

The Media Shield Bill (S.96)

And why it matters

Vermont's journalism community is calling on the legislature to defend the First Amendment by establishing basic legal protections for reporters and their sources. Unlike most other states, Vermont does little to prevent the legal system from essentially deputizing journalists by forcing them to reveal confidential sources and information on the stand. S.96, the media shield bill, would change that.

S.96 won unanimous, tri-partisan support in the Senate Judiciary and Government Operations committees, and it was approved by a vote of 29-0 on the Senate floor. The House Judiciary Committee joined its Senate counterpart in voting unanimously for the bill.

Here are some frequently asked questions — and their answers:

What is a shield law?

Media shield laws provide some degree of protection to journalists when they are subpoenaed in criminal and civil cases. Though they vary in strength and scope from state to state, they all establish what's known as a "reporter's privilege" — similar to other protections offered to attorneys and clergy members.

Why are shield laws important?

They recognize that there is a public interest in the free flow of information — and in the freedom of the press. For reporters to do their jobs, they must be able to engage with whistleblowers, victims, accused criminals and others whose livelihood, legal status or safety might be jeopardized if their identity came to light. There is a chilling effect on the newsgathering process when reporters are deputized by law enforcement and defense attorneys — and compelled to take the stand.

Is Vermont behind the times?

Yes! More than 40 states have statutory shield laws or strong case-law protections for journalists. Vermont does not. Though the Vermont Supreme Court established a reporter's privilege in a 1974 case known as *St. Peter*, it later eviscerated those protections in a 2005 case involving WCAX-TV.

Is this really a problem?

Yes! A Brigham Young University study found that, in 2006 alone, journalists were served with more than 7,200 subpoenas from state and local governments — and 800 from the feds.

Here in Vermont, journalists are regularly subpoenaed — often when other witnesses can provide the same information. In one recent example, three *Seven Days* journalists and one Vermont Public Radio reporter were subpoenaed in then-senator Norm McAllister's criminal trial.

So what?

It is a fundamental principle of journalism that reporters should not take the stand. When they are subpoenaed, reporters sometimes have to choose between betraying a source and going to jail for contempt of court. Fighting such subpoenas can be prohibitively expensive — particularly for cash-strapped Vermont news organizations. The threat of subpoenas can prevent news outlets from pursuing important stories.

So what does S.96 actually do?

The bill creates a two-tiered reporter's privilege modeled on a New York State law that has been on the books for decades. The first tier confers an "absolute privilege" on information gathered from confidential sources. In other words, a court could not compel a reporter to divulge the identity of a source speaking off the record, nor the information that source provided.

The second tier confers a "qualified privilege" on non-confidential information collected in the newsgathering process. This limits, but does not fully restrict, the legal system's access to journalistic information. Before a court could compel a reporter to disclose non-confidential information, it would have to show that the information was "highly material or relevant," unobtainable by other means and that there was "a compelling need for disclosure."

Finally, S.96 would prevent the court from making an end-run around these protections by subpoenaing a journalist's email provider or telephone company for the same information.

Does this bill break new legal ground?

Not at all. By passing S.96, Vermont would simply be catching up to other states. If reporters ran the world, they would establish an absolute privilege over all reporting material — confidential or not. As drafted, the bill is a reasonable compromise.

Who does the bill cover?

S.96 confers protections on individuals and organizations "engaging in journalism ... at the time the news or information sought to be compelled ... was obtained." It also protects those assisting a journalist, such as an editor or television camera operator.

But what is "journalism?"

The bill defines journalism as "investigating issues or events of public interest for the primary purpose of reporting, publishing or distributing news or information to the public, whether or not the news is ultimately published or distributed."

So would the bill protect someone posting a rant on Facebook?

No. The definition was crafted to cover only those whose "primary purpose" is to report and distribute information in the public interest. While the bill might cover an unpaid, investigative blogger, it would not protect someone mouthing off on Twitter.

Why not just list the types of journalists covered, such as “newspaper reporter” or “television anchor?”

Given the rapid evolution of the news media, it makes more sense to define *journalism*, rather than the particular *journalist*. A list of journalism forms contemplated a decade ago might have excluded online-only news outlets — but those have become integral to the state’s news ecosystem. Because it focuses on the *act* of journalism, this definition should better stand the test of time.

Does S.96 change libel law or contemplate a “duty to warn?”

Not at all. The bill only limits whether and how lawyers can compel journalists to provide information to a court.

Who’s behind the push for S.96?

The Vermont Press Association, which represents daily and weekly newspapers, has teamed up with the Vermont Association of Broadcasters and a broad coalition of independent news outlets and freelance reporters to fight for S.96. The group includes reporters, editors, news directors and publishers from such organizations as WCAX-TV, Vermont Public Radio, Seven Days, VTDigger.org, Burlington Free Press, Stowe Reporter, Waterbury Record, Addison County Independent, Milton Independent, Brattleboro Reformer, Bennington Banner and Niles Media.

The bill has been endorsed by Attorney General T.J. Donovan, Secretary of State Jim Condos, the Society for Professional Journalists, the American Civil Liberties Union of Vermont and the Vermont Network Against Domestic & Sexual Violence.

Should I vote for it?

Yes.

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