

# SENATE NO. 1118



## **AN ACT TO PROTECT PATIENT CONFIDENTIALITY**

*Be it enacted by the Senate and House of Representatives in General Court assembled,  
And by the authority of the same, as follows:*

1 SECTION 1. Chapter 112 of the General Laws, as appearing in the 2004 Official Edition, is  
2 hereby amended by inserting after section 172 the following section:-

3 Section 172 B. Except as in hereinafter provided, in any court proceeding, and in any  
4 proceeding preliminary thereto and in legislative and administrative proceedings, a client shall  
5 have the privilege of refusing to disclose and of preventing a witness from disclosing, any  
6 communication, wherever made, between said client and any mental health counselor licensed  
7 pursuant to the provisions of section one hundred and sixty-three of chapter one hundred and  
8 twelve, or a mental health counselor employed in a state, county or municipal government  
9 agency, relative to the diagnosis or treatment of the client's mental or emotional condition.

10 If a client is incompetent to exercise or waive such privilege, a guardian shall be appointed to  
11 act in the client's behalf under this section. A previously appointed guardian shall be authorized  
12 to so act.

13 The privilege granted hereunder shall not apply to any of the following communications:

14 (a) If a mental health counselor, in the course of his diagnosis or treatment of the client,  
15 determines the client is in need of treatment in a hospital for mental emotional illness or that  
16 there is a threat of imminently dangerous activity by the patient against himself or another  
17 person, and on the basis of such determination discloses such communication either for the  
18 purpose of placing or retaining the client in such hospital, provided however that the provision  
19 of this section shall continue in effect after the patient is in said hospital, or placing the patient  
20 under arrest or under the supervision of law enforcement authorities.

21 (b) If a judge finds that the client, after having been informed that the communications would  
22 not be privileged, has made communications to mental health counselor in the course of a  
23 psychiatric examination ordered by the court, provided that such communications shall be  
24 admissible only on issues involving the patient's mental or emotional condition but not as a  
25 confession or admission of guilt.

26 (c) In any proceeding, except one involving child custody, in which the client introduces his  
27 mental or emotional condition as an element of his claim or defense, and the judge or presiding  
28 officer finds that it is more important to the interests of justice that the communication be  
29 disclosed than that the relationship between client and mental health counselor be protected;

30 (d) In any proceeding after the death of a client in which his mental or emotional condition is  
31 introduced by any party claiming or defending through or as beneficiary of the patient as an  
32 element of the claim or the defense, and the judge or presiding officer finds that it is more  
33 important to the interests of justice that the communication be disclosed than that the  
34 relationship between client and mental health counselor be protected.

35 (e) In the initiation of proceedings under paragraph C of section twenty-three or under section  
36 twenty-four of chapter one hundred and nineteen, or section three of chapter two hundred ten or  
37 to give testimony in connection therewith;

38 (f) In any proceeding whereby the mental health counselor has acquired the information while  
39 conducting an investigation pursuant to section fifty-one B of chapter one hundred nineteen;

40 (g) Or in any case involving child custody, adoption or the dispensing with the need for consent  
41 to adoption which upon hearing in chambers, the judge in the exercise of his discretion,  
42 determines that the mental health counselor has evidence bearing significantly on the client's  
43 ability to provide suitable care or custody, and it is more important to the welfare of the child  
44 that the communication be disclosed than that the relationship between the client and the mental  
45 health counselor be protected; provided however, that in such case of adoption or the dispensing  
46 with the need for consent to adoption, a judge shall determine that the client has been informed  
47 that such communication should not be privileged; or

48 (h) If in any proceeding brought by the client against the mental health counselor, and in any  
49 malpractice, criminal, or license revocation proceeding, in which disclosure is necessary or  
50 relevant to the claim or defense of the mental health counselor.