of a timely filed transcript or statement of facts a motion for delayed appeal can be filed for 6 months thereafter.

# 4th Amendment Search & Seizure

## HB1479 Affidavit for Search Warrant

19.2-54 An affidavit will be available to the public after the search warrant has been executed or 15 days after the warrant has been issued, whichever is sooner.

## HB1909 Sealing Search Warrant

19.2-54 A search warrant and affidavit can be sealed by a court upon good cause shown by the Commonwealth in an ex parte hearing, for a specific amount of time. The order sealing the warrant can also be sealed by the court.

## HB1593 Sealing Court Order for Disclosure of Electronic Communications

19.2-70.3(B) A order to disclose electronic communications and any application or statement of facts relating to it can be sealed by a court upon good cause shown by the Commonwealth in an ex parte hearing for 90 days. The seal can be extended for 90 day periods upon subsequent ex parte applications by the Commonwealth.

## SB1162 Arrest Powers ABC Special Agents

19.2-81 Special Agents of the ABC have all powers of arrest of a police officer.

# Substantive

## Violent Crimes

### HB1516 A&B of ABC Agent

18.2-57 An ABC agent is now a law enforcement agent for purposes of punishment under this statute.

### SB772 A&B Fire Marshals

18.2-57 A&B of a fire marshal with police powers is an A&B on a law enforcement officer.

### HB1690 A&B Health Care Worker

18.2-57 Attacking a health care worker engaged in emergency aid at a medical facility for emergency aid is a class 1 misdemeanor with 2 days mandatory minimum.

### HB1898 Abduction

18.2-48 Abducting anyone for prostitution or a child for production of child porn is a class 2 felony.

18.2-356 Taking money for causing any person to engage in forced labor or services, concubinage, prostitution, or the manufacture of any obscene material or child pornography is a class 4 felony.

### HB2361 / SB1141 Abduction: Forfeiture of Vehicle

19.2-386.16(B) Any vehicle used in parental abduction, abduction, or pandering for a minor prostitute by its owner or with its owner's knowledge is subject to forfeiture.

19.2-386.32 Money, property (real and chattel) used to further an abduction can be seized by law enforcement and forfeited by order of the court which convicts the defendant.

### HB2063 Changes to Protective Orders

16.1-228 Family Abuse Expanded to: An act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of **death, sexual assault**, or bodily injury and that is committed by a person against such person's family or household member. **Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual**

**assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.**

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Family protective orders are to prohibit family abuse or **criminal offenses which injure a person or property**. 16.1-253.1 (preliminary), 16.1-253.4 (emergency), 16.1-279.1 (family abuse protective order)

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18.2-60.4 Violating a protective order

1st offense - class 1 misdemeanor

2d within 5 years & one of the two is based upon an act or threat of violence - class 1 misdemeanor with 60 days mandatory minimum jail

3d within 20 years & one of the three is based upon an act or threat of violence - class 6 felony, mandatory minimum 6 months in jail

Assault and Battery in violation of the protective order - class 6 felony

Sneaking into the home of the protected - class 6 felony

Entering the home of the protected and waiting until the protected arrives - class 6 felony

No matter what the sentence imposed by the judge, the judge cannot suspend the entire sentence.

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19.2-81.3(C) If a law enforcement officer has probable cause to believe that a violation of a protective order involves physical aggression, he shall arrest the predominant physical aggressor (absent special circumstances)

In determining the predominant physical aggressor the officer shall consider:

- (i) who was the first aggressor,
  - (ii) the protection of the health and safety of the person to whom the protective order was issued and the person's family and household members,
  - (iii) prior acts of violence, force, or threat by the person against whom the protective order was issued against the person protected by the order or the protected person's family or household members,
  - (iv) the relative severity of the injuries inflicted on persons involved in the incident,
  - (v) whether any injuries were inflicted in self-defense, (vi) witness statements,
  - (vii) other observations.
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19.2-120(B)(11) There is presumption against bond for a second or subsequent protection order violation.

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19.2-152.8(B) Protective orders broadened to be issued on probable cause that a person has been subjected to an act of violence, force, or threat. The order is to prohibit acts of violence, force, or threat or criminal offenses resulting in injury to person or property. 19.2-152.8(B) (emergency), 19.2-152.9 (preliminary), 19.2-152.10 (protective order)  
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19.2-152.8(D) If the protected is physically or mentally incapable of filing a petition for a protective order, an officer may request a 3 day extension of the emergency protective order.

#### HB2089 Notification of EPO

16.1-264(A1) Any person who is subject to an emergency protective order shall have been personally served with the protective order if a law-enforcement officer personally provides to such person a notification of the issuance of the order, which shall be on a form approved by the Executive Secretary of the Supreme Court of Virginia, provided that all of the information and individual requirements of the order are included on the form. The officer making service shall enter or cause to be entered the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court.

## **Sex Crimes**

#### HB2066 / SB1185 Sex Offenders & School Property

18.2-370.5 A sex offender cannot enter a school bus or go onto any public or private property which is being used for a school related or school sponsored activity. Violation is a class 6 felony.

#### SB1318 Sex Offenders on School Grounds

18.2-370.5 A sex offender may not enter school grounds after hours during a school sponsored or school related event. Violation is a class 6 felony.

#### SB927 Affidavit of Refusal to Register: Preliminary Hearing

18.2-471.1(H) Specifies that defendant does not have the right to object to the use of the affidavit in a preliminary hearing.

#### HB1747 / SB1260

18.2-374.1:1 A law enforcement agency can possess child pornography for a governmental purpose.

#### HB1487 Venue for Sex Crimes

18.2-359 Sex crimes can be prosecuted where they occurred or, with the permission of the Commonwealth Attorney in the jurisdiction in which they occurred, in any jurisdiction through which the victim was transported to arrive where the sexual crime occurred.

#### HB1995 Child Pornography Restitution

19.2-305.1(E1) Anyone convicted of a crime involving child pornography is mandated to pay restitution to the child in the pornography.

#### HB2065 DNA Taken Upon Conviction of Sexual Offenses

19.2-310.2 Every person convicted of a violation of (i) § 18.2-67.4 (sexual battery), (ii) § 18.2-67.4:2 (sexual abuse of a child 13 years of age or older but under 15), (iii) subsection C of § 18.2-67.5 (attempt to commit sexual battery), (iv) § 18.2-130 (peeping), or (v) § 18.2-370.6 (penetrating the mouth of a child under 13 with the tongue) shall have a sample of his blood, saliva, or tissue taken for DNA analysis.

#### HB1698 Sexual Offender Civil Commitment: Evaluation

37.2-906(C) (1) Within 21 days of getting an attorney the defendant may change his mind and cooperate in the mental health evaluation. (2) Defense counsel must give the court and Commonwealth notice of the defendant's new decision within 30 days of becoming the defendant's attorney. (3) If the defendant does not cooperate after purporting to change his mind, the court shall admit evidence of the non-cooperation and not allow the defendant's expert to testify.

37.2-910(A) After commitment, the required reviews of the defendant's condition shall be by video.

#### HB2227 Sexual Offender Civil Commitment: Lowered Standard Of Psychologist

37.2-902(B), 37.2-904(B), 37.2-907, 37.2-910(B), & 37.2-913 Mental health experts used by the Commonwealth or appointed to the defense no longer have to be skilled in treatment. They merely have to be knowledgeable about treatment.

## **Drug Crimes**

#### HB 2464 New Schedule II Drugs

54.1-3448(6)(c) Immediate precursor to fentanyl:

4-anilino-N-phenethyl-4-piperidine (ANPP)

### HB1407 / SB770 Underage Drinking & Driving

18.2-266.1 - Punishment is increased to a class 1 misdemeanor, mandatory loss of license for 1 year, & a fine of \$500 or 50 hours community service.

### HB1496 Buying Alcohol for a Minors

4.1-306 Buying alcohol for someone, knowing or **having reason to know** that the person is a minor, is a class 1 misdemeanor.

### HB2462 Minors: Petition Not Required - Referral of Marijuana to Intake

16.1-260(H)(3) A petition does not have to be filed upon misdemeanor possession of marijuana or juvenile DUI if the child is released to a legal guardian.

16.1-260(H)(3) When possession of marijuana is charged by summons, the juvenile shall be entitled to have the charge referred to intake for consideration of informal proceedings. This must be done NLT than 10 days prior to trial. When giving a summons, the officer must give notice of the right to have the charge referred to intake and make return of such service to the court. If the officer fails to make such service or return, the court shall dismiss the summons without prejudice.

### HB2256 / SB1150 Pharmacy Rules

54.1-3420.1 Before delivering a schedule II drug to a person unknown to the pharmacist, or pharmacist's agent, the pharmacist must make a copy of a government ID or record the name and address of the recipient. This record must be kept for a month.

### SB1096 Pharmacy Prescription Monitoring Program

54.1-3434 All pharmacies are allowed access to the Prescription Monitoring Program, but not required to access it.

### HB1434 / SB745 Synthetic Cannabinoids / Bath Salts -

18.2-248.1:1 Possession is a class 1 misdemeanor. Distribution is a class 6 felony. Distribution as an accommodation is a class 1 misdemeanor. Distribution to an inmate, state or local, is a class 4 felony. Manufacture is punished by 5 - 40 years in prison and up to a \$10,000 fine.

18.2-255.1 Distributing printing materials advertising or explaining the use to minors is a class 1 misdemeanor.

18.2-255 Distribution to someone under 18, or causing someone under 18 to be involved in distribution, is punished by 10 - 50 years incarceration and 2 years of this is a mandatory minimum.

18.2-255.2 Distributing, or possessing with intent to distribute, within 1,000 feet of a school or public property or on a school bus is a crime. Simple possession within 1,000 of a facility dealing with mental health, mental retardation, or substance abuse services is a crime. Both crimes are punished by up to five years in prison and up to \$100,000 fine. A second violation carries the same maximum penalty and a mandatory minimum of 1 year incarceration.

18.2-258 Any owner, lessor, agent of any such lessor, manager, chief executive officer, operator, or tenant who knowingly permits, establishes, keeps or maintains a place where users congregate is guilty of a Class 1 misdemeanor and, for a second or subsequent offense, a Class 6 felony.

18.2-258.02 If a house is reinforced, used to manufacture or store the substance, and subject to a search warrant, it is a fortified house and a class 5 felony.

18.2-308.4 Possession of a firearm while distributing, in possession with intent to distribute, or manufacturing is punished by a mandatory minimum 5 years incarceration.

18.2-474.1 Delivery, conspiracy to deliver, or attempt to deliver to an inmate is a class 5 felony.

53.1-203 Possession by an inmate is a class 5 felony.

These laws went into effect 23 March 2011.

## **Theft / Property Crimes**

### HB2050 Pay for Metal

59.1-126(b) A buyer of secondhand metal must pay by check if purchasing more than \$1,000.

### HB2035 / SB1215 Medicaid Restitution

32.1-314(B) Medicaid fraud restitution shall be paid to the Department of Medical Assistance Services.

## **Weapons Crimes**

### HB1411 Reckless Handling of Firearm While Hunting

18.2-56.1 - Using a firearm recklessly while hunting is a class 1 misdemeanor and allows a judge to revoke the violator's ability to hunt or trap with a firearm for

1 - 5 years. Hunting with a firearm while revoked is a class 1 misdemeanor and the judge can revoke the violator's ability to hunt or trap with a firearm for 1 year - life.

SB754 / HB1779 Reduce Limitation on Firearm Possession with Preliminary Protective Order for Protection of a Child

18.2-308.1:4 Changes ban on possession from all persons under a preliminary protective order for the protection of a child (16.1-253) to only those under a preliminary protective order for neglect or abuse of a child.

SB757 Pneumatic Gun / Private Property

15.2-915.4 A locality cannot prohibit the firing of a pneumatic gun on private property if it is allowed by the land holder and reasonable care is taken to keep the projectile from leaving the property.

HB1699 Purchase of Firearm by Formerly Incompetent

(1) A person formerly found incompetent may, after restoration, petition the general district court to be able to purchase a firearm. (2) A copy of the petition must go to the Commonwealth. (3) If either party requests a hearing the court must have one. (4) If the court determines that (a) the person is not a danger to the community and (b) it is not contrary to public interest, the judge shall grant the request. (5) If denied in general district court, the petitioner can have a de novo appeal to circuit court.

SB903 Violent Felony: Firearm at School

17.1-805(C) & 18.2-308.1(C) For the sentencing guidelines, merely possessing a firearm at a school is not a violent conviction; it must be possessed with intent to use.

## **Motor Vehicles**

### HB1981 Bikes and Stop Lights

46.2-833 A motorcycle, moped, or bicycle can make a left turn through a stop light if it has sat through 2 cycles of the light or 2 minutes and there is no traffic to yield to.

### HB2362 Restricted Driving License to Jail

18.2-271.1 A restricted driver license is allowed for trips to and from jail to serve weekend sentences or sentences on non-consecutive days.

### HB2374 Moped / Motorcycle

46.2-100 A moped which travels over 35 mph is a motorcycle.

### HB2391 Out of State License & Virginia Suspension

46.2-398 If a person has a valid driver's license not from Virginia, the court shall not order the person to physically surrender his out of state license.

### HB2423 Warrant for DUI Watercraft

19.2-81 An officer may arrest for probable cause DUI watercraft and transfer custody to another officer who can get a warrant based upon the statements of the first officer.

### HB2420 TV in Motor Vehicle

46.2-1077 No TV shall be in a vehicle so that the picture can be seen while the vehicle is in motion. Exceptions: 5. vehicle information display; 6. TV used to see occupants; 7. used for safety or traffic engineering information; 8. has an interlock which stops it when the vehicle is driven.

### HB2485 Reckless Driving Government Property

46.2-864 Reckless driving can happen on government property open to the public.

### HB1591 Breath Test Certificates

19.2-187.1(A)(3) The certificate must be filed with the clerk of the court within 3 days of the certificate and notice of intent to use the certificate in lieu of testimony having been served on the defendant.

### HB2051 / SB1266 Size and Weight Compliance Agents

46.2-217 (1) Allows the creation of Size and Weight Compliance Agents. (2) Agents shall (i) enforce the requirements for the use of dyed diesel fuel in §§ 58.1-2265 and 58.1-2267; (ii) enforce the weight & size requirements of Article 17 (§ 46.2-1122 et seq.) of Chapter 10; (iii) issue citations for violations of license, registration, and tax requirements and vehicle size limits pursuant to § 46.2-613.1; and (iv) carry out the vehicle seizure provisions of §§ 46.2-613.4, 46.2-613.5, 46.2-1134, and 46.2-1136 at any permanent weighing station.

#### HB1694 Getting License Back After Suspended For Child Non-Support

46.2-320(D) & 46.2-320(E) (1) A person who has had his license suspended for failure to pay child support must (a) pay 5% of the delinquency or **\$600**, whichever is greater, and (b) enter into an agreement to pay back within 10 years, in order to get his license back (2) If a person has previously entered into a payment plan in order to get his license back and the license was suspended again for failure to pay child support, he must pay 5% of the delinquency or **\$1200** and enter into an agreement to pay it back within **7 years**. (3) If a person has twice previously entered into a payment plan in order to get his license back and the license was suspended again for failure to pay child support, he must pay 5% of the delinquency or **\$1800** and enter into an agreement to pay it back within **7 years**.

#### HB1791 License Reinstatement Fee for Multiple Suspensions

46.2-411(G) If a person has multiple suspensions at the same time he only has to pay one reinstatement fee. The reinstatement fee shall be the highest of all due and an extra \$5.

#### HB1809 Commonwealth Attorney Prosecuting Civil Refusals of Breath Tests

15.2-1627(B) A Commonwealth Attorney may enforce civil refusals to submit to blood/breath tests.

## **Other**

### HB1442 Hunting Animals -

18.2-97.1 Removing an electronic transmitter from a dog, falcon, hawk or owl to keep the owner from finding it is a class 1 misdemeanor. Restitution shall include the value of any animal lost or killed as a result of transmitter removal.

18.2-136 If an owner goes on to prohibited land to retrieve a dog, falcon, hawk, or owl which has strayed during hunting, it is a class 4 misdemeanor for the animal owner to not identify himself to the landowner, or his agent, upon request.

### HB1461 Trespassing

18.2-119 Allows an **agent** of an owner, lessee, custodian to bar a person from property and place no trespassing signs.

### HB1541 / SB1026 Treatment of Farm Animals

3.2-6503.1 A new statute making it a class 4 misdemeanor for agricultural animals to be mistreated.

### HB1584 Illegal Gambling - Internet

18.2-325 (1) Overpaying to access an internet site where one can win money is illegal. Overpaying for an "other thing" which can be gambled to get money back is illegal. (2) Paying for access to an internet site or for "other things" which is incidental to a chance to win money is illegal. (3) It is no longer required that items be redeemed where bought for it to be illegal gambling.

### HB1605 Fraudulent Medical Record

18.2-260.1 Falsifying a medical record with intent to defraud is a class 1 misdemeanor.

### HB1777 False Birth Certificate / ID

18.2-204.1 (A) Possession of a false birth certificate is a class 1 misdemeanor. Creating or transferring a false birth certificate is a class 6 felony. (B) Possessing or transferring a false ID is a class 1 misdemeanor. (C) Anyone possessing or transferring a birth certificate or ID with intent to purchase a firearm is guilty of a class 6 felony.

### HB2059 Profane and Threatening Language via Video

18.2-427 Profane and threatening language received via video or electronic communication on a cell phone or electronic device is covered by this statute.

SB1067 Statute of Limitations Unauthorized Practice of Law

19.2-8 Prosecution for unauthorized practice is changed from a year statute of limitations to two years.

HB1712 Fishing License Interjurisdictional Waters

29.1-534 If a person is fishing in waters which adjoin two states the fisherman must have a license for the state he is standing in. (changed from requiring a license from state of residence) Not having a license is a class 2 misdemeanor.

HB2272 Statute of Limitations: Locality's Professional Licensure Requirements

19.2-8 Prosecution of any misdemeanor violation of any professional licensure requirement imposed by a locality shall commence within one year of the discovery of the offense by the complainant, but in no case later than five years from occurrence of the offense.