

Department of Legislative Services  
Maryland General Assembly  
2005 Session

FISCAL AND POLICY NOTE

House Bill 431 (Delegate Mandel, *et al.*)  
Health and Government Operations

---

Health Occupations - Practicing Without License - Penalties

---

This bill increases the penalty for practicing most health occupations without a license or a certificate from a misdemeanor to a felony and, in most cases, doubles the maximum fine and the maximum prison term that may be imposed upon conviction.

---

Fiscal Summary

**State Effect:** Minimal decrease in general fund revenues and minimal increase in general fund expenditures due to the bill's penalty provisions. Health occupations boards' special fund revenues and expenditures would not be affected.

**Local Effect:** Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

**Small Business Effect:** Meaningful for violators who are found guilty of a felony offense and charged a fine.

---

Analysis

**Bill Summary:** The maximum felony penalties for practicing without a license range from a \$1,000 fine to a \$10,000 fine or 1 year to 10 years in prison, or both in most cases. The maximum penalty for repeat offenders practicing without a license in two health occupations is even greater.

Among the health occupations affected, the bill retains the variation in the fines and prison terms that could be imposed. For example, health occupations with a maximum

penalty of \$1,000 or one year in prison, or both, are audiologists, hearing aid dispensers, speech-language pathologists, optometrists, professional counselors and therapists, psychologists, and social workers. Physicians and physician assistants are subject to a maximum penalty of \$10,000 or 10 years in prison, or both for all offenses. However, chiropractors and dentists face maximum penalties of \$4,000 or one year in prison for a first offense and \$12,000 or two years in prison for a chiropractor's subsequent offense or \$12,000 and one year in prison for a dentist's subsequent offense.

**Appendix 1** includes the changes in maximum penalties for the health occupations affected and makes current law comparisons. This bill does not change the misdemeanor penalty for practicing without certification under the State Board for Certification of Residential Child Care Program Administrators.

**Current Law:** Practicing a health occupation without a license is a misdemeanor offense for the health occupations affected by this bill. Upon conviction, the maximum penalties individuals face range from \$500 or 90 days in prison to \$5,000 or five years in prison, or both in most cases. The maximum penalty increases to \$6,000 or one year in prison for repeat offenders in two health occupations.

For example, social workers face a maximum penalty of either \$500 or 90 days in prison, whereas audiologists, hearing aid dispensers, and speech-language pathologists face both. Health occupations with maximum penalties of \$500 or six months in prison are optometrists, professional counselors and therapists, and psychologists. Morticians face a maximum penalty of \$500 or one year in prison, or both.

Chiropractors and dentists face maximum penalties of \$2,000 or six months in prison for a first offense and \$6,000 or one year in prison for a subsequent offense.

Some health occupations boards also may impose civil fines on individuals who practice without a license that are deposited into the boards' special funds. The Board of Physicians can levy a \$5,000 civil fine against a person who practices as a physician assistant or respiratory care, radiation oncology/therapy technology, medical radiation technology, or nuclear medicine technology without a license. The Board of Physicians can impose a \$50,000 civil fine against a person who practices medicine without a license. Three other boards have similar authority. The State Board of Pharmacy, the State Board of Physical Therapy Examiners, and the State Board of Podiatric Medical Examiners can each impose a \$50,000 civil fine against a person who practices without a license.

### *Residential Child Care Program Administrators*

Under the State Board for Certification of Residential Child Care Program Administrators, it is a misdemeanor to perform, attempt to perform, or offer to perform program administrator duties unless certified by the board. It also is a misdemeanor to supervise, direct, induce, or aid an uncertified individual to perform program administrator duties. Additionally, persons cannot misrepresent themselves to the public as certified, sell or aid in selling or fraudulently obtaining certificates, or operate a program without a certified program administrator. An individual who commits any of these violations is guilty of a misdemeanor and on conviction is subject to a maximum \$1,000 penalty for the first offense and a maximum \$5,000 penalty or six months in prison, or both, for subsequent violations.

**Background:** Generally, with certain statutory exceptions, misdemeanor offenses are heard in the District Court and felony offenses in the circuit courts. All jury trials are heard in the circuit courts.

Changing crimes from misdemeanors to felonies means: (1) that such cases will likely be filed in the circuit courts rather than the District Court; and (2) some persons could eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses, for prior felony convictions. It is not known whether, under this bill's provisions, the prospect of a jury trial might spur more plea bargains and affect actual sentencing practices for practicing without a license. In any case, this bill would shift a minimal number of cases from the District Court to the circuit courts.

The Department of Health and Mental Hygiene reports that the District Court has been reluctant to pursue misdemeanor cases for most health occupations boards because the current fine structure is too low to merit prosecution.

The Board of Physicians states that over the last five years the board has taken action against a total of 14 people for practicing without a license, an average of three people per year. The Department of Public Safety and Correctional Services' Division of Correction (DOC) states that, although it does not maintain records specific to this crime, in fiscal 2003 there were five false representation offenses. One of these offenses listed false representation as the major offense with a sentence of 12 months incarceration.

**State Revenues:** General fund revenues could decrease minimally as a result of the bill shifting a minimal number of cases from District Court to the circuit courts. However, because the number of these cases is expected to remain small, that decrease could be minimal. Health occupations boards' special fund revenues would not be affected

because this bill does not change the existing maximum civil fines certain boards may impose.

**State Expenditures:** Since this bill increases the likelihood that persons would serve longer incarceration terms, it is assumed that general fund expenditures could increase minimally due to more people being committed to DOC facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. However, because the number of these cases is expected to remain small, that increase would be minimal. Health occupations boards' special fund expenditures would not be affected.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$310 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2006 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Revenues:** Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts. This bill would shift a minimal number of cases from the District Court to the circuit courts.

**Local Expenditures:** Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2006.

## **Additional Information**

**Prior Introductions:** SB 330 of 2004, and its cross file HB 1321, would have raised the penalties and prison terms for misdemeanor offenses across many health occupations boards to make them more uniform. SB 330 was referred to interim study by the Senate Education, Health, and Environmental Affairs Committee. HB 1321 was withdrawn.

**Cross File:** SB 24 (Senator Teitelbaum, *et al.*) – Education, Health, and Environmental Affairs.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - February 2, 2005  
ncs/ljm

---

Analysis by: Lisa A. Daigle

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510

**Appendix 1**  
**Existing Misdemeanor Penalties for Practicing Without a License (or Certificate)**  
**and Proposed Felony Penalties for this Violation Under HB 431**

<u>Health Occupation</u>	<u>Maximum Existing Misdemeanor Penalties</u>	<u>Maximum Felony Penalties Under HB 431</u>
Acupuncturists	\$5,000 or 3 years in prison, or both	\$10,000 or 6 years in prison, or both
Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists	\$500 or 90 days in prison, or both	\$1,000 or 1 year in prison, or both
Chiropractors	<b>First offense:</b> \$2,000 or 6 months in prison <b>Subsequent offense:</b> \$6,000 or 1 year in prison	<b>First offense:</b> \$4,000 or 1 year in prison <b>Subsequent offense:</b> \$12,000 or 2 years in prison
Massage Therapists	\$5,000 or 1 year in prison, or both	\$10,000 or 2 years in prison, or both
Dentists	<b>First offense:</b> \$2,000 or 6 months in prison <b>Subsequent offense:</b> \$6,000 or 1 year in prison	<b>First offense:</b> \$4,000 or 1 year in prison <b>Subsequent offense:</b> \$12,000 or 1 year in prison
Dental Hygienists	\$1,000	\$2,000
Dietitians-Nutritionists	\$1,000 or 1 year in prison, or both	\$2,000 or 2 years in prison, or both
Morticians	\$500 or 1 year in prison, or both	\$1,000 or 2 years in prison, or both
Electrologists	\$5,000 or 1 year in prison, or both	\$10,000 or 2 years in prison, or both
Nurses	\$5,000 or 1 year in prison, or both	\$10,000 or 2 years in prison, or both
Nursing Home Administrators	<b>First offense:</b> \$1,000 <b>Subsequent offense:</b> \$5,000 or 6 months in prison, or both	<b>First offense:</b> \$2,000 <b>Subsequent offense:</b> \$10,000 or 1 year in prison, or both
Occupational Therapists	\$1,000 or 1 year in prison, or both	\$2,000 or 2 years in prison, or both
Optometrists	\$500 or 6 months in prison, or both	\$1,000 or 1 year in prison, or both
Pharmacists*	\$1,000 or 1 year in prison, or both	\$2,000 or 2 years in prison, or both
Physical Therapists*	\$5,000 or 3 years in prison, or both	\$10,000 or 6 years in prison, or both
Respiratory Care Practitioners*	\$1,000 or 1 year in prison, or both	\$2,000 or 2 years in prison, or both

<b><u>Health Occupation</u></b>	<b><u>Maximum Existing Misdemeanor Penalties</u></b>	<b><u>Maximum Felony Penalties Under HB 431</u></b>
Radiation Oncology/Therapy, Medical Radiation, and Nuclear Medicine Technologists*	\$1,000 or 1 year in prison, or both	\$2,000 or 2 years in prison, or both
Physicians*	\$5,000 or 5 years in prison, or both	\$10,000 or 10 years in prison, or both
Physician Assistants*	\$5,000 or 5 years in prison, or both	\$10,000 or 10 years in prison, or both
Podiatrists*	\$5,000 or 90 days in prison	\$10,000 or 1 year in prison
Professional Counselors and Therapists	\$500 or 6 months in prison, or both	\$1,000 or 1 year in prison, or both
Psychologists	\$500 or 6 months in prison, or both	\$1,000 or 1 year in prison, or both
Social Workers	\$500 or 90 days in prison	\$1,000 or 1 year in prison

\*Health occupations which are also subject to a civil fine for practicing without a license imposed by the appropriate regulatory board.