

AMENDED IN ASSEMBLY AUGUST 12, 2013

AMENDED IN ASSEMBLY JUNE 25, 2013

AMENDED IN ASSEMBLY JUNE 6, 2013

AMENDED IN SENATE MAY 1, 2013

SENATE BILL

No. 558

Introduced by Senator Lieu
(*Coauthor: Assembly Member Wagner*)

February 22, 2013

An act to amend Section 1986.1 of the Code of Civil Procedure, relating to reporters.

LEGISLATIVE COUNSEL'S DIGEST

SB 558, as amended, Lieu. Reporters' shield law.

The reporter's shield law contained in the California Constitution prohibits a publisher, editor, reporter, or other person connected with or employed by a newspaper, magazine, or other periodical publication, or by a press association or wire service, from being held in contempt for refusing to disclose the source of any information procured for publication while so connected or employed. The law also prohibits any of those persons from being held in contempt for refusing to disclose any unpublished information obtained or prepared in gathering, receiving, or processing information for communication to the public.

Existing statutory law prohibits any testimony or other evidence given by a journalist under subpoena in a civil or criminal proceeding from being construed as a waiver of the immunity rights provided by the reporter's shield law. Existing law requires that, except in exigent circumstances, a journalist who is subpoenaed in any civil or criminal proceeding be given at least 5 days' notice by the party issuing the

subpoena that his or her appearance will be required, and requires a court that holds a journalist in contempt in a criminal proceeding to set forth specified findings regarding the information sought.

This bill, in addition, would require that, except in ~~exigent~~ circumstances *that pose a clear and substantial threat to the integrity of the criminal investigation or present an imminent risk of death or serious bodily harm*, a ~~body~~ or party issuing a subpoena in any civil or criminal proceeding to a third party that seeks the records of a journalist to provide notice of the subpoena to the journalist and the publisher of the newspaper, magazine, or other publication or station operations manager of the broadcast station that employs or contracts with the journalist, as applicable, at least 5 days prior to issuing the subpoena. The bill would require the ~~body~~ or party issuing the subpoena to include in the notice, at a minimum, an explanation of why the requested records will be of material assistance to the party seeking them and why alternate sources of information are not sufficient to avoid the need for the subpoena. *The bill also would revise the exception for the existing 5 days' notice requirement for a subpoena requiring a journalist to appear, providing that the requirement applies except in circumstances that pose a clear and substantial threat to the integrity of the criminal investigation or present an imminent risk of death or serious bodily harm.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1986.1 of the Code of Civil Procedure
2 is amended to read:
3 1986.1. (a) No testimony or other evidence given by a
4 journalist under subpoena in a civil or criminal proceeding may
5 be construed as a waiver of the immunity rights provided by
6 subdivision (b) of Section 2 of Article I of the California
7 Constitution.
8 (b) (1) Because important constitutional rights of a third-party
9 witness are adjudicated when rights under subdivision (b) of
10 Section 2 of Article I of the California Constitution are asserted,
11 except in ~~exigent~~ circumstances *that pose a clear and substantial*
12 *threat to the integrity of the criminal investigation or present an*
13 *imminent risk of death or serious bodily harm*, a journalist who is

1 subpoenaed in any civil or criminal proceeding shall be given at
2 least five days' notice by the party issuing the subpoena that his
3 or her appearance will be required.

4 (2) To protect against the inadvertent disclosure by a third party
5 of information protected by Section 2 of Article I of the California
6 Constitution, a ~~body or~~ party issuing a subpoena in any civil or
7 criminal proceeding to a third party that seeks the records of a
8 journalist shall, except in ~~exigent~~ circumstances *that pose a clear*
9 *and substantial threat to the integrity of the criminal investigation*
10 *or present an imminent risk of death or serious bodily harm,*
11 provide notice of the subpoena to the journalist and the publisher
12 of the newspaper, magazine, or other publication or station
13 operations manager of the broadcast station that employs or
14 contracts with the journalist, as applicable, at least five days prior
15 to issuing the subpoena. The ~~body or~~ party issuing the subpoena
16 shall include in the notice, at a minimum, an explanation of why
17 the requested records will be of material assistance to the party
18 seeking them and why alternate sources of information are not
19 sufficient to avoid the need for the subpoena.

20 (c) If a trial court holds a journalist in contempt of court in a
21 criminal proceeding notwithstanding subdivision (b) of Section 2
22 of Article I of the California Constitution, the court shall set forth
23 findings, either in writing or on the record, stating at a minimum,
24 why the information will be of material assistance to the party
25 seeking the evidence, and why alternate sources of the information
26 are not sufficient to satisfy the defendant's right to a fair trial under
27 the Sixth Amendment to the United States Constitution and Section
28 15 of Article I of the California Constitution.

29 (d) As used in this section, "journalist" means the persons
30 specified in subdivision (b) of Section 2 of Article I of the
31 California Constitution.