

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2225/P1dn  
MGG:bjk:jf

March 5, 2009

This is a major redraft of 2007 Assembly Bill 946. I found this redraft necessary to improve the bill's organization, and to make the language clearer and more consistent. Please review carefully to make sure I have not inadvertently strayed from the intent of the bill.

I have reorganized this bill and have used titles to make it clear that s. 885.14 (2) applies to subpoenas issued directly to the news persons and that s. 885.14 (3) applies to other persons. Note that in s. 885.14 (2) the items sought are described as the identity of "sources" and "news" and "information." In s. 885.14 (3) the items sought are "information," "records," and "communications." None of these terms is defined, but each term under the statutory rules of construction would be interpreted by courts to mean something different. I left this dichotomy in the draft so that you could consider it, and let me know if you want any changes.

In an effort to eliminate redundancy, I consolidated the definition of "news persons" to include the concept of "news media." I used "news person" as the defined term instead of "news media" because it works better with articles (a or the) and can be used easily in the singular as well as the plural.

Note that the burden of proof for a subpoena under s. 885.14 (2) (against a news person) is "clear and convincing evidence" for both criminal and civil proceedings. Absent any specific language, I think in civil proceedings it would be by a preponderance of the evidence and in criminal proceeding probable cause would be necessary. See s. 968.135. "Preponderance of the evidence" is a lesser burden than "clear and convincing evidence"; "probable cause" is greater. Also, note that s. 885.14 (3) (against 3rd persons) does not contain any specific burden of proof so the regular applicable burden probably would apply depending on the type of proceeding. Let me know if you want any changes.

Note that I changed "government agency" in the provisions under s. 885.14 (3) to district attorneys and attorney generals since I believe they are the only persons who would appear in court in a criminal investigation.

Note that in s. 885.14 (4) I expanded the cross-reference to include the protections from disclosure under both s. 885.14 (2) and (3).

Mary Gibson-Glass  
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