

1 **PROPOSED WASHINGTON SHIELD BILL**

2
3 AN ACT Relating to a privilege from compelled testimony for members of the
4 news media; creating a new chapter, RCW 5.70, as follows:

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6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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8 **SECTION 1. COMPELLED DISCLOSURE PROHIBITED.**

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10 Except as provided in Section 2, no judicial, legislative, administrative, or other body
11 with the power to issue a subpoena or other compulsory process may compel the news
12 media to testify, produce or otherwise disclose:

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14 (a) the source of any news or information or any information that would tend to
15 identify the source where such source has a reasonable expectation of
16 confidentiality; or
17 (b) any news or information obtained or prepared by the news media in its capacity in
18 gathering, receiving or processing news or information for potential
19 communication to the public, including, but not limited to, any notes, outtakes,
20 photographs, video or sound tapes, film or other data of whatever sort in any
21 medium now known or hereafter devised.

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23 **SECTION 2. CONDITIONS FOR COMPELLED DISCLOSURE.**

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25 A court may compel disclosure of the news or information described in Section 1(b) if
26 the court finds that the party seeking such news or information established by clear and
27 convincing evidence –

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29 (a) in a criminal investigation or prosecution, based on information other than that
30 information being sought, that there are reasonable grounds to believe that a crime
31 has occurred; or
32 (b) in a civil action or proceeding, based on information other than that information
33 being sought, that there is a prima facie cause of action; and
34 (c) in all matters, whether criminal or civil, that:
35 (1) the news or information is highly material and relevant;
36 (2) the news or information is critical or necessary to the maintenance of a
37 party's claim, defense or proof of an issue material thereto;
38 (3) the party seeking such news or information has used reasonable efforts to
39 obtain it from alternative sources; and
40 (4) there is a compelling public interest in the disclosure. A court may
41 consider whether or not the news or information was obtained from a
42 confidential source in evaluating the public interest in disclosure.

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44 **SECTION 3. COMPELLED DISCLOSURE FROM THIRD PARTIES.**

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1 The protection from compelled disclosure contained in Section 1 shall also apply to any
2 subpoena issued to, or other compulsory process against, a non-news media party where
3 such subpoena or process seeks records, information or other communications relating to
4 business transactions between such non-news media party and the news media for the
5 purpose of discovering the identity of a source or obtaining news or information
6 described in Section 1. Whenever a subpoena is issued to, or other compulsory process is
7 initiated against, a non-news media party where such subpoena or process seeks
8 information or communications on business transactions with the news media, the
9 affected news media shall be given reasonable and timely notice of the subpoena or
10 compulsory process before it is executed or initiated, as the case may be, and an
11 opportunity to be heard. In the event that the subpoena to, or other compulsory process
12 against, the non-news media party is in connection with a criminal investigation in which
13 the news media is the express target, and advance notice as provided in this section would
14 pose a clear and substantial threat to the integrity of the investigation, the governmental
15 authority shall so certify to such a threat in court and notification of the subpoena or
16 compulsory process shall be given to the affected news media as soon thereafter as it is
17 determined that such notification will no longer pose a clear and substantial threat to the
18 integrity of the investigation.

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20 **SECTION 4. NON-WAIVER.**

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22 Publication or dissemination by the news media of news or information described in
23 Section 1, or a portion thereof, shall not constitute a waiver of the protection from
24 compelled disclosure that is contained in Section 1.

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26 **SECTION 5. INADMISSIBILITY.**

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28 The source of any news or information or any news or information that is protected from
29 disclosure hereunder shall be inadmissible in any action, proceeding, or hearing before
30 any judicial, legislative, administrative or other body.

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32 **SECTION 6. DEFINITIONS.**

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34 The term “news media” means:

- 35 (a) any newspaper, magazine or other periodical, book publisher, news agency, wire
36 service, radio or television station or network, cable or satellite station or network,
37 or audio or audiovisual production company or any person or entity that is in the
38 regular business of disseminating news or information to the public by any means,
39 including, but not limited to, print, broadcast, photographic, mechanical, or
40 electronic distribution;
- 41 (b) any person who is or has been a journalist, a researcher or scholar employed by
42 any institution of higher education, or other individual who either (1) at the time
43 he or she obtained or prepared the information that is sought was earning a
44 substantial portion of his or her livelihood by obtaining or preparing information
45 for dissemination by any person or entity listed in subsection (a) above, or (2)
46 obtained or prepared the information that is sought while serving in the capacity

1 of an agent, assistant, employee, or supervisor of any person or entity listed in
2 subsections (a) or (b)(1) above; or
3 (c) any parent, subsidiary or affiliate of the entities listed in subsections (a) or (b)
4 above to the extent that the subpoena or other compulsory process seeks news or
5 information described in Section 1.