

HOUSE BILL 1628

D4, D3

8lr0812

By: **Delegate Hettleman**

Introduced and read first time: February 9, 2018

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Privileged Communications – Mental Health Providers – Exception for**
3 **Suspected Child Abuse and Neglect**

4 FOR the purpose of providing that a certain patient privilege does not exist for certain
5 records and certain testimony of a psychiatrist or licensed psychologist, a
6 psychiatric–mental health nursing specialist or professional counselor, or a licensed
7 certified social worker related to suspected child abuse and neglect in certain civil
8 proceedings under certain circumstances; and generally relating to privileged
9 communications between mental health professionals and patients.

10 BY repealing and reenacting, with amendments,
11 Article – Courts and Judicial Proceedings
12 Section 9–109, 9–109.1, and 9–121
13 Annotated Code of Maryland
14 (2013 Replacement Volume and 2017 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
16 That the Laws of Maryland read as follows:

17 **Article – Courts and Judicial Proceedings**

18 9–109.

19 (a) (1) “Authorized representative” means a person authorized by the patient
20 to assert the privilege granted by this section and until permitted by the patient to make
21 disclosure, the person whose communications are privileged.

22 (2) “Licensed psychologist” means a person who is licensed to practice
23 psychology under the laws of Maryland.

24 (3) “Patient” means a person who communicates or receives services

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 regarding the diagnosis or treatment of his mental or emotional disorder from a
2 psychiatrist, licensed psychologist, or any other person participating directly or vitally with
3 either in rendering those services in consultation with or under direct supervision of a
4 psychiatrist or psychologist.

5 (4) "Psychiatrist" means a person licensed to practice medicine who devotes
6 a substantial proportion of his time to the practice of psychiatry.

7 (b) Unless otherwise provided, in all judicial, legislative, or administrative
8 proceedings, a patient or the patient's authorized representative has a privilege to refuse
9 to disclose, and to prevent a witness from disclosing:

10 (1) Communications relating to diagnosis or treatment of the patient; or

11 (2) Any information that by its nature would show the existence of a
12 medical record of the diagnosis or treatment.

13 (c) If a patient is incompetent to assert or waive this privilege, a guardian shall
14 be appointed and shall act for the patient. A previously appointed guardian has the same
15 authority.

16 (d) There is no privilege if:

17 (1) A disclosure is necessary for the purposes of placing the patient in a
18 facility for mental illness;

19 (2) A judge finds that the patient, after being informed there will be no
20 privilege, makes communications in the course of an examination ordered by the court and
21 the issue at trial involves his mental or emotional disorder;

22 (3) In a civil or criminal proceeding:

23 (i) The patient introduces his mental condition as an element of his
24 claim or defense; or

25 (ii) After the patient's death, his mental condition is introduced by
26 any party claiming or defending through or as a beneficiary of the patient;

27 (4) The patient, an authorized representative of the patient, or the personal
28 representative of the patient makes a claim against the psychiatrist or licensed
29 psychologist for malpractice;

30 (5) Related to civil or criminal proceedings under defective delinquency
31 proceedings;

32 (6) The patient expressly consents to waive the privilege, or in the case of
33 death or disability, his personal or authorized representative waives the privilege for

1 purpose of making claim or bringing suit on a policy of insurance on life, health, or physical
2 condition;

3 (7) In a criminal proceeding against a patient or former patient alleging
4 that the patient or former patient has harassed or threatened or committed another
5 criminal act against the psychiatrist or licensed psychologist, the disclosure is necessary to
6 prove the charge; [or]

7 (8) In a peace order proceeding under Title 3, Subtitle 15 of this article in
8 which the psychiatrist or licensed psychologist is a petitioner and a patient or former
9 patient is a respondent, the disclosure is necessary to obtain relief; OR

10 **(9) IN A DIVORCE, CUSTODY, GUARDIANSHIP, ADOPTION,**
11 **PROTECTIVE ORDER, OR ANY OTHER CIVIL PROCEEDING UNDER THE FAMILY LAW**
12 **ARTICLE, THE DISCLOSURE OF RECORDS OF, OR TESTIMONY REGARDING,**
13 **TREATMENT OF A CHILD BY A PSYCHIATRIST OR LICENSED PSYCHOLOGIST IN**
14 **RESPONSE TO SUSPECTED CHILD ABUSE OR NEGLECT REPORTED, AS REQUIRED**
15 **UNDER § 5-704 OF THE FAMILY LAW ARTICLE, IS NECESSARY TO AID THE COURT IN**
16 **DETERMINING THE BEST INTERESTS OF A CHILD, AND:**

17 **(I) THE PSYCHIATRIST OR LICENSED PSYCHOLOGIST**
18 **REPORTED THE SUSPECTED ABUSE OR NEGLECT; OR**

19 **(II) A COWORKER OR COLLEAGUE OF THE PSYCHIATRIST OR**
20 **LICENSED PSYCHOLOGIST, OR A MEMBER OF AN ORGANIZATION BY WHOM THE**
21 **PSYCHIATRIST OR LICENSED PSYCHOLOGIST IS EMPLOYED, REPORTED THE**
22 **SUSPECTED ABUSE OR NEGLECT.**

23 9-109.1.

24 (a) (1) In this section the following words have the meanings indicated.

25 (2) “Client” means an individual who communicates to or receives services
26 from a psychiatric–mental health nursing specialist or a professional counselor regarding
27 the diagnosis or treatment of the individual’s mental or emotional disorder.

28 (3) “Professional counselor” means an individual who is certified, licensed,
29 or exempted from licensure as a counselor under Title 17 of the Health Occupations Article.

30 (4) “Psychiatric–mental health nursing specialist” means a registered
31 nurse who:

32 (i) Has a master’s degree in psychiatric–mental health nursing;

33 (ii) Has a baccalaureate degree in nursing and a master’s degree in

1 a mental health field; or

2 (iii) Is certified as a clinical specialist in psychiatric and mental
3 health nursing by the American Nurses' Association or by a body approved by the Board of
4 Nursing.

5 (b) Unless otherwise provided, in any judicial, legislative, or administrative
6 proceeding, a client or a client's authorized representative has a privilege to refuse to
7 disclose, and to prevent a witness from disclosing, communications relating to:

8 (1) Diagnosis or treatment of the client; or

9 (2) Any information that by its nature would show a medical record of the
10 diagnosis or treatment exists.

11 (c) (1) If a client is incompetent to assert or waive this privilege, a guardian
12 shall be appointed and shall act for the client.

13 (2) A guardian appointed before the proceeding has the authority to act for
14 the client.

15 (d) There is no privilege if:

16 (1) A disclosure is necessary for the purpose of placing the client in a
17 facility for mental illness;

18 (2) A judge finds that the client, after being informed that there will be no
19 privilege, makes communications in the course of an examination ordered by the court and
20 the issue at trial involves the client's mental or emotional disorder;

21 (3) In a civil or criminal proceeding:

22 (i) The client introduces the client's mental condition as an element
23 of the claim or defense; or

24 (ii) After the client's death, the client's mental condition is
25 introduced by any party claiming or defending through or as a beneficiary of the client;

26 (4) The client, the authorized representative of the client, or the personal
27 representative of the client makes a claim against the psychiatric-mental health nursing
28 specialist or the professional counselor for malpractice;

29 (5) The client expressly consents to waive the privilege or, in the case of
30 death or disability, the client's personal representative waives the privilege for the purpose
31 of making a claim or bringing suit on a policy of insurance on life, health, or physical
32 condition;

1 (6) In a criminal proceeding against a client or former client alleging that
2 the client or former client has harassed or threatened or committed another criminal act
3 against the psychiatric–mental health nursing specialist or the professional counselor, the
4 disclosure is necessary to prove the charge; [or]

5 (7) In a peace order proceeding under Title 3, Subtitle 15 of this article in
6 which the psychiatric–mental health nursing specialist or professional counselor is a
7 petitioner and a client or former client is a respondent, the disclosure is necessary to obtain
8 relief; OR

9 (8) IN A DIVORCE, CUSTODY, GUARDIANSHIP, ADOPTION,
10 PROTECTIVE ORDER, OR ANY OTHER CIVIL PROCEEDING UNDER THE FAMILY LAW
11 ARTICLE, THE DISCLOSURE OF RECORDS OF, OR TESTIMONY REGARDING,
12 TREATMENT OF A CHILD BY A PSYCHIATRIC–MENTAL HEALTH NURSING SPECIALIST
13 OR PROFESSIONAL COUNSELOR IN RESPONSE TO SUSPECTED CHILD ABUSE OR
14 NEGLECT REPORTED, AS REQUIRED UNDER § 5–704 OF THE FAMILY LAW ARTICLE,
15 IS NECESSARY TO AID THE COURT IN DETERMINING THE BEST INTERESTS OF A
16 CHILD, AND:

17 (I) THE PSYCHIATRIC–MENTAL HEALTH NURSING SPECIALIST
18 OR PROFESSIONAL COUNSELOR REPORTED THE SUSPECTED ABUSE OR NEGLECT;
19 OR

20 (II) A COWORKER OR COLLEAGUE OF THE
21 PSYCHIATRIC–MENTAL HEALTH NURSING SPECIALIST OR PROFESSIONAL
22 COUNSELOR OR A MEMBER OF AN ORGANIZATION BY WHOM THE
23 PSYCHIATRIC–MENTAL HEALTH NURSING SPECIALIST OR PROFESSIONAL
24 COUNSELOR IS EMPLOYED REPORTED THE SUSPECTED ABUSE OR NEGLECT.

25 (e) There is no privilege in:

26 (1) Any administrative or judicial nondelinquent juvenile proceeding;

27 (2) Any guardianship and adoption proceeding initiated by a child
28 placement agency;

29 (3) Any guardianship and protective services proceeding concerning a
30 disabled person; or

31 (4) Any criminal or delinquency proceeding in which there is a charge of
32 child abuse or neglect or that arises out of an investigation of suspected child abuse or
33 neglect.

1 (a) (1) In this section the following words have the meanings indicated.

2 (2) "Client" means a person who communicates to or receives services from
3 a licensed certified social worker regarding his mental or emotional condition, or from any
4 other person participating directly or vitally with a licensed certified social worker in
5 rendering those services, in consultation with or under direct supervision of a licensed
6 certified social worker.

7 (3) "Licensed certified social worker" means any person licensed as a
8 certified social worker under Title 19 of the Health Occupations Article.

9 (4) "Witness" means a licensed certified social worker or any other person
10 participating directly or vitally with a licensed certified social worker in rendering services
11 to a client, in consultation with or under direct supervision of a licensed certified social
12 worker.

13 (b) Unless otherwise provided, in all judicial or administrative proceedings, a
14 client has a privilege to refuse to disclose, and to prevent a witness from disclosing,
15 communications made while the client was receiving counseling or any information that by
16 its nature would show that such counseling occurred.

17 (c) If a client is incompetent to assert or waive this privilege, a guardian shall be
18 appointed and shall act for the client. A previously appointed guardian has the same
19 authority.

20 (d) There is no privilege if:

21 (1) A disclosure is necessary for the purpose of placing the client in a
22 facility for mental illness;

23 (2) A judge finds that the client, after being informed there will be no
24 privilege, makes communications in the course of an examination ordered by the court;

25 (3) In a civil or criminal proceeding:

26 (i) The client introduces the client's mental condition as an element
27 of the claim or defense; or

28 (ii) After the client's death, the client's mental condition is
29 introduced by any party claiming or defending through or as a beneficiary of the client;

30 (4) The client or the personal representative of the client makes a claim
31 against the licensed certified social worker for malpractice;

32 (5) The client expressly consents to waive the privilege, or in the case of
33 death or disability, the client's personal representative waives the privilege for purpose of
34 making a claim or bringing suit on a policy of insurance on life, health, or physical

1 condition;

2 (6) In a criminal proceeding against a client or former client alleging that
3 the client or former client has harassed or threatened or committed another criminal act
4 against the licensed certified social worker, the disclosure is necessary to prove the charge;
5 [or]

6 (7) In a peace order proceeding under Title 3, Subtitle 15 of this article in
7 which the licensed certified social worker is a petitioner and a client or former client is a
8 respondent, the disclosure is necessary to obtain relief; OR

9 (8) IN A DIVORCE, CUSTODY, GUARDIANSHIP, ADOPTION,
10 PROTECTIVE ORDER, OR ANY OTHER CIVIL PROCEEDING UNDER THE FAMILY LAW
11 ARTICLE, THE DISCLOSURE OF RECORDS OF, OR TESTIMONY REGARDING,
12 TREATMENT OF A CHILD BY A LICENSED CERTIFIED SOCIAL WORKER IN RESPONSE
13 TO SUSPECTED CHILD ABUSE OR NEGLECT REPORTED, AS REQUIRED UNDER § 5-704
14 OF THE FAMILY LAW ARTICLE, IS NECESSARY TO AID THE COURT IN DETERMINING
15 THE BEST INTERESTS OF A CHILD, AND:

16 (I) THE LICENSED CERTIFIED SOCIAL WORKER REPORTED THE
17 SUSPECTED ABUSE OR NEGLECT; OR

18 (II) A COWORKER OR COLLEAGUE OF THE LICENSED CERTIFIED
19 SOCIAL WORKER OR A MEMBER OF AN ORGANIZATION BY WHOM THE LICENSED
20 CERTIFIED SOCIAL WORKER IS EMPLOYED REPORTED THE SUSPECTED ABUSE OR
21 NEGLECT.

22 (e) There is no privilege in:

23 (1) Any administrative or judicial nondelinquent juvenile proceeding;

24 (2) Any guardianship and adoption proceeding initiated by a child
25 placement agency;

26 (3) Any guardianship and protective services proceeding concerning
27 disabled persons; or

28 (4) Any criminal or delinquency proceeding in which there is a charge of
29 child abuse or neglect or which arises out of an investigation of suspected child abuse or
30 neglect.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2018.