



Background

- Doctor-patient, lawyer-client and priest-penitent relationships have long been privileged, allowing recipients to withhold confidential information learned in their professional capacity. However, the reporter's privilege is much less developed, and journalists are frequently asked to reveal confidential sources and information they have obtained during newsgathering to attorneys, the government and courts. (source: Reporter's Committee for Freedom of the Press)
- Thirty-one states and the District of Columbia have enacted statutory shield laws to protect the media from compelled disclosure of confidential sources and federal shield legislation is being considered in Congress.
- Washington has no statutory shield law but its courts have ruled in favor of qualified privilege based on the First Amendment and on common law.

The Problem

- A top First Amendment lawyer says "Washington's privilege is rooted in the unpredictable world of common law, and is not even directly grounded in the First Amendment."
- While Washington has common law protections, our state media face substantial subpoena risks and costly legal expenses to defend themselves.
- Compelled disclosure of confidential information has a chilling effect on the free flow of information and prevents whistleblowers from disclosing information about important societal problems.
- Without a shield law, Washington's news reporters run the risk of becoming a partner in a larger government or criminal investigation when they report on wrongdoing.

Who's supporting McKenna's shield bills?

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Groups:

- Allied Daily Newspapers
- Washington State Association of Broadcasters
- American Federation of Television and Radio Artists (AFTRA/AFL-CIO)—Seattle local
- Washington Newspaper Publishers Association

Editorial Support:

The Daily News (Longview)
Seattle P-I
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Yakima Herald-Republic
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Lewiston Tribune
Spokesman-Review (Spokane)
King County Journal
Seattle Weekly
The Columbian (Vancouver)

Attorney General Rob McKenna's Shield Law (HB 2452)

- Provides an absolute privilege to protect those in the news business from compelled disclosure of the identity of confidential sources;
- Provides a qualified privilege for a reporter's work product (notes, outtakes, etc.) such that disclosure may only be compelled in the following circumstances:
 - There are reasonable grounds to believe that a crime has occurred or that there is a prima facie cause of action in a civil case; and
 - If the court finds:
 - The news or information is highly material and relevant;
 - The news or information is critical or necessary to the maintenance of a party's claim, defense, or proof of an issue material thereto;
 - The party seeking such news or information has used reasonable efforts to obtain it from alternative sources; and
 - There is a compelling public interest in the disclosure.
- Protects not just the news gatherer but third-parties who are in business with the news gatherer and who could reveal the confidential source, such as a cellular phone provider with records of calls to the source; and
- Applies broadly to protect not just television, radio and newspaper reporters but any person who earns a "substantial portion" of his or her livelihood in the "regular business of disseminating news or information to the public by any means."