

# HOUSE BILL 821

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By: **Delegate Simmons**

Introduced and read first time: February 6, 2013

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Courts and Judicial Proceedings – Communications Between Patient and**  
3 **Psychiatrist or Licensed Psychologist – Exceptions to Privilege**

4 FOR the purpose of creating an exception to the privilege of communications of a  
5 certain patient if the disclosure is necessary to prove a charge in a certain  
6 criminal proceeding against the patient; creating an exception to the privilege of  
7 certain communications of a certain patient if the patient is using the services of  
8 the psychiatrist or licensed psychologist for certain purposes; and generally  
9 relating to communications between a patient and psychiatrist or licensed  
10 psychologist.

11 BY repealing and reenacting, with amendments,  
12 Article – Courts and Judicial Proceedings  
13 Section 9–109  
14 Annotated Code of Maryland  
15 (2006 Replacement Volume and 2012 Supplement)

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

18 **Article – Courts and Judicial Proceedings**

19 9–109.

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

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           (3) “Patient” means a person who communicates or receives services  
2 regarding the diagnosis or treatment of his mental or emotional disorder from a  
3 psychiatrist, licensed psychologist, or any other person participating directly or vitally  
4 with either in rendering those services in consultation with or under direct supervision  
5 of a psychiatrist or psychologist.

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

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

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

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

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

18           (d) There is no privilege if:

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

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

24           (3) In a civil or criminal proceeding:

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

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

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

32           (5) Related to civil or criminal proceedings under defective  
33 delinquency proceedings; [or]

1           (6)    The patient expressly consents to waive the privilege, or in the  
2 case of death or disability, his personal or authorized representative waives the  
3 privilege for purpose of making claim or bringing suit on a policy of insurance on life,  
4 health, or physical condition;

5           **(7)    IN A CRIMINAL PROCEEDING AGAINST A PATIENT OR FORMER**  
6 **PATIENT ALLEGING THAT THE PATIENT OR FORMER PATIENT HAS HARASSED OR**  
7 **THREATENED THE PSYCHIATRIST OR LICENSED PSYCHOLOGIST, THE**  
8 **DISCLOSURE IS NECESSARY TO PROVE THE CHARGE; OR**

9           **(8)    THE PATIENT IS USING THE SERVICES OF THE PSYCHIATRIST**  
10 **OR LICENSED PSYCHOLOGIST IN FURTHERANCE OF AN ONGOING OR FUTURE**  
11 **CRIME OR FRAUD.**

12           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2013.