

Wins and Losses in Effort to Expand Shield

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Posted in Shield Laws

The invaluable Media Law Resource Center recently released a report detailing state efforts to pass shield laws in the past three years.

According to the report, because of the high-profile contempt arrests of reporters James Taricani in 2004 and Judith Miller in 2005, legislative support for the reporter's privilege gained significant momentum. As a result, five states -- Hawaii, Maine, Utah, Washington, and Connecticut -- passed shield statutes, bringing the total nationally to 36 states plus the District of Columbia.

Three other states, however, attempted to pass shield statutes in the past two years and failed. In Kansas, Senate Bill 313 was introduced in the 2007 session with bipartisan support from the Senate minority and majority leaders. Despite this support, however, the bill did not make it out of the Judiciary Committee in 2007 or 2008, and it now appears to be dead.

In Missouri, bills were introduced in 2005 and again in 2007 that would have provided a qualified reporter's privilege. In 2007, the bill passed the House and was approved 7-1 by the Senate Judiciary Committee but was never voted on by the full Senate because of threats of a filibuster from key Senators. A final attempt in 2008 to pass a version of the bill never received a vote by the House.

Finally, in Texas, the Free Flow of Information Act was passed by the Senate in 2007 and sent to the House for consideration. The bill made it out of the House Judiciary Committee and onto the floor for debate, but was immediately killed on procedural grounds.

Given the uncertain extent of the First Amendment's protection for reporters who find themselves served with a subpoena (which we discussed in a previous post), it is critical that reporters and editors know what protection, if any, state law offers. For those engaged in newsgathering in states without shield statutes, these times call for you to redouble your efforts to make the case for why, as a public policy matter, your state should enact a statutory privilege against the compelled disclosure of sources and source materials.