

EXHIBIT A

Supreme Court of Michigan's Amendment to Rule 8.115 of the Michigan Court Rules – Issued
January 8, 2020

EXHIBIT B

Supreme Court of Georgia's approval of Georgia's Uniform Superior Court Rule 22 – Effective
May 1, 2018

EXHIBIT C

Supreme Court of Virginia's Model Policy for the Use of Portable Electronic Devices in
Courthouses and Courtrooms – Approved December 5, 2018

EXHIBIT D

Massachusetts' Report of the Working Group [of the Massachusetts Access to Justice
Commission] on Possession and Use of Cell Phones and Similar Devices in the Courts of
Massachusetts – Dated April 30, 2019

EXHIBIT E

Joint Resolution of the Conference of Chief Justices and the Conference of State Court
Administrators – Adopted August 2018

EXHIBIT F

American Bar Association Resolution 116

EXHIBIT G

Minutes of the December 18, 2020 meeting of the Committee to Review the Prohibition on Personal Electronic Devices Inside State Courthouses

EXHIBIT H

Minutes of the January 19, 2021 meeting of the Committee to Review the Prohibition on Personal Electronic Devices Inside State Courthouses

EXHIBIT I

Minutes of the February 22, 2021 meeting of the Committee to Review the Prohibition on Personal Electronic Devices Inside State Courthouses

EXHIBIT J

Massachusetts Trial Court's Emergency Administrative Order 20-10 Order Concerning Trial Court Policy on Possession & Use of Cell Phones & Personal Electronic Devices (Issued June 24, 2020; Effective July 13, 2020)

EXHIBIT K

Massachusetts Trial Court's Public Notice regarding the use of cellphones and PEDs in courthouses

RULE 8.115 COURTROOM DECORUM; POLICY REGARDING USE OF CELL PHONES OR OTHER PORTABLE ELECTRONIC COMMUNICATION DEVICES

(A) Display of Flags. The flags of the United States and of the State of Michigan must be displayed in a conspicuous place adjacent to the bench at all times when court is in session.

(B) Judicial Robe. When acting in his or her official capacity in the courtroom, a judge shall wear a black robe.

(C) Use of Portable Electronic Devices in a Courthouse.

(1) Purpose. This rule specifies the permitted and prohibited uses of portable electronic devices in a courthouse. A court must use reasonable means to advise courthouse visitors of the provisions of this rule. Any allowed use of a portable electronic device under this rule is subject to the authority of a judge to terminate activity that is disruptive or distracting to a court proceeding, or that is otherwise contrary to the administration of justice. This rule does not modify or supersede the guidelines for media coverage of court proceedings set forth in AO No. 1989-1.

(2) Definitions. The following definitions apply in this rule:

(a) “portable electronic device” is a mobile device capable of electronically storing, accessing, or transmitting information. The term encompasses, among other things, a transportable computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone, or other wireless phone; a camera and other audio or video recording devices; a personal digital assistant (PDA); other devices that provide internet access; and any similar items.

(b) A “courthouse” includes all areas within the exterior walls of a court building, or if the court does not occupy the entire building, that portion of the building used for the administration and operation of the court. A “courthouse” also includes areas outside a court building where a judge conducts an event concerning a court case.

(c) A “courtroom” includes the portion of a courthouse in which the actual proceedings take place.

(3) Photography and audio or video recording, broadcasting, or live streaming. Except for requests for film or electronic media coverage of court proceedings as permitted under AO No. 1989-1, the following

restrictions apply to photography, audio recording, video recording, broadcasting, or live streaming in a courthouse.

(a) In a courtroom: In a courtroom, no one may use a portable electronic device to take photographs or for audio or video recording, broadcasting, or live streaming unless that use is specifically allowed by the Judge presiding over that courtroom.

(b) Outside a courtroom: In areas of a courthouse other than courtrooms, no one may photograph, record, broadcast, or live stream an individual without that individual's prior express consent.

(c) Jurors: No one may photograph, record, broadcast, or live stream any juror or anyone called to the court for jury service.

(d) Local orders: By local administrative order, a court may adopt further reasonable limits on photography and audio or video recording or broadcasting in a courthouse that are not inconsistent with this rule.

(4) Jurors and witnesses. The following restrictions apply to use of portable electronic devices by jurors, including prospective jurors, and by witnesses.

(a) Jurors: Jurors must turn off their portable electronic devices while present in a courtroom. A court may order jurors to turn over to the court their portable electronic devices during deliberations. If so, the court must provide jurors with a phone number where they can be reached in case of an emergency during deliberations.

(b) Witnesses: A witness must silence any portable electronic device while in a courtroom, and may use a device while testifying only with permission of a judge.

(5) Attorneys, parties, and members of the public. The following provisions apply to use of portable electronic devices in a courtroom by attorneys, parties, and members of the public.

(a) Allowed uses: Attorneys, parties, and members of the public may use a portable electronic device in a courtroom to retrieve or to store information (including notetaking), to access the Internet, and to send and receive text messages or information. Attorneys, parties, and members of the public may use a portable electronic device to reproduce public court documents in a clerk's office as long as the device leaves no mark or impression on the document and does not unreasonably interfere with the operation of the clerk's office.

(b) Prohibited uses: Attorneys, parties, and members of the public must silence portable electronic devices while in the courtroom. A portable electronic device may not be used, without permission of the court, to make or to receive telephone calls or for any other audible function while court is in session. Portable electronic devices may not be used to communicate in any way with any courtroom participant including, but not limited to, a party, a witness, or juror at any time during any court proceedings. Additional prohibited uses related to photography, recording, and broadcasting are found in 8.115(C)(3) above.

(6) Use of a portable electronic device outside a courtroom; limitations. Except as provided in paragraphs (3), (4) and (5) of this rule, a person may use a portable electronic device in a courthouse, subject to the authority of judges, Clerks of the Court, or court administrators to limit or terminate activity that is disruptive to court operations or that compromises courthouse security.

(7) Violations of this rule. If these rules are violated, the presiding judge may confiscate the device for the remainder of the day or order that the phone be turned off and put away. Violations of this rule are punishable by appropriate sanctions up to and including contempt of court as determined in the discretion of the court.



SUPREME COURT OF GEORGIA

Atlanta February 6, 2018

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

It is ordered that Uniform Superior Court Rule 22, which relates to the use of electronic devices in courtrooms and recording of judicial proceedings by representatives of the news media and other persons, be amended. The amended Rule 22, which is the product of several years of study and discussion by the Council of Superior Court Judges, this Court, and numerous organizations that provided written and oral comments on proposed rule drafts, replaces the existing Rule 22 in its entirety. The amended rule continues to implement OCGA § 15-1-10.1 but is updated to reflect developments over the last two decades in recording technology, in the news media, and, most significantly, in recording devices – namely, the smart phones and other mobile computers with recording capabilities that today are routinely carried and used by most people in this state. The amended Rule 22 will take effect on May 1, 2018, and reads as follows:

Rule 22. USE OF ELECTRONIC DEVICES IN COURTROOMS AND RECORDING OF JUDICIAL PROCEEDINGS

(A) Overview.

Open courtrooms are an indispensable element of an effective and respected judicial system. It is the policy of Georgia's courts to promote access to and understanding of court proceedings not only by the participants in them but also by the general public and by news media who will report on the proceedings to the public. This must be done, however, while protecting the legal rights of the participants in the proceedings and ensuring appropriate security and decorum.

Except as otherwise required by law, this rule governs the use of devices to record sounds or images in a courtroom and comports with the standards provided in OCGA § 15-1-10.1 regarding the use of devices to record judicial proceedings.

This rule similarly governs the use of electronic devices, including mobile phones and computers, in a courtroom for purposes other than recording sounds and images. Such

use is generally allowed by lawyers, by employees of lawyers, and by self-represented parties, but to ensure decorum and avoid distraction, such use is generally prohibited by jurors, witnesses, parties, and spectators, including representatives of the news media. Such persons may, however, use their devices by stepping outside the courtroom, and nothing in this rule prevents a judge from permitting parties and spectators to use their devices for non-recording purposes as the judge may allow in his or her discretion.

A court must use reasonable means to advise courtroom visitors of the provisions of this rule and must make the form in Exhibit A available in its clerk's office and on the court's website.

(B) Definitions. The following definitions apply in this rule:

(1) "Recording device" means a device capable of electronically or mechanically storing, accessing, or transmitting sounds or images. The term encompasses, among other things, a computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone or other wireless phone; a camera and other audio or video recording devices; a personal digital assistant (PDA); and any similar devices.

(2) "Recording" means electronically or mechanically storing, accessing, or transmitting sounds or images. "Record" means to electronically or mechanically store, access, or transmit sounds or images, including by photographing, making an audio or video recording, or broadcasting. Nothing in this rule prohibits making written notes and sketches pertaining to any judicial proceedings.

(3) "Courtroom" means the room in which a judge will conduct a court proceeding and the areas immediately outside the courtroom entrances or any areas providing visibility into the courtroom.

(C) Jurors, witnesses, parties, and spectators, including representatives of the news media. The following restrictions apply to use of recording devices by jurors, including grand jurors and prospective jurors, by witnesses, by parties, and by spectators, including representatives of the news media.

(1) *Jurors:* Jurors shall turn the power off to any recording device while present in a courtroom and while present in a jury room during the jury's deliberations and discussions concerning a case. Jurors may use their devices during breaks as authorized by the judge. Jurors shall not record proceedings.

(2) *Witnesses*: Witnesses shall turn the power off to any recording device while present in a courtroom, and may use a device while testifying only with permission of the judge. Witnesses shall not record proceedings.

(3) *Parties and spectators*: Parties and spectators may use recording devices to record proceedings only as specifically authorized by the court pursuant to this rule. All parties and spectators shall turn the power off to any recording device while present in a courtroom, unless the judge allows orally or in writing the use of recording devices in the courtroom for purposes other than recording sounds and images, which the judge may freely do when he or she believes such use would not be disruptive or distracting and is not otherwise contrary to the administration of justice. When such use is allowed, recording devices must be silenced and may not be used to make or receive telephone calls or for other audible functions without express permission from the judge.

(D) Attorneys, employees of attorneys such as paralegals and investigators, and self-represented parties (pro se litigants).

(1) *Use of recording devices to record*: Unless otherwise ordered by the court, attorneys representing parties in a proceeding and self-represented parties may make audio recordings of the proceeding in a nondisruptive manner after announcing to the court and all parties that they are doing so. Recordings made pursuant to this paragraph may be used only in litigating the case or as otherwise allowed by the court or provided by law. Attorneys and self-represented parties may also seek authorization to record proceedings pursuant to paragraph (E) of this rule.

(2) *Use of recording devices for non-recording purposes*: Attorneys and their employees such as paralegals and investigators may use recording devices in a courtroom for purposes other than recording sounds and images, including word processing, storing or retrieving information, accessing the internet, and sending or receiving messages or information. Self-represented parties may do the same but only in direct relation to their proceedings. Recording devices must be silenced and may not be used to make or receive telephone calls or for other audible functions without express permission from the judge.

(3) *Limitation*: Any allowed use of a recording device under paragraph (D) is subject to the authority of the judge to terminate activity that is disruptive or distracting or is otherwise contrary to the administration of justice.

(E) Celebratory or ceremonial proceedings, or when the court is not in session. Notwithstanding other provisions of this rule, a person may request orally or in writing, and a judge or judge's designee may approve orally or in writing, use of a recording device in a courtroom to record a celebratory or ceremonial proceeding or use of a recording device in a courtroom when the court is not in session.

(F) Other persons or organizations desiring to record. Any other persons or organizations, including representatives of the news media, desiring to record a court proceeding shall make application to the judge on the form in Exhibit A following this rule.

(1) *Submission of a request:* The person or organization must submit the request to the judge or to an officer of the court designated to receive requests under this rule. The request should address any logistical issues that are expected to arise.

(2) *Time limit for submitting a request:* The person or organization must submit the request sufficiently in advance of the proceeding – at least 24 hours where practicable under the circumstances – to allow the judge to consider it in a timely manner.

(3) *Notice and hearing:* The court will notify the parties of its receipt of a request for recording. Parties shall then notify their witnesses. The prosecutor of a criminal case shall notify alleged victims. The judge will promptly hold a hearing if the judge intends to deny the request or a portion of the request, or if a party, witness, or alleged victim objects to a request. The hearing under this paragraph shall be part of the official record of the proceeding.

(4) *Time for a party, witness, or alleged victim to object to a request:* A properly notified party, witness, or alleged victim waives an objection to a request for recording of a proceeding if the party, witness, or alleged victim does not object to the request in writing or on the record before or at the start of the proceeding.

(G) Denial or limitation of recording. A properly submitted request for recording should generally be approved, but a judge may deny or limit the request as provided in this paragraph. A judge's decision on a request, or on an objection to a request, is reviewable as provided by law.

(1) *Denial of recording:* A judge may deny a request for recording only after making specific findings on the record that there is a substantial likelihood of harm arising from one or more of the following factors, that the harm outweighs the benefit of

recording to the public, and that the judge has considered more narrow restrictions on recording than a complete denial of the request:

- (a) The nature of the particular proceeding at issue;
- (b) The consent or objection of the parties, witnesses, or alleged victims whose testimony will be presented in the proceedings;
- (c) Whether the proposed recording will promote increased public access to the courts and openness of judicial proceedings;
- (d) The impact upon the integrity and dignity of the court;
- (e) The impact upon the administration of the court;
- (f) The impact upon due process and the truth finding function of the judicial proceeding;
- (g) Whether the proposed recording would contribute to the enhancement of or detract from the ends of justice;
- (h) Any special circumstances of the parties, witnesses, alleged victims, or other participants such as the need to protect children or factors involving the safety of participants in the judicial proceeding; and
- (i) Any other factors affecting the administration of justice or which the court may determine to be important under the circumstances of the case.

(2) *Limitation of recording*: Upon his or her own motion or upon the request of a party, witness, or alleged victim, a judge may allow recording as requested or may, only after making specific findings on the record based on the factors in the preceding paragraph, impose the least restrictive possible limitations such as an order that no recording may be made of a particular criminal defendant, civil party, witness, alleged victim, law enforcement officer, or other person, or that such person's identity must be effectively obscured in any image or video recording, or that only an audio recording may be made of such person.

(H) Manner of recording. The judge should preserve the dignity of the proceeding by designating the placement of equipment and personnel for recording the proceeding. All persons and affiliated individuals engaged in recording must avoid conduct or appearance that may disrupt or detract from the dignity of the proceeding. No person shall use any recording device in a manner that disrupts a proceeding.

(I) Pooling of recording devices. The judge may require pooling of recording devices if appropriate. The persons or organizations authorized to record have the responsibility to implement proper pooling procedures that meet the approval of the judge.

(J) Prohibitions. The following uses of recording devices are prohibited:

(1) *No use of recording devices while the judge is outside the courtroom:* Except as provided in paragraph (E) of this rule, a person may use a recording device in a courtroom only when the judge is in the courtroom, and use of a recording device must terminate when the judge leaves the courtroom.

(2) *Recording of jurors:* Recording devices must be placed to avoid recording images of jurors or prospective jurors in any manner. Audio recordings of jurors' or prospective jurors' statements or conversations are also prohibited, except that the jury foreperson's announcement of the verdict or questions to the judge may be audio recorded.

(3) *No recording of privileged or confidential communications:* In order to preserve the attorney-client privilege and client confidentiality as set forth in the Georgia Rules of Professional Conduct and statutory or decisional law, no person shall make a recording of any communication subject to the attorney-client privilege or client confidentiality.

(4) *No recording of bench conferences:* No person other than the court reporter may record a bench conference, unless prior express permission is granted by the judge.

(K) Recording not official court record. No recording of a judicial proceeding made pursuant to this rule may be used to modify or supplement the official court record of that proceeding without express permission of the judge pursuant to OCGA § 5-6-41(f).

(L) Disciplinary authorities. This rule does not apply to disciplinary authorities acting in the course of their official duties.

(M) Enforcement. Persons who violate this rule may be removed or excluded from the courtroom. A willful violation of this rule may be punishable as contempt of court.

EXHIBIT A

IN THE SUPERIOR COURT OF _____ COUNTY
STATE OF GEORGIA

(STYLE OF CASE/CALENDAR)

CASE NO. _____

**REQUEST TO USE A RECORDING DEVICE PURSUANT TO RULE 22 ON
RECORDING OF JUDICIAL PROCEEDINGS.**

Pursuant to Rule 22 of the Uniform Rules for Superior Court regarding Use of Electronic Devices in Courtrooms and Recording of Judicial Proceedings, the undersigned hereby requests permission to use a recording device in Courtroom _____ in order to record images and/or sound during (all) (the following portions) of the proceedings in the above captioned case/calendar.

Consistent with the provisions of the rule, the undersigned desires to use the following described recording device(s): _____. The proceedings that the undersigned desires to record commence on (date). Subject to direction from the court regarding possible pooled coverage, the undersigned wishes to use this device in the courtroom on (date). The personnel who will be responsible for the use of this recording device are: (identify appropriate personnel).

The undersigned hereby certifies that the device to be used and the locations and operation of such device will be in conformity with Rule 22 and any guidelines issued by the court.

The undersigned understands and acknowledges that a violation of Rule 22 and any guidelines issued by the court may be grounds for removal or exclusion from the courtroom and a willful violation may subject the undersigned to penalties for contempt of court.

This _____ day of _____, 20__.

(Individual Signature)

(Representing/Firm)

(Position)

APPROVED: _____

Judge, Superior Court

_____ Judicial Circuit

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia

Witness my signature and the seal of said court hereto
affixed the day and year last above written.

Thiise A. Bame, Clerk

SUPREME COURT OF VIRGINIA

CHIEF JUSTICE
DONALD W. LEMONS

JUSTICES
S. BERNARD GOODWYN
WILLIAM C. MIMS
ELIZABETH A. McCLANAHAN
CLEO E. POWELL
D. ARTHUR KELSEY
STEPHEN R. MCCULLOUGH

SENIOR JUSTICES
CHARLES S. RUSSELL
ELIZABETH B. LACY
LAWRENCE L. KOONTZ, JR.
LEROY F. MILLETTE, JR.



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REPORTER OF DECISIONS
KENT SINCLAIR

STATE LAW LIBRARIAN
GAIL WARREN

Press Release: December 14, 2018

THE SUPREME COURT OF VIRGINIA APPROVES AND RECOMMENDS MODEL POLICY FOR THE USE OF PORTABLE ELECTRONIC DEVICES IN COURTHOUSES AND COURTROOMS

The Supreme Court of Virginia approved a model policy for the use of portable electronic devices in courthouses and courtrooms at its business meeting on December 5, 2018. The Justices have determined that the model policy provides a proper balance between the interests of promoting access to justice, and maintaining security, safety, and order in courthouses and courtrooms. The Court recommends the model policy for consideration by the district courts and circuit courts of the Commonwealth.

As defined in the model policy, portable electronic devices include personal computers, tablet computers, mobile telephones (including cell phones and any form of telephone with cameras and audio and video recording and transmission capabilities), electronic calendars, ebook readers, and “smart” watches.

A copy of the model policy adopted by the Court, and a memo to the chief judges of all circuit and district courts from Chief Justice Donald W. Lemons is included with this press release.

About the Supreme Court of Virginia: The Supreme Court of Virginia possesses both original and appellate jurisdiction. The Court reviews decisions of lower courts, including the Court of Appeals, from which appeals have been allowed. Virginia does not allow an appeal to the Supreme Court as a matter of right except in cases involving the State Corporation Commission, certain disciplinary actions against an attorney, and review of the death penalty. The Court's original jurisdiction is limited to cases of habeas corpus, mandamus, prohibition, and actual innocence. The Supreme Court also has original jurisdiction in matters filed by the Judicial Inquiry and Review Commission relating to judicial censure and retirement, and removal of judges. The Chief Justice of the Supreme Court serves as the administrative head of Virginia's Judicial System. The Chief Justice is charged with overseeing the efficient and effective operation of the Judicial Branch.

Media Contact: Kristi S. Wright, Director of Legislative and Public Relations, Office of the Executive Secretary, Supreme Court of Virginia, (804) 786-6455.

SUPREME COURT OF VIRGINIA

CHIEF JUSTICE
DONALD W. LEMONS

JUSTICES
S. BERNARD GOODWYN
WILLIAM C. MIMS
ELIZABETH A. McCLANAHAN
CLEO E. POWELL
D. ARTHUR KELSEY
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TO: Chief Judges of All Circuit and District Courts

FROM: Chief Justice Donald W. Lemons


DATE: December 14, 2018

RE: Model Policy for the Use of Portable Electronic Devices in Courthouses and Courtrooms

At its December 5, 2018, Business Meeting, the Supreme Court approved the attached model policy for the use of portable electronic devices in courthouses and courtrooms. Whether courts adopt this particular policy or a variation thereof, it is important for courts to clearly communicate to the public their policies regarding the use of portable electronic devices in courthouses and courtrooms. When making decisions on what policy to adopt, judges and sheriffs should keep in mind the competing interests of promoting access to justice and maintaining security, safety and order in courthouses and courtrooms. The Justices have determined that this model policy provides a proper balance between those various interests, and the Court recommends this policy for consideration by the district courts and circuit courts of the Commonwealth.

Enclosure

cc: Karl R. Hade, Executive Secretary

MODEL POLICY FOR THE USE OF PORTABLE ELECTRONIC DEVICES IN COURTHOUSES AND COURTROOMS

I. Purpose of the Model Policy

The Supreme Court of Virginia recommends this Model Policy to the district courts and circuit courts of the Commonwealth of Virginia regarding the Use of Portable Electronic Devices in Courthouses and Courtrooms.

As defined in the Model Policy, portable electronic devices include personal computers, tablet computers, mobile telephones (including cell phones and any form of telephone with cameras and audio and video recording and transmission capabilities), electronic calendars, e-book readers, and “smart” watches.

The use of portable electronic devices in our society has increased dramatically, and many users see these devices as a necessary incident to their personal and working lives. People rely on these devices for purposes ranging from organizational or data storage activities to ensuring personal security. Appropriate use at the courthouse will allow people to access information for presentation to the court, and it will allow people to transact other necessary business. Inappropriate use can be a danger, cause distractions, and demean the order and processes of the court. The purpose of this Model Policy is to recommend a policy that respects the interests and needs of the people who enter the courthouses and courtrooms of the Commonwealth.

Policies barring portable electronic devices may prevent self-represented litigants or other court users from effectively presenting evidence in their cases, successfully accessing court resources or information, or communicating with others while in the courthouse. By authorizing the possession and use of portable electronic devices in courthouses for evidentiary and other legitimate purposes, the Model Policy improves access to justice and judicial efficiency by establishing known processes and procedures.

The use and possible misuse of portable electronic devices present legitimate security concerns. Weapons can be disguised as portable electronic devices. Possible misuses of portable electronic devices include the unauthorized creation of video and audio recordings that can be posted on social media or in other public forums; unauthorized communication with jurors or witnesses; and, threats and intimidation directed towards parties, witnesses, jurors, or other people. Every person who enters a Virginia courthouse must be protected from such dangers and behavior. Additionally, the use and misuse of portable electronic devices can cause either intentional or unintentional disruptions in the order and processes of the courts. The

Model Policy recognizes the need to maintain security, safety, and order in the courts of the Commonwealth.

It is important for all users of the courts and court facilities to know whether they can bring portable electronic devices into courthouses, and whether they can use them in courtrooms in appropriate circumstances. When court users and members of the public carrying portable electronic devices are denied entry to a courthouse without reasonable prior notice that their devices are not permitted in the courthouse or courtroom, they may experience great inconvenience. They sometimes must store their portable electronic devices in unsecured locations, risking the loss of the devices and the information that the devices contain. The Model Policy recognizes that notice of a court's policy regarding the possession and use of portable electronic devices must be accessible and effective. The Model Policy also recognizes that any restrictions on possession or use of such devices should be accompanied by reasonable access to on-site storage for the devices.

After considering the interests of the judiciary, the users of the courthouses and courtrooms of the Commonwealth, and the sheriffs who are responsible for court security, the Supreme Court of Virginia approves and recommends the following Model Policy for consideration by the circuit courts and district courts of the Commonwealth.

II. MODEL POLICY

1. Definition of "Portable Electronic Device"

The term "Portable Electronic Device" is defined to include personal computers, tablet computers, mobile telephones (including cell phones and any form of telephone with cameras and audio and video recording and transmission capabilities), electronic calendars, e-book readers, and "smart" watches.

2. Possession and Use of Portable Electronic Devices

The following policies and procedures govern the possession and use of Portable Electronic Devices in the courthouse and in the courtroom.

A. In the Courthouse:

Portable Electronic Devices are allowed in the courthouse subject to security screening, including courthouse screening devices, and the following rules:

- (1) Court visitors may use Portable Electronic Devices in the common areas of the courthouse, such as lobbies and hallways. Further restrictions, including restricting mobile telephone conversations to designated areas, may be imposed as needed to maintain safety, security, proper behavior, order, and the administration of justice. All Portable Electronic Devices must be placed in a silent mode, such as vibrate, at all times within the courthouse.
- (2) Using Portable Electronic Devices to take photographs, make audio or video recordings, or to transmit live audio or video streaming is prohibited except with prior written authorization by a judge of the Circuit or District Court.
- (3) Other Electronic Devices: Cameras, video cameras, video recording equipment and recording devices (“other electronic devices”) not classified as Portable Electronic Devices are not allowed in the courthouse except for use at events such as investitures ceremonies and weddings. Other electronic devices may be allowed in the courthouse with prior written authorization by a judge of the Circuit or District Court.

B. In the Courtroom:

Portable Electronic Devices shall not be brought into or used in the courtroom without authorization from the presiding judge. A presiding judge may authorize the possession and use of Portable Electronic Devices in the courtroom and may impose restrictions on such possession and use. If the possession of Portable Electronic Devices in the courtroom is authorized, they must remain silent at all times. They shall only be used for the purposes and in the manner authorized by the presiding judge. Photography, video recording, audio recording, or video transmission or communication of any information using any media from inside the courtroom is prohibited without prior written authorization of the presiding judge.

C. Confiscation of Equipment and Ejection of User:

Any person using a Portable Electronic Device in violation of this or any other court order or policy may be removed from the courthouse, found in contempt of court, and subject to penalties as provided by law. Any Portable Electronic Device used in violation of this or any other court order or policy may be confiscated, and the Sheriff shall not be responsible or liable for any damage to or loss of a confiscated device.

D. Further Limitations by Judges:

A judge may further limit or ban the possession or use of any Portable Electronic Device:

- (1) pursuant to Virginia Code § 19.2-266 (to regulate media coverage of judicial proceedings);
- (2) if possession or use of the Portable Electronic Device may or does interfere with the administration of justice or cause any threat to safety or security; or (3) for any other reason.

3. Posting Notice of this Policy

The policy of each court regarding the possession and use of Portable Electronic Devices shall be posted on the court's home page on the Virginia Judicial System website; on the court's local website (if any); at the courthouse entrance; and, in the Clerk's Office.

4. Storage of Portable Electronic Devices.

If the possession of Portable Electronic Devices in the courtroom is prohibited or restricted, then storage for the devices shall be provided at the security entrance to the courthouse for anyone who is not allowed to bring their devices into the courtroom. Storage locker units are recommended as the means for storing the devices. Other forms of on-site storage may be provided. Storage of devices may be limited to persons who represent to security personnel that they have no other means of storage available to them, such as a vehicle parked on or near the courthouse premises.



MASSACHUSETTS ACCESS TO JUSTICE COMMISSION

REPORT OF THE WORKING GROUP ON POSSESSION AND USE OF CELL PHONES AND SIMILAR DEVICES IN THE COURTS OF MASSACHUSETTS



Foreword

In August 2018 the Conference of Chief Justices and Conference of State Court Administrators adopted a joint resolution encouraging members to "carefully review and assess their policies with respect to cell phone use in courthouses, so as to appropriately balance the security risks posed by cell phone use with the needs of litigants, especially those who are self-represented." The resolution noted that "cell phones have become an integral part of daily life for many litigants, serving as an essential tool for communication, research, information storage," and that consequently "restrictions on cell phone use in courthouses may impose additional burdens on litigants," by preventing them from accessing and presenting evidence stored on cell phones; gathering information over the Internet; communicating with individuals outside of the courthouse, such as childcare providers; and using their phones to access translation services or hearing assistance applications. The resolution also acknowledged, however, that there are "significant security risks presented by cell phone use in courthouses," due to the potential misuse of cell phones to photograph or record courtroom participants, resulting in possible intimidation or other threats to their safety.

How should courts balance the legitimate needs of litigants with the requirements of maintaining courtroom security in setting cell phone policies? The following working group report, which was presented to and adopted by the Access to Justice Commission at its May 23, 2019 meeting, provides a comprehensive review of current policies and challenges concerning cell phone use in courthouses and innovative proposals for the Massachusetts Trial Court to consider as it wrestles with this question. On behalf of the Access to Justice Commission, we would like to express our gratitude to the members of the working group -- retired Appeals Court Justice and Continuing Access to Justice Fellow Cynthia J. Cohen, retired Superior Court Justice and Access to Justice Fellow Paul A. Chernoff, and former Massachusetts Bar Association President and current Access to Justice Commissioner Jeffrey N. Catalano -- for the countless hours that they have devoted to investigating this topic and preparing their report. In addition, we would like to thank Paula M. Carey, Chief Justice of the Trial Court, Court Administrator Jonathan Williams, Trial Court Director of Security Jeffrey Morrow, the Chief Justices of the Trial Court departments, and the many other judges, clerks, deputy court administrators, security chiefs, court staff, and outside experts who conferred with the members of the working group, for taking the time to share their experiences and insights. We also want to thank the Appleseed Center for Law & Justice for its study of the hardships created by cell phone bans in the Massachusetts courts and for presenting its preliminary findings to the Commission in March 2018, and the many contributors to the December 2017 Justice for All Strategic Action Plan, which also highlighted this issue.

Deciding how to regulate cell phone use in the courts is a complex issue because it involves many conflicting concerns and a wide range of different courthouse environments. But we are confident that, armed with the information in this report, the Massachusetts Trial Court can develop solutions that appropriately accommodate the needs of court users in each courthouse in the Commonwealth.

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Co-Chairs of the Massachusetts Access to Justice Commission

REPORT OF THE WORKING GROUP ON POSSESSION AND USE OF CELL PHONES AND SIMILAR DEVICES IN THE COURTS OF MASSACHUSETTS

INTRODUCTION

In June 2018, Supreme Judicial Court Chief Justice Ralph Gants and Attorney Susan Finegan, in their capacities as co-chairs of the Massachusetts Access to Justice Commission (Commission), established a working group¹ to review the Trial Court's policies and practices regarding the use of cell phones and other personal electronic devices (PEDs)² in the courts of the Commonwealth, and to report back to the Commission with conclusions and recommendations. The impetus for this review was a March 2018 presentation to the Commission by the Massachusetts Appleseed Center for Law & Justice (Appleseed), summarizing the preliminary findings of its study of cell phone bans and the hardships they create for court users.

Although existing Trial Court policy generally permits the use of cell phones in the courthouse as long as they are turned off or set to silent before entering a courtroom, it also allows individual courthouses to seek authorization for further restrictions. Currently, the Trial Court website identifies 56 courts (some housed in the same courthouse) that do not permit cell phones to be brought into the building.³ According to the website, all of these courts make exceptions for

¹ The members of the working group are retired Superior Court Justice Paul A. Chernoff, former Massachusetts Bar Association President and current Access to Justice Commissioner Jeffrey N. Catalano, and retired Appeals Court Justice and Continuing Access to Justice Fellow Cynthia J. Cohen.

² Trial Court policies apply to any PED, defined as "any device capable of communicating, transmitting, receiving, or recording messages, images, sounds, data or other information by any means including but not limited to a computer, tablet, cell phone, or blue-tooth device." There is a growing number of other "smart devices" that have some or all of these capabilities, including watches, pens, and eyeglasses.

³ Attleboro District Court, Bristol County Superior Court - Fall River, Boston Municipal Court - Brighton Division, Boston Municipal Court - Dorchester Division, Boston Municipal Court - East Boston Division, Boston Municipal Court - Roxbury Division, Boston Municipal Court - South Boston Division, Boston Municipal Court - West Roxbury Division, Bristol County Juvenile Court - Fall River, Bristol County Juvenile Court - New Bedford, Bristol Probate and Family Court - Fall River, Brockton District Court, Chelsea District Court, Chicopee District Court, Concord District Court, Clinton District Court, Dudley District Court, East Brookfield District Court, Essex County Juvenile Court - Lawrence, Essex County Juvenile Court - Salem,

"employees, police, attorneys, and jurors." Two courts, Bristol County Juvenile Court and New Bedford District Court, make another explicit exception for social workers.⁴

The primary rationale for courthouse bans on possession of cell phones is that they are necessary to maintain safety and security. Among other things, they are intended to prevent individuals from photographing or recording victims, witnesses, jurors or court employees for the purpose of threatening or intimidating them, and to prevent members of gangs or other troublemakers from summoning confederates to confront "enemies" spotted in the courthouse.

In July 2018, after the working group had begun its investigation, Appleseed issued a final report confirming and expanding upon the preliminary findings it had shared with the Commission. The report cited numerous ways in which litigants, especially self-represented litigants, need their cell phones: to display evidence, to communicate with others outside the courthouse, to use translation services, to access information, and to perform legal research. Appleseed concluded that "these bans are unduly burdensome to litigants -- especially those without representation -- and have a harmful effect on access to justice in Massachusetts."⁵

Essex Probate and Family Court - Lawrence, Essex Superior Court - Lawrence, Essex Superior Court - Newburyport, Essex Superior Court - Salem, Fall River District Court, Falmouth District Court, Fitchburg District Court, Framingham District Court, Haverhill District Court, Holyoke District Court, Lawrence District Court, Lowell District Court, Lynn District Court, Lynn Juvenile Court, Malden District Court, Marlborough District Court, Milford District Court, Natick District Court, New Bedford District Court, Newburyport District Court, Northeast Housing Court - Lawrence, Northeast Housing Court - Salem, Peabody District Court, Salem District Court, Somerville District Court, Southeast Housing Court - Fall River, Stoughton District Court, Uxbridge District Court, Waltham District Court, Westborough District Court, Worcester District Court, Worcester Housing Court - Worcester, Worcester Juvenile Court - Worcester, Worcester Probate and Family Court, Worcester Superior Court, Wrentham District Court.

⁴ Trial Court policies do not formally authorize an exception for social workers; nor do they account for others who are permitted to provide services in the courthouse but who are neither lawyers nor court employees. We have been told, however, that there is a process for such individuals to obtain identification badges that allow them to enter with a cell phone.

⁵ Massachusetts Appleseed Center for Law & Justice, Court Cell Phone Policy Report, July 2018. See massappleseed.org/wp-content/uploads/2018/07/Cell-Phones-in-the-Courthouse.pdf (last visited April 30, 2019).

Access to justice concerns arising from courthouse cell phone bans also garnered national attention. On August 22, 2018, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) approved a joint Resolution entitled “Review of Courthouse Cell Phone Policies.”⁶ This Resolution concluded that “restrictions on cell phone use in courthouses may impose additional burdens on litigants, particularly those who are self-represented,” and listed a number of ways in which bans preclude litigants from meeting important needs, such as accessing evidence and communicating with individuals outside the courthouse to assist with childcare or transportation. It therefore was resolved that CCJ and COSCA encourage all of their members to carefully review and assess their policies with respect to cell phone use in courthouses so as to appropriately balance the security risks posed by cell phone use with the needs of litigants, especially those who are self-represented.

After an extensive investigation, the working group has come to the conclusion that cell phone bans create unacceptable hardships and should be phased out in favor of alternative security measures that have been shown to guard against the dangerous misuse of cell phones in the courthouse while still meeting the needs of court users and visitors to have access to their devices. Instead of using a strategy that relies on prohibiting the possession of cell phones as a condition of entry, each courthouse should employ a strategy, tailored to its security needs, that relies on regulating and controlling the use of cell phones within the building. While there will need to be a transition period, all cell phone bans should be eliminated as soon as practicable. The goal must be that no persons are denied entry to our public courthouses because they are carrying cell phones; nor should they be compelled to leave them at home, pay for them to be stored, or hide them outside, as a condition of coming into the building.

As set out more fully in the final section of this report, we recommend that the following steps be taken to phase out cell phone bans, replace them with alternative security measures, and, in the interim, improve communication to the public about cell phone restrictions, and alleviate hardships for self-represented litigants.

⁶ Conference of Chief Justices/Conference of State Court Administrators Resolution 7, In Support of a Review of Courthouse Cell Phone Policies, August 22, 2018 (attached as Exhibit A).

- review each courthouse with a ban to determine, based upon objective criteria, whether demonstrated, serious security risks justify the continuation of the ban until a suitable alternative is available;
- transition courthouses that do not have demonstrated, serious security risks to policies and practices used successfully in courts without bans;
- conduct a pilot project in high-risk courthouses to test the deployment of magnetically locked security pouches that prevent unauthorized cell phone use while allowing cell phone owners to retain possession of their devices and regain access to them if necessary;
- use security pouches (if found to be feasible) or on-site storage (where it is practicable) as alternatives to bans in high-risk courthouses;
- while bans continue to exist, develop a global exemption, supported by a workable screening or authorization process, for self-represented litigants doing business in the courthouse;
- while bans continue to exist, improve websites and other forms of communication to provide the public with information about the details of the bans, including the availability of storage and whether there is a practice of granting individual exceptions by court order;
- revise the Trial Court PED policy to acknowledge and reflect that it is intended to allow court users to possess and use their devices in the courthouse consistent with sound security practices; and,
- move expeditiously towards the objective of completely eliminating bans and, where restrictions are still necessary, replacing bans with alternatives that allow the public to have access to their cell phones in the courthouse when needed.

SCOPE OF INVESTIGATION

The working group reviewed the existing rules and policies governing the use of cell phones and other electronic devices in Massachusetts courthouses, obtained and analyzed more than 90 policies from other jurisdictions, and investigated the situation on the ground. Appleseed's research into the user experience was extensive and persuasive, but it did not have formal access to information gathered from the courts. The working group was in a position to fill that gap.

Although it was not feasible for us to speak with all potentially interested members of the court community or to visit all affected courthouses, we believe that we succeeded in obtaining a cross-section of views. We spoke with numerous

individuals in the Trial Court, including Trial Court Chief Justice Paula Carey, Trial Court Administrator Jonathan Williams, the Chief Justices of each individual court department and, in some cases, the deputy court administrators of those courts. In preparation for these meetings, several of the Chiefs had canvassed other judges in their departments and shared the results with us. We had many consultations with the Trial Court Director of Security, Jeffrey Morrow, whose expertise and assistance were invaluable. We visited a representative sample of courthouses with and without bans, and we met with judges, security chiefs, court service center staff and others. Through Director Morrow, we received input from David Bernard, the Business Agent of the National Association of Government Employees (NAGE), which represents court officers and probation officers.

On two occasions, we visited businesses (a convenience store and a constable's office) that provide cell phone storage for a fee. We also conducted telephone interviews, including a conference call with two Justices of the Georgia Supreme Court, which recently promulgated an innovative policy. In addition, we did extensive research into magnetically locked security pouches used by some courts in other jurisdictions. We consulted with the Executive Director of the Board of Bar Examiners, Marilyn Wellington, who successfully used these pouches to secure the cell phones of nearly 1,500 examinees during the July 2018 bar exam and 500 examinees during the February 2019 exam. We met with representatives of Yondr, the company that makes the pouches, and, accompanied by Director Morrow, we made two out-of-state trips -- one to Philadelphia, and another to Washington, D.C. and Prince George's County, Maryland -- to observe the different ways that Yondr pouches can be deployed in high-risk courthouses.⁷

ISSUES AND CONCERNS

- Concerns raised by cell phones.

Cell phones can be used to intimidate, harass, and incite retribution against undercover agents, witnesses, jurors and employees by creating and disseminating photographs, video or audio recordings. The ease with which photographs, video and audio can be posted on the internet exacerbates this risk. Cell phones also can be used to send messages about trial testimony to sequestered witnesses, thereby compromising the integrity of the proceedings. Another danger is that cell phones can be used to communicate that a target is present in the courthouse. On two

⁷ The members of the working group have personally absorbed all of the expenses connected with their service, including expenses for their travel within and without Massachusetts.

recent occasions, violence occurred at the Suffolk County Courthouse when calls or text messages from the courthouse summoned members of rival gangs.

While not rising to the level of a security threat, cell phones can disrupt court proceedings if people fail to turn them off or silence them in the courtroom. On the other hand, in busy courthouses without bans, security personnel have reported that cell phone use in the common areas of the courthouse is a calming distraction for those waiting to receive services.

Another concern is that cell phone use by jurors may expose them to outside influences or otherwise interfere with their service during trial and deliberations. It appears, however, that current policies and practices address this concern effectively without subjecting jurors to cell phone bans. Jurors may bring their cell phones into the courthouse but must adhere to limitations on where, when, and how their cell phones may be used, including any particularized limitations imposed in the discretion of the presiding judge.

- Concerns raised by courthouse bans.

Prohibiting court users from entering the courthouse with a cell phone results in many hardships, especially for self-represented litigants. Cell phones have become essential tools of daily life; they are used not only for communication but also for storing information and for locating and using resources. Self-represented litigants may need to use their phones in the courthouse to present evidence, such as photographs or text messages; to access names, addresses and other information in order to complete court forms; to obtain other information needed to make effective use of self-help support services; to use translation aids and services; and to consult their calendars to schedule future court dates. Without their cell phones, self-represented litigants lose the opportunity to self-duplicate court documents and avoid copying fees,⁸ to perform research, and to find and seek help from legal and social service resources. Self-represented litigants and other courthouse visitors also lose their ability to communicate with child care providers,

⁸ See Trial Court Rule XIV - Uniform Rules on Public Access to Court Records. Within reasonable limits, these rules allow members of the public to use cell phones and other PEDs to copy court records without having to pay fees for reproduction. See Rules 2(c) and 2(j). As the notes to Rule 2(j) explain, however, if a court facility does not permit these devices within the building, the requester cannot take advantage of this process. The requester "may obtain a copy through other means," but a fee will be charged as set forth in the Trial Court's Uniform Schedule of Fees. See Rule 2(i).

employers, and others, since pay phones are a thing of the past, and courthouse phones are not intended for public use.

Compounding these problems is the fact that courts with bans do not provide on-site storage. In smaller courthouses there may be no room for such facilities. There are security concerns about making self-service storage available; lockers are thought to pose a threat because weapons and other contraband can be secreted there. Supervised repositories require additional personnel and may invite claims for loss or damage. While the absence of on-site storage is not a problem for people who drive to the courthouse and can leave their devices securely locked in their cars, those who arrive via public transportation or a ride-sharing service do not have this option. In some locations, nearby businesses will store cell phones for a fee, but the charge, which can be as much as \$5.00, is hardly trivial for some litigants. Even for those who can afford it, leaving cell phones with a third party is inconvenient if they need to get to their devices easily. In one location where a constable's office provides storage, the office closes at 4:00 PM. People whose court matters do not wrap up in time discover that they cannot retrieve their phones that day.

When private storage is not available, affordable, or practical, individuals resort to hiding their cell phones outside in the bushes or under flower pots. Those who are unable or unwilling to find a place to leave their devices are denied entry to the courthouse. Litigants facing this prospect may choose to leave their cell phones at home, but that creates other issues. In addition to the impact on their ability to conduct court business and to stay in touch with family and work, the lack of a cell phone can compromise personal safety. For example, individuals seeking or receiving restraining orders are at heightened risk when traveling to and from court without their cell phones.

Courts with bans are not blind to these issues and are open to making exceptions to the ban on an individualized basis. The Dorchester Division of the Boston Municipal Court has established a protocol whereby self-represented litigants (most often, restraining order applicants) may obtain permission to bring in their cell phones for the purpose of displaying evidence to the judge. Even without a court protocol, individual judges in courts with bans make exceptions for self-represented litigants who have evidence on their cell phones.

These efforts, while laudable, are imperfect. Because the potential for obtaining an exception is not publicized on the Trial Court website or otherwise, self-represented litigants with evidence on their cell phones may arrive at the

courthouse having already stored their devices or left them at home. Some judges will attempt to make further accommodation -- such as allowing litigants time to retrieve their devices if they are stored nearby, or rescheduling the matter -- but this is not always feasible.

Currently, the information about courthouse bans that is available on the Trial Court website is insufficient and potentially confusing. The website pages of courts with bans provide notice that cell phones are prohibited under the heading "Restrictions," but they also link to the website page of the general Trial Court policy, which states that individuals "may use PEDs outside the courtroom in the public access areas of the courthouse." One needs to scroll down to see that there is potential for further restrictions. Furthermore, no information is provided about the possibility of obtaining permission to bring in a phone; and no information is given about storage options. Often, court users learn of the ban only after waiting in line at the courthouse security checkpoint. These deficiencies in communication can create confusion, anxiety, and delay for those arriving with cell phones at the courthouse.

Finally, the fact that lawyers are allowed to bring in their cell phones creates an issue of fairness. One person who works with self-represented litigants reported that the people she serves feel like "second-class citizens" and that scrambling to find a place to leave their phones adds greatly to the stress of navigating the courts on their own.

MASSACHUSETTS POLICIES

Currently, the possession and use of cell phones and other personal electronic devices (collectively PEDs) in Massachusetts courthouses are governed by SJC Rule 1:19 (attached as Exhibit B), and three Trial Court Policy Statements:

- an August 14, 2015 Policy Statement broadly addressing possession and use of PEDs in courthouses (attached as Exhibit C);
- a Policy Statement most recently updated on April 9, 2018, identifying courthouses that have been authorized to prohibit the public's use of PEDs (attached as Exhibit D); and
- a March 25, 2010 Policy Statement relating to the use of PEDs by jurors (attached as Exhibit E).

In addition, criminal statutes, particularly G. L. c. 268, § 13B (the "witness intimidation statute") and G. L. c. 272, § 99(C)1 (the "wiretap statute"), may be

implicated when PEDs are misused in courthouses. The relevant provisions of these authorities are summarized below.

- SJC Rule 1:19 - Electronic Access to the Courts.

Rule 1:19(1) is entitled "Covert photography, recording or transmission prohibited." It provides as follows: "No person shall take any photographs, or make any recording or transmission by electronic means, in any courtroom, hearing room, office, chambers or lobby of a judge or magistrate without prior authorization from the judge or magistrate then having immediate supervision over such place." The rule does not address how this section is to be enforced, or the potential consequences of a violation.

Rule 1:19(2) is entitled "Electronic access by the news media." Subject to certain limitations, it permits the "news media" to photograph, record, and transmit courtroom proceedings open to the public. The term "news media" is defined to include any authorized representative of a news organization registered with the SJC Public Information Officer or any individual so registered. Those eligible to register are organizations or individuals that "regularly gather, prepare, photograph, record, write, edit, report or publish news or information about matters of public interest for dissemination to the public in any medium, print or electronic." Applicants must certify that they perform such a role and that they will familiarize themselves and comply with the rule. A judge has discretion to entertain a request from news media that "have not yet registered" to obtain electronic access to a particular matter over which the judge is presiding. According to the SJC Public Information Office, problems with the administration of this rule are rare.

Rule 1:19(3) is entitled "Other recordings." It provides that: "A judge may permit the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record when authorized by law, for other purposes of judicial administration, or for the preparation of materials for educational or ceremonial purposes."

- August 14, 2015 Trial Court Policy Statement -- Possession & Use of Cameras & Personal Electronic Devices (2015 Policy).

Although this policy is undated on the Trial Court website, other records show that it was adopted effective August 14, 2015. The most relevant features of the 2015 policy may be broken down as follows:

Devices covered. The 2015 policy applies to any PED, defined as "any device capable of communicating, transmitting, receiving, or recording messages, images, sounds, data or other information by any means including but not limited to a computer, tablet, cell phone, or blue-tooth device." It also applies to cameras whether or not they have the attributes of a PED.

Application. The 2015 policy is a uniform policy that applies to all Trial Courts; however, it provides for a process that allows individual courthouses to seek permission to impose further restrictions. It also generally preserves the discretion of individual judges over courtroom management.

Relationship to Rule 1:19. The 2015 policy is to be read consistent with SJC Rule 1:19, and, to the extent there is any conflict, SJC Rule 1:19 will control.

Purpose. The stated intent of the 2015 policy is "to ensure a safe and secure environment for court staff and the public and to ensure that court business is conducted in an orderly and efficient manner." The 2015 policy refers to security risks that may arise from PEDs, such as using "cellular communications" for the purpose of intimidating or inciting retribution against trial participants and taking photographs of jurors, witnesses, counsel, or undercover agents in order to intimidate or cause harm to them.

Possession and use of PEDs. The general rule is that members of the general public may bring PEDs into the courthouse; however, upon entering and passing through the security screening station, they will be instructed to turn off the devices or set them on silent mode prior to going into a courtroom. Individuals may use PEDs outside the courtroom in public access areas as long as the activity does not disrupt or disturb court business or proceedings; but they may not take photographs or make video recordings, except in association with court-sponsored ceremonies when photography has been authorized by the presiding judge. With the permission of the department head (Clerk, Register, Recorder, CPO) or designee, individuals may use PEDs to copy non-impounded court documents.⁹

PEDs may be brought into a courtroom, but unless an exception applies, they cannot be used there. In addition to being turned off or set to silent mode, PEDs must be "stowed away." The use of Bluetooth earpieces and similar

⁹ This is consistent with Trial Court Rule XIV - Uniform Rules on Public Access to Court Records. See note 8, above.

extended communication devices also is prohibited in courtrooms except by persons with disabilities as defined by the American with Disabilities Act, who need such devices to communicate.

Exceptions to the prohibition on using PEDs in the courtroom are made for news media authorized by SJC Rule 1:19, as well as for counsel, court staff, and others conducting business before the court. These individuals may use their PEDs in the courtroom with the consent of (and within guidelines set by) the presiding judge. In deciding whether to give consent, the presiding judge "shall be guided by whether the [PED] can be operated so that it: does not interfere with courtroom decorum, is not inconsistent with court functions, and does not otherwise impede the administration of justice; does not interfere with the court sound system, recording system, or other technology, or the court reporter's function; does not generate sound or require speaking into a device; does not photograph proceedings or record video images; does not record audio or digitally transcribe the proceedings except as permitted by this policy."

The 2015 policy explicitly allows jurors to "possess" PEDs in the Jury Pool area, but it is within the discretion of the presiding judge to decide whether jurors may "possess" PEDs in the courtroom or deliberation room. The policy is silent as to "use." A separate policy, discussed below, requires judges to instruct jurors on when and how they may use PEDs during the course of their jury service.

Enforcement and penalties. The 2015 policy provides that Court Officers have the "primary responsibility for enforcement." They may confiscate a device used in violation of the policy, but only until the violator is leaving the courthouse for the day. They also may remove the violator from the courtroom or the courthouse, but only if he or she has received and ignored a Court Officer's oral warning to stop the behavior or failed to surrender the PED until leaving the courthouse. In addition to measures taken by Court Officers, a judge may order that an individual be held in contempt of court for violation of a judicial order to comply with the policy.

Court Officers cannot arrest an individual for noncompliance with the policy; nor can Court Officers search a confiscated PED for any reason without a search warrant or the express written consent of the owner. Court Officers may retain the PED as evidence of a criminal violation if authorized to do so by the First Justice, Regional Administrative Justice, or presiding judge. Citing to § 10(d) of Chapter 258 (the Massachusetts Tort Claims Act), the policy states that no

liability shall accrue to security personnel or any other court official or employee for any loss, misplacement or damage to a confiscated device.

Further restrictions authorized. The 2015 policy provides a process for adopting more stringent restrictions for specific courthouses. In courthouses occupied by only one court department, the protocol is as follows:

"In the event that a First Justice/Regional Administrative Justice determines, following consultation with the Director of Trial Court Security, that special security or privacy concerns exist, the First Justice/Regional Administrative Justice may notify the respective Departmental Chief Justice or Deputy Court Administrator that the possession or use of PEDs and cameras will be further restricted or prohibited. Exemptions to the restriction on the possession of PEDs in a courthouse will be limited to employees, attorneys, law enforcement officers, and jurors."

In courthouses housing multiple court departments, the decision to further restrict the use of PEDs must be made jointly:

"Where more than one Trial Court Department is located in the courthouse, the decision to further restrict the possession or use of PEDs and cameras will be made jointly by the individuals in each department as identified above."

If there are differences of opinion between judicial officers and the Director of Security as to the need for further restrictions, the issue will be referred to the Court Administrator and the Chief Justice of the Trial Court for resolution.

The policy preserves further restrictions instituted prior to the policy's effective date of August 14, 2015, but "they will be subject to annual review and discussion with the Director of Security to determine whether the initial concerns that warranted the restrictions continue to exist."

Administration. Insofar as there are separate "courthouse policies prohibiting the possession and use of PEDs," the 2015 policy states that such policies "shall be administered by the Security Department." Insofar as issues arise in a particular courtroom or courthouse regarding the use of PEDs, the 2015 policy provides that ordinarily the presiding judge will work with a Chief Court Officer to address them; however, "unusual requests or circumstances may require consultation with a First Justice or Regional Administrative Justice, the Director of

Security, or the SJC Public Information Officer, depending on the nature of the situation and whether it is a single occurrence or ongoing issue."

- April 9, 2018 Trial Court Policy Statement -- Restrictions on the Possession of Cellular Telephones and Personal Electronic Device (2018 policy).

This policy identifies courts that have bans on cell phones as of April 9, 2018. On the Trial Court website, the 2018 policy is introduced by the following language: "To protect the safety and security of those who appear in court, and to minimize potential distractions to court proceedings, cellular telephones and other personal electronic devices (PED[s]) may be prohibited from courthouses." (Emphasis added.) However, the subsequent text of the 2018 policy does not refer to prohibition from the courthouse. Rather, it identifies Trial Court facilities that "have banned the public's use of cellular telephones and PEDs." (Emphasis added.) Prohibiting possession is, of course, different from prohibiting use.

We have been told that this discrepancy resulted from an error made when the policy was posted on the website. In fact, all of the 56 listed courts¹⁰ have been authorized to ban the possession of PEDs by non-exempt individuals. Consistent with that authorization, these courts prohibit non-exempt individuals from bringing PEDs into the building.

- March 15, 2010 Trial Court Policy Statement -- Juror Use of Personal Communication Devices (2010 Policy).

The relevant portion of the 2010 policy requires judges to instruct individuals who have been selected to serve on a jury that, until their jury service is concluded, they "shall not use a computer, cellular phone, or other electronic device with communication capabilities, including access to the internet, while in attendance at trial or during jury deliberations. These devices may be used during lunch breaks but may not be used to obtain or disclose information about, or relevant to the case." See also the 2015 policy, discussed above, which allows jurors to "possess" PEDs in the Jury Pool area, and, in the discretion of the presiding judge, in the courtroom or deliberation room.

¹⁰ See note 3, above, for the complete list.

- "Witness Intimidation Statute," G. L. c. 268, § 13B.

Effective April 13, 2018, G. L. c. 268, § 13B was extensively amended. In its new iteration, it criminalizes the willful harassment or intimidation of a wide variety of individuals associated with or in attendance at court proceedings (including witnesses and jurors) with the intent to interfere with the proceeding or to inflict harm or retaliation.

- "Wiretap Statute," G. L. c. 272, § 99(C)(1).

This statute criminalizes the willful "interception" of any wire or oral communication. "Interception" is defined to mean: "to secretly hear, secretly record, or aid another to secretly hear or secretly record the contents of any wire or oral communication through the use of any intercepting device by any person other than a person given prior authority by all parties to such communication."

POLICIES IN OTHER JURISDICTIONS

Issues and concerns regarding possession and use of cell phones and other PEDs are hardly unique to the Massachusetts courts. Our research has shown that courts throughout the country face similar challenges in striking an appropriate balance between security concerns and access to justice concerns. At the inception of our work in July 2018, we obtained and analyzed more than 90 PED policies from 31 states, the District of Columbia, one territory, and three Federal courts. Subsequently, these policies (along with some additional data) were reviewed again, with a focus on exceptions to restrictions and provisions relating to enforcement.¹¹

What follows are some general observations gleaned from this research, with the caution that they reflect a snapshot in time. Especially in the wake of the CCJ/COSCA resolution, we suspect that Massachusetts is not the only jurisdiction taking a fresh look at its policies. At the end of this section, to give a sense of emerging perspectives on PED policies and practices, we include a discussion of recently issued PED policies in Georgia and Virginia, and we describe how courts in Pennsylvania, the District of Columbia, and Maryland utilize security pouches to restrict only the use of PEDs and not their possession.

¹¹ We thank volunteer intern Madelyn Chan, SJC law clerks Abrisham Eshghi and Maia Usui, and judicial intern Karyn Michela for their valuable assistance in these endeavors.

- General observations.

Local regulation. Because court administration often is decentralized, most of the policies we reviewed pertain to specific courts or judicial districts. Often, there are substantial differences among policies in the same jurisdiction. In some jurisdictions, the state's highest court has sought to establish a unified approach by promulgating an all-courts policy or a model policy that local courts are encouraged to use.

Photography, video/audio recording and transmission. Nearly all of the policies prohibit the use of PEDs for photography and video/audio recording or transmission, unless it falls within an exception for authorized media, or is otherwise permitted by the court. Photography may be allowed to memorialize adoptions and other ceremonial occasions, or to copy court records where self-service duplication is permitted. At least two policies allow individuals who are not affiliated with the media to obtain permission to record court proceedings.

Range of restrictions. PED policies run the gamut from highly restrictive to relatively permissive. The most restrictive policies prohibit non-exempt individuals from bringing PEDs into the courthouse. Other policies allow non-exempt individuals to retain their devices but ban their use anywhere in the courthouse, unless permitted by the judge. Some policies require individuals to place and carry their PEDs in magnetically locked security pouches that can be opened only with a special device.

Less restrictive policies, like the Massachusetts 2015 policy, commonly allow court visitors to possess PEDs in the courthouse and use them in common areas but prohibit the use of PEDs in the courtroom. At least one policy requires that persons entering a courtroom hand over their PEDs to a court officer. A substantial number of policies allow individuals to keep their PEDs in the courtroom but require that the devices be turned off or left on silent/vibrate mode and stowed away. Some courts require that PEDs be placed in magnetically locked pouches that are distributed at the entryway to the courtroom. Some policies explicitly allow attorneys to use PEDs in the courtroom in connection with presenting their cases, and several policies extend such permission to self-represented litigants.

The least restrictive policies allow courtroom spectators to make use of their PEDs in the courtroom as long as they do so silently and adhere to prohibitions on

photography and recording. Several policies advise that there is free Wi-Fi for the benefit of court users.

Courthouse bans. Fewer than twenty of the more than 90 policies we reviewed prohibit individuals from bringing PEDs into the courthouse. All but a handful make exceptions for specific categories of people.¹² Like the Massachusetts policies, the policies in other jurisdictions ordinarily make exceptions for employees, attorneys, police and jurors. Policies in other jurisdictions also may exempt additional categories, e.g.: licensed law enforcement officers of all types; staff members of attorneys, such as paralegals and investigators; individuals who provide a variety of services in connection with court business, such as probation officers, mediators, domestic violence advocates, and other social service providers; and persons performing repairs or maintenance in the building. Exceptions also are made for ADA qualified individuals who require the use of electronic devices to assist them.¹³ The policy for the Circuit Courts in Cook County, Illinois, includes exceptions for individuals seeking to obtain civil orders of protection, and for witnesses in protection order cases. In addition, most policies give notice that an exception will be made for anyone who obtains written permission from a judge in the courthouse.

Some policies explicitly inform potential court visitors about the presence or absence of storage facilities and/or telephones at the courthouse. The policy in New Castle, Delaware, states that it provides cell phone lockers in the parking garage and that there is public telephone access in the courthouse. The policy for the Circuit Courts of Cook County, Illinois, states that there are a limited number of free storage lockers in the courthouse and that public telephones are available. The policy for the Court of Common Pleas in Bradford County, Pennsylvania, also says that there are a limited number of lockers available. Other policies inform court visitors that there are no storage facilities and advise them to leave their devices in their cars or elsewhere.

¹² A few policies are silent as to exceptions. The policy of one local court in Colorado purports to make no exceptions, even for Sheriffs.

¹³ The Massachusetts 2015 policy recognizes an ADA exception to its restrictions on the use of PEDs in the courtroom. Although the 2018 policy does not articulate a comparable exception to prohibitions on bringing a PED into the courthouse, we found no reason to believe that exceptions are not being made to accommodate qualifying individuals.

Enforcement. Like the Massachusetts 2015 policy, policies in other jurisdictions generally provide that violation may result in confiscation of the device until the violator leaves the building, removal of the violator from the courtroom or courthouse, or a finding of contempt of court and the imposition of appropriate sanctions. Depending upon the circumstances, some policies also allow for forfeiture of future PED privileges, permanent confiscation of the offending device, substantial fines, or incarceration.

Notice. Policies often require that the rules regarding PEDs must be posted prominently in the courthouse. Virtually all of the policies we reviewed are posted on the internet. We were unable to determine if any courts put notices of restrictions on PEDs on court forms and documents that are sent to litigants.

- Emerging policy trends and practices.

Georgia. Last year, the Supreme Court of Georgia adopted a new rule relating to the use of PEDs in courtrooms and the recording of judicial proceedings. This rule was the product of two years of study by a committee drawn from a wide variety of stakeholders.

The policy is based on the premise that cell phones and other PEDs have become essential tools in everyday life. The policy does not restrict possession of PEDs in the courthouse and provides that PEDs may be used even in the courtroom. Attorneys and their employees (such as paralegals and investigators) may use PEDs in the courtroom for purposes other than recording sounds and images -- such as word processing, storing or retrieving information, accessing the internet, and sending or receiving messages or information. Self-represented parties also may use PEDs in the courtroom for the same purposes "in direct relation to their proceedings." Jurors, witnesses, parties, and spectators may bring PEDs into the courtroom. While, generally, they must step outside the courtroom to use their devices, judges have the discretion to permit them to use PEDs for non-recording purposes.

After we learned that Georgia Supreme Court Presiding Justice David E. Nahmias had expressed a willingness to speak with us,¹⁴ we arranged a conference call with him and Justice Nels S.D. Peterson to learn more about the Georgia policy. They told us that the use of cell phones and other electronic devices in the courtroom had been prohibited in the past, but that their study had shown that

¹⁴ We express our appreciation to Appleseed's Executive Director, Deborah Silva, for suggesting and facilitating our contact with Justice Nahmias.

allowing PED use in the courtroom was necessary to meet the needs of court users. According to the Justices, Georgia courts have the same security issues that we have in Massachusetts. They noted that their policy has sufficient flexibility to allow for more restrictions in cases of special concern without imposing them as a general rule. They rely on monitoring behavior in the courtroom and, if necessary, entering orders banning PED use when sensitive testimony is being heard. In their view, people are so dependent on their cell phones that any broader restrictions would be unacceptable. As one of the Justices stated, people should not be cut off from their phones as a price for using the courts.

Recognizing that the new policy would be a big change for some courts, the Supreme Court provided for a six-month transition period during which training was provided. The policy was put into effect throughout the Superior Court and is in the process of being implemented in most other courts.

Virginia. Virginia is a jurisdiction where some courts have prohibited PEDs in the courthouse, and others have not. Concerned about the lack of uniformity and the impact that courthouse bans had on self-represented litigants, the Virginia Access to Justice Commission urged that a statewide policy be adopted to authorize the carrying and use of PEDs in courthouses for evidentiary and other purposes. In December 2018, the Supreme Court of Virginia responded to this recommendation by approving a model policy for the use of PEDs in courthouses and courtrooms.

The model policy acknowledges that the use of PEDs has increased dramatically, and that many users see these devices as a necessary incident to their personal and working lives. It recognizes that appropriate use at the courthouse will allow people to access information for presentation to the court and to transact other necessary business, but also recognizes that inappropriate use can be a danger, cause distractions, and demean the order and processes of the court.

The model policy generally allows court visitors to use PEDs in the common areas of the courthouse; however, further restrictions may be imposed -- such as limiting conversations to designated areas. PEDs must be placed in silent/vibrate mode. Photography, audio or video recordings, or transmission of live audio or video is prohibited without written judicial authorization.

PEDs may not be brought into the courtroom unless the presiding judge permits it. If PEDs are allowed, they must remain silent. Any use of PEDs in the courtroom also must be authorized by the judge. Notably, if possession in the

courtroom is prohibited or restricted, the model policy provides that provision must be made for storage at the security entrance to the courthouse for those who are not allowed to bring in their devices. Storage may be limited to persons who represent that they have no other means of storage available, such as a vehicle parked near the courthouse.

Yondr pouches. In some jurisdictions, courts require visitors to turn off or silence their cell phones and place them in magnetically locking neoprene pouches, manufactured and distributed by a company called "Yondr."¹⁵ Pouches for cell phones are approximately ten inches long and four inches wide. Pouches also are available in larger sizes for tablets. A photograph depicting a cell phone Yondr pouch and an unlocking base is attached as Exhibit F.

Depending upon security needs, cell phones may be placed in pouches at the entrance to the courthouse, thereby prohibiting unauthorized use anywhere in the building, or at the entrances to courtrooms where sensitive matters are being heard. Cell phone owners remain in possession of their devices but are unable to use them until the pouches are unlocked by tapping them against an unlocking base.

Yondr pouches originally were designed to prevent audience members from recording or disturbing music concerts and other performances, and they still are used for that purpose across the country and internationally. Yondr now markets its product to a variety of customers who wish to create cell phone free spaces, including schools and courts. In Massachusetts, a number of Boston public schools use Yondr pouches, and, since July 2018, the Massachusetts Board of Bar Examiners has utilized Yondr pouches to prevent examinees from accessing their phones for any purpose, including cheating. Despite the fact that very large numbers of phones needed to be secured (there were nearly 1,500 examinees in July 2018 and 500 examinees in February 2019), the use of the pouches did not increase wait time at security.

The working group visited three courthouses that use "Yondr" pouches: the Juanita Kidd Stout Center for Criminal Justice in Philadelphia, Pennsylvania, the District of Columbia Superior Court, and the Prince George's County Circuit Court, a general jurisdiction trial court in Maryland. All three courthouses have acute security needs.

¹⁵ See <https://www.veryondr.com> (last visited April 30, 2019).

In the Philadelphia courthouse, which handles only criminal business, all non-exempt individuals have their cell phones placed in pouches when entering the courthouse.¹⁶ In the District of Columbia and Maryland courthouses, pouches are deployed at security stations at the entrances to individual courtrooms where the matters being heard are considered to pose elevated security risks. In Philadelphia, pouches are unlocked at a central unlocking station when cell phones are needed for court business, and when visitors leave the courthouse. In the District of Columbia and Maryland courthouses, they are unlocked when visitors leave the courtroom.

Court officials in all three venues believe that using Yondr pouches provides a solution to serious security concerns while allowing both court users and the courts the advantages that accrue from having the devices remain in their owners' possession. In the Philadelphia courthouse, which is located in downtown Philadelphia and is the main criminal courthouse for its judicial district, there had been a history of individuals using cell phones to intimidate witnesses or reveal the identities of undercover officers. While there have been some glitches in the use of Yondr, such as people forgetting or neglecting to get their phones unlocked and pouches becoming dirty and needing to be replaced, the overall experience has been very positive. One court official remarked that Yondr pouches essentially have eliminated the dangers that cell phones had created in the past. He believes that they have "saved lives."

We noticed that there also was a strong police presence outside the courthouse in Philadelphia. This brought home the fact that security risks are not confined to the inside of courthouse buildings and that collaboration with local police also may be needed to secure the vicinity and protect potential targets of intimidation and violence.

FINDINGS, CONCLUSIONS & RECOMMENDATIONS

As a result of our research and investigation, we have determined that even heightened security needs can be met without preventing court users from bringing cell phones into the courthouse. While we recognize that cell phone bans cannot be eliminated overnight, the ultimate goal should be that no litigants or other court visitors are denied entry to a courthouse because they are carrying cell phones; nor

¹⁶ Judges, court employees, attorneys, and police officers are exempt.

should they need to leave their devices at home, pay a business to store them, or hide them in the bushes, as a condition of entering the courthouse.

That is not to say that liberal use of cell phones should be allowed in every corner of every courthouse. Rather, the objective should be to move from policies and practices that prohibit cell phone possession to policies and practices that regulate and control their use. Among the options that can be effective even in the highest-risk courthouses are Yondr pouches and, where practicable, on-site storage. Both of these options prevent the indiscriminate use of cell phones and other PEDs but allow for access when cell phone use is necessary and authorized. Meanwhile, as steps are taken towards the ultimate goal of no longer prohibiting any member of the public from bringing a cell phone into the courthouse, interim measures can and should be taken to ameliorate the special hardships experienced by self-represented litigants when they are deprived of access to their cell phones.

While we offer the recommendations listed below, we recognize that we do not have the expertise to refine them. Fortunately, the Trial Court has an extremely able Director of Security who is well-equipped to evaluate the relative costs and merits of alternative suggestions and formulate the details for implementation.

(1) Review existing bans. As soon as practicable, the Director of Security should review each existing courthouse ban, in accordance with the authority granted to him by the 2015 policy, to determine, based upon objective criteria, whether the ban remains necessary for the time being in order to address demonstrated, serious security risks. In the past, there have been no uniform guidelines or standards for deciding whether a ban is warranted. The sheer number of courthouse bans (many of which were grandfathered when the 2015 policy was adopted) suggests that some may have been requested and approved for reasons other than serious security risks -- such as preserving court decorum. While maintaining decorum is a legitimate concern, it is an insufficient justification for a courthouse ban and can be addressed in other ways.

(2) Reduce the number of bans. Courthouses that are found not to have demonstrated, serious security risks should be transitioned away from bans. Because some Massachusetts courthouses already manage significant security challenges without banning cell phones, techniques successfully used in those courthouses can be replicated. These techniques include the generous use of signage and announcements to give notice of restrictions on cell phone use and the consequences of noncompliance, and the maintenance of a visible court officer

presence in the hallways as well as in the courtrooms. It may be necessary to train court personnel on best practices for courtroom management of cell phone interruptions and effective ways to monitor for cell phone misuse. Staffing levels also may need to be reviewed and adjusted.

(3) Conduct a pilot project with Yondr pouches. As soon as practicable, a pilot project should be initiated to test Yondr pouches as a substitute for cell phone bans and to determine the most effective ways to deploy them in different high-risk environments (e.g., in single-court courthouses; in multi-court courthouses; by placing devices in pouches at the courthouse entrance; by placing devices in pouches at selective courtroom entrances). Director Morrow already has investigated the cost of renting Yondr pouches and testing them in three different courthouses during a ninety-day period. He estimates that the total cost of the pilot may be as low as \$12,000 and that the pilot can be initiated this summer.

(4) Implement alternatives to bans in high-risk courthouses. In the event that the use of Yondr pouches is determined to be feasible, courthouses with heightened security risks should be evaluated as candidates for using them. In the alternative, these courthouses should be evaluated for the use of on-site storage. We are aware that on-site storage may not be an ideal solution in some courthouses, especially because of space or staffing limitations. However, the use of on-site storage in other jurisdictions suggests that it can be made to work smoothly in some environments.

(5) Develop a global exemption for self-represented litigants. As an interim measure while bans continue to exist, the Director of Security should take steps to establish an additional global exemption for self-represented litigants who have business in the courthouse, and, in consultation with security staff, judges, and others, develop a workable screening or authorization process to support it.

(6) Improve communication about bans. As long as bans continue to exist, courts covered by a ban should use their websites and other methods of communication to inform the public at large not only about the existence of the ban but also about details such as whether or not storage is available. Until such time as a global exemption becomes available to self-represented litigants, court websites also should explain whether and by what means individual exceptions to the ban may be obtained by court order before or after arriving at the courthouse.

(7) Revise Trial Court PED Policy. The 2015 policy should be revised to improve clarity, eliminate repetition, and reflect a broader purpose. Currently, the

intent of the policy is expressed only in terms of safety, security, and the orderly and efficient conduct of court business. The revised policy should reflect and acknowledge that cell phones and other PEDs have become ubiquitous and essential and that the policy is intended to meet the needs of court visitors to possess and use these devices in the courthouse consistent with sound security practices.

(8) Regularly reassess and eliminate bans. The necessity of remaining bans should be reassessed on a regular basis in light of other available and effective security measures. The courts of the Commonwealth should move expeditiously towards the objective of completely eliminating bans, and, where restrictions are still necessary, replacing bans with alternatives that allow the public to have access to their cell phones in the courthouse when needed.

Dated: April 30, 2019

Exhibit A

CONFERENCE OF CHIEF JUSTICES CONFERENCE OF STATE COURT ADMINISTRATORS

Resolution 7

In Support of a Review of Courthouse Cell Phone Policies

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators have long supported the expansion of meaningful access to the justice system for all; and

WHEREAS, in 2015 the Conferences adopted Resolution 5, which urged their members to provide leadership in achieving the aspirational goal of 100 percent access to effective assistance for essential civil legal needs; and

WHEREAS, cell phones have become an integral part of daily life for many litigants, serving as an essential tool for communication, research, information storage, and safety; and

WHEREAS, there is currently a wide range of policies with respect to cell phone use in courthouses, both across the country and within states; and

WHEREAS, restrictions on cell phone use in courthouses may impose additional burdens on litigants, particularly those who are self-represented, by preventing them from:

- Accessing and presenting evidence stored on cell phones;
- Gathering information and conducting legal research on the Internet;
- Communicating with individuals outside of the courthouse, for example, to coordinate appearances of "on-call" witnesses, childcare, eldercare, or transportation; or
- Using cell phones to overcome language or accessibility barriers, for example, accessing translation services or hearing assistance applications; and

WHEREAS, these burdens may be especially serious for those self-represented litigants who are not aware of the cell phone restrictions and who may consequently appear in court expecting to offer evidence stored on their cell phones, such as texts or photographs, and who may be unable to offer the evidence or information necessary to prevail in their cases without their cell phones; and

WHEREAS, restrictions on cell phone use in courthouses may also limit litigants' access to innovative self-help solutions such as text messages reminding them where

and when to appear for court, informational videos, online forms, and financial calculation tools; and

WHEREAS, courthouses may not offer adequate storage for cell phones, forcing litigants to leave their cell phones in unsecure locations outside the court or to pay a fee to a neighborhood store or office for storage; and

WHEREAS, there are also significant security risks presented by cell phone use in courthouses, including the risk that individuals may use their cell phones to photograph or record witnesses, jurors, or prosecutors involved in trials or hearings, leading to witness intimidation or other threats to safety; and

WHEREAS, the Conferences recognize the need to strike a careful balance between expanding meaningful access to the justice system and protecting the safety of witnesses, jurors, prosecutors, and all court personnel and court users;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators encourage their members to carefully review and assess their policies with respect to cell phone use in courthouses, so as to appropriately balance the security risks posed by cell phone use with the needs of litigants, especially those who are self-represented.

Approved as proposed by the CCJ/COSCA Joint Committee on Access and Fairness Committee at the Conference of Chief Justices and Conference of State Court Administrators 2018 Annual Meeting on August 22, 2018.

Exhibit B



SUPREME JUDICIAL COURT RULES

Supreme Judicial Court Rule 1:19: Electronic access to the courts

EFFECTIVE DATE: 09/17/2012

UPDATES: Adopted September 1, 1998, effective November 2, 1998
Amended December 15, 1999, effective January 3, 2000
[Amended February 28, 2012, effective July 1, 2012](https://www.mass.gov/doc/order-amending-sjc-rule-119-effective-july-1-2012)
<https://www.mass.gov/doc/order-amending-sjc-rule-119-effective-july-1-2012>
Amended June 7, 2012, effective September 17, 2012
[Show fewer updates](#) ^

1. Covert photography, recording or transmission prohibited

No person shall take any photographs, or make any recording or transmission by electronic means, in any courtroom, hearing room, office, chambers or

lobby of a judge or magistrate without prior authorization from the judge or magistrate then having immediate supervision over such place.

2. Electronic access by the news media

A judge shall permit photographing or electronic recording or transmitting of courtroom proceedings open to the public by the news media for news gathering purposes and dissemination of information to the public, subject to the limitations of this rule. Subject to the provisions of paragraph (d), the news media shall be permitted to possess and to operate in the courtroom all devices and equipment necessary to such activities. Such devices and equipment include, without limitation, still and video cameras, audio recording or transmitting devices, and portable computers or other electronic devices with communication capabilities.

The "news media" shall include any authorized representative of a news organization that has registered with the Public Information Officer of the Supreme Judicial Court or any individual who is so registered. Registration shall be afforded to organizations that regularly gather, prepare, photograph, record, write, edit, report or publish news or information about matters of public interest for dissemination to the public in any medium, whether print or electronic, and to individuals who regularly perform a similar function, upon certification by the organizations or individuals that they perform such a role and that they will familiarize themselves or their representatives, as the case may be, with the provisions of this rule and will comply with them.

In his or her discretion, a judge may entertain a request to permit electronic access as authorized by this rule to a particular matter over which the judge is presiding by news media that have not registered with the Public Information Officer.

(a) Substantial likelihood of harm

A judge may limit or temporarily suspend such access by the news media if it appears that such coverage will create a substantial likelihood of harm to any person or other serious harmful consequence.

(b) Limitations

A judge shall not permit:

- (i) photography or electronic recording or transmission of voir dire hearings concerning jurors or prospective jurors.
- (ii) electronic recording or transmission of bench and side-bar conferences, conferences between counsel, and conferences between counsel and client; or
- (iii) frontal or close-up photography of jurors and prospective jurors.

A judge may impose other limitations necessary to protect the right of any party to a fair trial or the safety and well-being of any party, witness or juror, or to avoid unduly distracting participants or detracting from the dignity and decorum of the proceedings.

If the request is to record multiple cases in a session on the same day, a judge, in his or her discretion, may reasonably restrict the number of cases that are recorded to prevent undue administrative burdens on the court.

(c)

Minors and sexual assault victims may not be photographed without the consent of the judge.

(d) Positioning of equipment

All equipment and devices shall be of a type and positioned and operated in a manner which does not detract from the dignity and decorum of the proceeding. Unless the judge permits otherwise for good reason, only one stationary, mechanically silent video camera shall be used in the courtroom for broadcast television, a second mechanically silent video camera shall be used for other media, and, in addition, one silent still camera shall be used in the courtroom at one time. Unless the judge

otherwise permits, photographic equipment and its operator shall be in place in a fixed position within the area designated by the judge and remain there so long as the court is in session, and movement shall be kept to a minimum, particularly in jury trials. The operator shall not interrupt a court proceeding with a technical problem.

(e) Advance notice

A judge may require reasonable advance notice from the news media of their request to be present to photograph or electronically record or transmit at a particular session. In the absence of such notice, the judge may refuse to admit them. A judge may defer acting on such a request until the requester has seasonably notified the parties and, during regular business hours, the Bureau Chief or News Editor of the Associated Press, Boston, using the email address of apboston@ap.org (<mailto:apboston@ap.org>) A judge hearing any motion under this rule may reasonably limit the number of counsel arguing on behalf of the several interested media.

(f) Non-exclusive access

A judge shall not make an exclusive arrangement with any person or organization for news media coverage of proceedings in the courtroom. If

there are multiple requests to photograph or electronically record the same proceeding, the persons making such requests must make arrangements among themselves for pooling or cooperative use and must do so outside of the courtroom and before the court session without judicial intervention.

(g) Objection by a party

Any party seeking to prevent any of the coverage which is the subject of this rule may move the court for an appropriate order, but shall first deliver electronic notice of the motion during regular business hours to the Bureau Chief or News Editor of the Associated Press, Boston, using the email address of apboston@ap.org (<mailto:apboston@ap.org>) as seasonably as the matter permits. The judge shall not hear the motion unless the movant has certified compliance with this paragraph, but compliance shall relieve the movant and the court of any need to postpone hearing the motion and acting on it, unless the judge, as a matter of discretion, continues the hearing.

3. Other recordings

A judge may permit the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record when authorized by law, for other purposes of judicial administration, or for the preparation of

materials for educational or ceremonial purposes.

4. Definitions

For purposes of this rule, the term "judge" shall include a magistrate presiding over a proceeding open to the public. The term "minor" shall be defined as a person who has not attained the age of eighteen.

Exhibit C



Mass.gov

Trial Court Policy on Possession & Use of Cameras & Personal Electronic Devices

Describes court policy on bringing cell phones, cameras and other electronic devices to court.

Definitions

News Media

Personnel who fall under the provisions of the Massachusetts SJC Rule 1:19: “Electronic Access to the Courts” and are accredited pursuant to that Rule.

Camera

Device capable only of recording images.

Personal Electronic Device (PED)

Any device capable of communicating, transmitting, receiving, or recording

messages, images, sounds, data, or other information by any means including but not limited to a computer, tablet, cell phone, or blue-tooth device.

Presiding Judge

Judge presiding over the session.

Scope

This policy supersedes the memorandum titled “Policy on Clothing, Cameras and Cellular Telephones,” dated January 9, 2006, issued by the Chief Justice for Administration and Management, and should be read consistent with SJC Rule 1:19. Where there is a conflict, SJC Rule 1:19 shall control. This policy is intended to ensure a safe and secure environment for court staff and the public and to ensure that court business is conducted in an orderly and efficient manner.

Courthouse policies prohibiting the possession and use of PEDs shall be administered by the Security Department.

The possession and use of cameras and PEDs in the courts can pose a security risk to court staff, counsel, witnesses and the public, as well as permit the improper audio/video recording of proceedings contrary to Massachusetts law.

See G.L. c. 272, § 99(C)(1). Some examples include using cellular communications for the purpose of intimidating or inciting retribution against trial participants, taking photographs of jurors, witnesses, counsel or undercover agents to intimidate or cause harm to these individuals or jurors.

In general, a presiding judge will work with a Chief Court Officer to address issues that arise in a courtroom or courthouse regarding the use of cameras or PEDs. Unusual requests or circumstances may require consultation with a First Justice or Regional Administrative Justice, the Director of Security, or the SJC Public Information Officer, depending on the nature of the situation and whether it is a single occurrence or ongoing issue.

Requests for approval of photographic or video recording must be coordinated with Security to avoid the unintentional compromise of security systems, practices or designs as well as the confidentiality and decorum associated with judicial proceedings.

Employee Use of PEDs

1. With the exception of circumstances described in Section II, paragraph 3, below, during court business hours, Trial Court employees are subject to the policies and conditions regarding the use of PEDs and cameras established by their respective department heads.
2. The possession and use of PEDs by Court Officers is governed by *Director of Security Memorandum, Subject: Cellular Telephone and Other Personal Electronic Device Use by Court Security Personnel dated June 3, 2014*.

Public Use of PEDs & Cameras

1. All members of the general public entering the Trial Court in possession of PEDs or cameras will be instructed in passing through the entry security screening station to turn off the device or to set the device on silent mode prior to entering a courtroom.
2. Individuals may utilize PEDs outside of the courtroom in the public access areas of a courthouse, as long as the activity does not disrupt or disturb court business or proceedings.

No PED or camera may be used to take photographic images within the public access areas of a courthouse or to take video recordings in a courthouse or courtroom (unless permitted under SJC Rule 1:19 without the prior approval of the Chief Court Officer in consultation with the First Justice/Regional Administrative Justice. Exceptions may be granted for photography associated with court-sponsored ceremonies and events, such as adoption ceremonies when photos are authorized by the presiding judge.

Any photographing/recording of court documents will be allowed only with the permission of the department head [Clerk, Register, Recorder, CPO.], or his/her designee. There shall be no copying of any documents that are impounded.

3. All PEDs and cameras must be turned off or set to silent mode and stowed away prior to entering a courtroom. See SJC Rule 1:19(1). PEDs and cameras shall not be used in a courtroom except as follows:
 - News Media registered under the provisions of the Massachusetts SJC

Rule 1:19: “Electronic Access to the Courts” who shall be subject to the terms of that rule.

- Counsel, court staff, and others conducting business before the court may utilize cellular telephones and PEDs in a courtroom with the consent and within guidelines set by the presiding justice. The presiding justice shall be guided by whether the PED or camera can be operated so that it:
 - does not interfere with courtroom decorum, is not inconsistent with the court functions, and does not otherwise impede the administration of justice
 - does not interfere with the court sound system, recording system, or other technology, or with a court reporter’s function
 - does not generate sound or require speaking into a device
 - does not photograph proceedings or record video images
 - does not record audio or digitally transcribe the proceedings except as permitted by this policy
4. The wearing of Bluetooth earpieces and/or other similar extended communication devices and accessories is prohibited in the courtroom at all times with the following exception:
- Persons with disabilities, as defined by the Americans with Disabilities Act, whose disabilities necessitate the use of an electronic device to communicate.
5. When a Court Officer observes an individual using a PED without

permission inside a courtroom, the Court Officer shall advise the individual that using the PED in a courtroom violates Trial Court policy. The Court Officer shall further inform the individual that, if he or she does not comply with the policy, either the PED will be confiscated and returned upon departure from the courthouse for the day, or the individual must leave the courtroom.

6. Jury Pool members may possess PEDs in the Jury Pool area. The possession of PEDs or cameras by a juror in the courtroom or jury deliberation room is at the discretion of the presiding judge.

Further Restrictions or Prohibitions

1. In the event that a First Justice / Regional Administrative Justice determines, following consultation with the Director of Trial Court Security, that special security or privacy concerns exist, the First Justice / Regional Administrative Justice may notify the respective Departmental Chief Justice or Deputy Court Administrator that the possession or use of PEDs and cameras will be further restricted or prohibited. Exemptions to the restriction on the possession of PEDs in a courthouse will be limited to employees, attorneys, law enforcement officers and jurors.
2. Where more than one Trial Court Department is located in the courthouse, the decision to further restrict the possession or use of PEDs and cameras will be made jointly by the individuals in each department as identified above. Any differences among judicial leaders and the Director of Trial

Court Security concerning the need for PED restrictions will be referred to the Court Administrator and the Chief Justice of the Trial Court for resolution.

3. Individual courthouse restrictions instituted prior to the effective date of this policy will remain in place. They will be subject to annual review and discussion with the Director of Security to determine whether the initial concerns that warranted the restrictions continue to exist.

Penalties

1. Court Officers have the primary responsibility for enforcing protocols for the proper use of PEDs and cameras within the Trial Court as defined by this policy. Violations of this policy may result in the following actions:
 - Confiscation of the PED or camera used in the violation of this policy by Court Officers until the individual is leaving the courthouse for the day.
 - Removal of the individual by Court Officers from the courtroom or the courthouse. No individual shall be removed by a Court Officer for using a PED unless the individual has received and failed to heed an oral warning from a Court Officer to stop recording or to surrender the PED until he or she leaves the courthouse.
 - A Court Officer cannot arrest an individual for non-compliance with this policy. A judge may order that an individual be held in contempt of

court for violation of a judge's order to comply with the policy.

2. If a PED or camera is confiscated, it will be returned to the individual upon completion of his or her business with the court. No liability shall accrue to security personnel or any other court official or employee for any loss or misplacement of or damage to a confiscated device. See G.L. c. 258, § 10(d). Court Officers may retain devices as evidence of a criminal violation, if authorized by the First Justice / Regional Administrative Justice or presiding justice. Court Officers cannot search a confiscated PED for any reason without a search warrant or the expressed written consent of the owner.

Exhibit D



Mass.gov

POLICY STATEMENT

Trial Court restrictions on the possession of cellular telephones and personal electronic devices

DATE: 04/09/2018

REFERENCED SOURCES: [Executive Office of the Trial Court](#)
[\(/orgs/executive-office-of-the-trial-court\)](/orgs/executive-office-of-the-trial-court)

To protect the safety and security of those who appear in court, and to minimize potential distractions to court proceedings, cellular telephones and other personal electronic devices (PED) may be prohibited from courthouses.

Policy

Personal electronic devices are defined as laptop or notebook computers, computer tablets, smartphones, Bluetooth and other similar devices.

The following Trial Court facilities have banned the public's use of cellular telephones and PEDs:

- [Attleboro District Court](/locations/attleboro-district-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Bristol County Superior Court-Fall River](/locations/bristol-county-superior-court-fall-river)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Boston Municipal Court - Brighton Division](/locations/brighton-division-boston-municipal-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Boston Municipal Court-Dorchester Division](/locations/dorchester-division-boston-municipal-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Boston Municipal Court-East Boston Division](/locations/east-boston-division-boston-municipal-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Boston Municipal Court-Roxbury Division](/locations/roxbury-division-boston-municipal-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Boston Municipal Court-South Boston Division](/locations/south-boston-division-boston-municipal-court)
(Exceptions: Employees, Police, Attorneys and Jurors)

- **[Boston Municipal Court- West Roxbury Division](#)**
(</locations/west-roxbury-division-boston-municipal-court>)
(Exceptions: Employees, Police, Attorneys and Jurors)
- **[Bristol County Juvenile Court-Fall River](#)** (</locations/fall-river-juvenile-court>)
(Exceptions: Employees, Police, Attorneys and Jurors)
- **[Bristol County Juvenile Court-New Bedford](#)**
(</locations/new-bedford-juvenile-court>)
(Exceptions: Employees, Police, Attorneys, Jurors and Social Workers)
- **[Bristol Probate and Family Court-Fall River](#)**
(</locations/fall-river-probate-and-family-court>)
(Exceptions: Employees, Police, Attorneys and Jurors)
- **[Brockton District Court](#)** (</locations/brockton-district-court>)
(Exceptions: Employees, Police, Attorneys and Jurors)
- **[Chelsea District Court](#)** (</locations/chelsea-district-court>)
(Exceptions: Employees, Police, Attorneys and Jurors)
- **[Chicopee District Court](#)** (</locations/chicopee-district-court>)
(Exceptions: Employees, Police, Attorneys and Jurors)
- **[Concord District Court](#)** (</locations/concord-district-court>)
(Exceptions: Employees, Police, Attorneys and Jurors)
- **[Clinton District Court](#)** (</locations/clinton-district-court>)
(Exceptions: Employees, Police, Attorneys and Jurors)
- **[Dudley District Court](#)** (</locations/dudley-district-court>)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [East Brookfield District Court](/locations/east-brookfield-district-court) (</locations/east-brookfield-district-court>)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Essex County Juvenile Court - Lawrence](/locations/lawrence-juvenile-court) (</locations/lawrence-juvenile-court>)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Essex County Juvenile Court - Salem](/locations/salem-juvenile-court) (</locations/salem-juvenile-court>)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Essex Probate and Family Court - Lawrence](/locations/lawrence-probate-and-family-court)

(</locations/lawrence-probate-and-family-court>)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Essex Superior Court - Lawrence](/locations/essex-county-superior-court-lawrence) (</locations/essex-county-superior-court-lawrence>)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Essex Superior Court - Newburyport](/locations/essex-county-superior-court-newburyport)

(</locations/essex-county-superior-court-newburyport>)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Essex Superior Court - Salem](/locations/essex-county-superior-court) (</locations/essex-county-superior-court>)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Fall River District Court](/locations/fall-river-district-court) (</locations/fall-river-district-court>)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Falmouth District Court](/locations/falmouth-district-court) (</locations/falmouth-district-court>)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Fitchburg District Court](/locations/fitchburg-district-court) (</locations/fitchburg-district-court>)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Framingham District Court \(/locations/framingham-district-court\)](/locations/framingham-district-court)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Haverhill District Court \(/locations/haverhill-district-court\)](/locations/haverhill-district-court)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Holyoke District Court \(/locations/holyoke-district-court\)](/locations/holyoke-district-court)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Lawrence District Court \(/locations/lawrence-district-court\)](/locations/lawrence-district-court)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Lowell District Court \(/locations/lowell-district-court\)](/locations/lowell-district-court)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Lynn District Court \(/locations/lynn-district-court\)](/locations/lynn-district-court)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Lynn Juvenile Court \(/locations/lynn-juvenile-court\)](/locations/lynn-juvenile-court)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Malden District Court \(/locations/malden-district-court\)](/locations/malden-district-court)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Marlborough District Court \(/locations/marlborough-district-court\)](/locations/marlborough-district-court)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Milford District Court \(/locations/milford-district-court\)](/locations/milford-district-court)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [Natick District Court \(/locations/natick-district-court\)](/locations/natick-district-court)

(Exceptions: Employees, Police, Attorneys and Jurors)

- [New Bedford District Court](/locations/new-bedford-district-court) (/locations/new-bedford-district-court)
(Exceptions: Employees, Police, Attorneys, Jurors and Social Workers)
- [Newburyport District Court](/locations/newburyport-district-court) (/locations/newburyport-district-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Northeast Housing Court - Lawrence](/locations/northeast-housing-court-lawrence-session)
(/locations/northeast-housing-court-lawrence-session)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Northeast Housing Court - Salem](/locations/northeast-housing-court-salem-session)
(/locations/northeast-housing-court-salem-session)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Peabody District Court](/locations/peabody-district-court) (/locations/peabody-district-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Salem District Court](/locations/salem-district-court) (/locations/salem-district-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Somerville District Court](/locations/somerville-district-court) (/locations/somerville-district-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Southeast Housing Court-Fall River](/locations/southeast-housing-court-fall-river-session)
(/locations/southeast-housing-court-fall-river-session)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Stoughton District Court](/locations/stoughton-district-court) (/locations/stoughton-district-court)
(Exceptions: Employees, Police, Attorneys and Jurors)

- [Uxbridge District Court](/locations/uxbridge-district-court) (/locations/uxbridge-district-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Waltham District Court](/locations/waltham-district-court) (/locations/waltham-district-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Westborough District Court](/locations/westborough-district-court) (/locations/westborough-district-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Worcester District Court](/locations/worcester-district-court) (/locations/worcester-district-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Worcester Housing Court - Worcester](/locations/central-housing-court-worcester-session)
(/locations/central-housing-court-worcester-session)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Worcester County Juvenile Court - Worcester](/locations/worcester-juvenile-court)
(/locations/worcester-juvenile-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Worcester Probate and Family Court](/locations/worcester-probate-and-family-court)
(/locations/worcester-probate-and-family-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Worcester Superior Court](/locations/worcester-county-superior-court) (/locations/worcester-county-superior-court)
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Wrentham District Court](/locations/wrentham-district-court) (/locations/wrentham-district-court)
(Exceptions: Employees, Police, Attorneys and Jurors)

Exhibit E



Mass.gov

POLICY STATEMENT

Trial Court policy on juror use of personal communication devices

DATE: 03/25/2010

REFERENCED SOURCES: [Executive Office of the Trial Court](#)
([/orgs/executive-office-of-the-trial-court](#))

The Massachusetts Trial Court Policy related to the use of cell phones and other personal communication devices by jurors in courthouses and courtrooms.

Policy

This is intended to complement the existing policy introduced January 9, 2006.

Judges shall instruct jurors selected to serve on a jury that, until their jury service is concluded, they shall not:

- (a)** discuss the case with others, including other jurors, except as otherwise authorized by the court;
- (b)** read or listen to any news reports about the case;
- (c)** use a computer, cellular phone, or other electronic device with communication capabilities, including access to the internet, while in attendance at trial or during jury deliberations. These devices may be used during lunch breaks but may not be used to obtain or disclose information about, or relevant to, the case;
- (d)** use a computer, cellular phone, or other electronic device with communication capabilities, including access to the internet, or any other methods to obtain or disclose information about, or relevant to, the case when they are not in court.

Departmental Chief Justices may impose a more restrictive policy, including the collection of cell phones and other communication devices while the jury is deliberating. However, for a variety of reasons, cell phones and other communication devices shall not be collected and stored by Associate Court Officers working at the front door screening station.

The judge who greets the jurors in the pool each morning pursuant to G.L. c. 234A, sec. 65, shall inform them about this policy.

Departmental Chief Justices shall work to develop and promulgate whatever procedures are necessary to insure compliance in their department.

Robert A. Mulligan, Chief Justice for Administration & Management

Exhibit F



**CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS**

Resolution 7

In Support of a Review of Courthouse Cell Phone Policies

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators have long supported the expansion of meaningful access to the justice system for all; and

WHEREAS, in 2015 the Conferences adopted Resolution 5, which urged their members to provide leadership in achieving the aspirational goal of 100 percent access to effective assistance for essential civil legal needs; and

WHEREAS, cell phones have become an integral part of daily life for many litigants, serving as an essential tool for communication, research, information storage, and safety; and

WHEREAS, there is currently a wide range of policies with respect to cell phone use in courthouses, both across the country and within states; and

WHEREAS, restrictions on cell phone use in courthouses may impose additional burdens on litigants, particularly those who are self-represented, by preventing them from:

- Accessing and presenting evidence stored on cell phones;
- Gathering information and conducting legal research on the Internet;
- Communicating with individuals outside of the courthouse, for example, to coordinate appearances of "on-call" witnesses, childcare, eldercare, or transportation; or
- Using cell phones to overcome language or accessibility barriers, for example, accessing translation services or hearing assistance applications; and

WHEREAS, these burdens may be especially serious for those self-represented litigants who are not aware of the cell phone restrictions and who may consequently appear in court expecting to offer evidence stored on their cell phones, such as texts or photographs, and who may be unable to offer the evidence or information necessary to prevail in their cases without their cell phones; and

WHEREAS, restrictions on cell phone use in courthouses may also limit litigants' access to innovative self-help solutions such as text messages reminding them where

and when to appear for court, informational videos, online forms, and financial calculation tools; and

WHEREAS, courthouses may not offer adequate storage for cell phones, forcing litigants to leave their cell phones in unsecure locations outside the court or to pay a fee to a neighborhood store or office for storage; and

WHEREAS, there are also significant security risks presented by cell phone use in courthouses, including the risk that individuals may use their cell phones to photograph or record witnesses, jurors, or prosecutors involved in trials or hearings, leading to witness intimidation or other threats to safety; and

WHEREAS, the Conferences recognize the need to strike a careful balance between expanding meaningful access to the justice system and protecting the safety of witnesses, jurors, prosecutors, and all court personnel and court users;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators encourage their members to carefully review and assess their policies with respect to cell phone use in courthouses, so as to appropriately balance the security risks posed by cell phone use with the needs of litigants, especially those who are self-represented.

Approved as proposed by the CCJ/COSCA Joint Committee on Access and Fairness Committee at the Conference of Chief Justices and Conference of State Court Administrators 2018 Annual Meeting on August 22, 2018.

AMERICAN BAR ASSOCIATION**HOUSE OF DELEGATES****ADOPTED AUGUST 12-13, 2019****RESOLUTION**

RESOLVED, That the American Bar Association encourages all federal, state, tribal, territorial, and local court systems, in conjunction with state, territorial, tribal and local bar associations, to carefully review their cellphone policies, so as to balance the security risks posed by cellphone use with the needs of litigants to ensure meaningful access to our judicial system, especially to those who are self-represented;

FURTHER RESOLVED, That the American Bar Association opposes cellphone policies that impose undue burdens on litigants, particularly those who are self-represented, lower income, disabled, and/or seeking emergency access to the courts; and

FURTHER RESOLVED, That the American Bar Association opposes cellphone policies or procedures that force litigants to leave their cellphones in unsecure locations outside the courthouse or to pay a fee for storage at a location outside the courthouse.

REPORT

I. Introduction

This resolution addresses cellphone use in courthouses. Specifically, it encourages chief judges and court administrators to carefully consider cellphone access in the courtroom and to adopt policies that balance access and legitimate security concerns.

Cellphones today are no longer just for making phone calls. Advanced cellphones, often referred to as “smartphones,” may include cameras, video cameras, and Internet access for research, email, and text communications. They also allow users to disseminate information instantaneously.¹

Cellphones are everywhere. According to one report, there were 435.31 million wireless-subscribers in the U.S. in the third quarter of 2018. Another study reports that in 2011, the number of cellphones in the U.S. exceeded the entire population of the United States, 327 million cellphones for 315 million people.²

As cellphone use has exploded, courts have grappled with their presence in the courtroom. Reasons cited in support of banning cellphones from courthouses and courtrooms include disruptiveness, security, and intimidation of witnesses and other trial participants. These are legitimate concerns for the orderly administration of justice. On the other hand, there is evidence that cellphone bans can impede access to the courts and limit some litigants’ ability to adequately present their cases.

Cellphone bans affect judges, court personnel, law enforcement and court security, lawyers, their clients, and the general public seeking access to the courts. Research shows that bans disproportionately disadvantage unrepresented and lower-income litigants.

II. Reasons in Support of Cellphone Bans

There are three principal arguments in support of cellphone bans: disruptiveness, security, and the protection of witnesses and other trial participants.

¹ Rachel Mahoney, *Policy Addresses Cellphone Ban in Courtrooms; May Prompt Discussions in Lynchburg Area*, The News and Advance (December 19, 2018), https://www.newsadvance.com/news/local/policy-addresses-cellphone-ban-in-courtrooms-may-prompt-discussions-in/article_b1146296-bd92-5812-8a96-6e0b554d49fe.html

² *How Many cell phone subscribers in the US in 2018*, Media Tech Reviews (March 20, 2018) <http://www.mediatechreviews.com/how-many-cell-phone-subscribers-the-us/>

a. Disruptiveness

A common complaint among courts all over the country is that cellphones distract attention from judges and lawyers, and disrupt court proceedings.³ The Circuit Court in Lynchburg, Virginia, for example, does not allow cellphones in an effort to avoid distractions during hearings and interference with court proceedings that are recorded.⁴

It has also been noted that cellphone interruptions can derail legal proceedings.⁵ In 2013, Cook County Chief Judge Tim Evans of Chicago, Illinois acknowledged that banning cellphones in the courthouse inconvenienced the public, but said sheriff's deputies had been unable to control the use of phones in court: "I wish it were possible to just say to the people coming to court, 'Please turn off your phones and devices.' The simple fact is we have tried that, and it does not work...People either ignore or refuse to comply with the judge's directions."⁶ The disruption caused by vibrating and ringing cellphones, was cited as a reason for a blanket cellphone ban in 2016 in the Lancaster Pennsylvania Court of Common Pleas. The court also cited the possibility that witnesses could be photographed and intimidated.⁷

b. Security

Purported security risks are another reason cited for cellphone bans. Safety and security concerns have focused on cellphones possibly being used to conceal firearms, bombs, or to study courthouse layouts.

In 2012, a cellphone ban was implemented in the criminal court courthouse and civil courthouse of Madison County, Missouri, because law-enforcement bulletins had warned of the possibility that some cellphones could contain firearms.⁸

³ Monique Angle, *Ring of Contempt: Cell Phones Can be Trouble in Courthouses*, Daily Press (July 23, 2004), <https://www.dailypress.com/news/dp-xpm-20040723-2004-07-23-0407230006-story.html>

⁴ Mahoney, *supra* note 1.

⁵ Scott Schober, *Do cell Phones in courts undermine the judicial process?* Berkeley Varitronics Systems Wireless Detection Systems (August 18, 2016), <https://www.bvsystems.com/cell-phones-undermine-courts/>

⁶ Erin Meyer, *Cellphone Ban at Courthouse Leads to Confusion...and Some Creativity*, DnaInfo (April 15, 2013), <https://www.dnainfo.com/chicago/20130415/little-village/cellphone-ban-at-courthouse-leads-confusion-creativity/>

⁷ *Blanket cellphone Ban at the Lancaster County Courthouse ought to be refined*, Lancaster Online (December 7, 2016), https://lancasteronline.com/opinion/editorials/blanket-cellphone-ban-at-the-lancaster-county-courthouse-ought-to/article_76802748-bc09-11e6-9ddf-57053ce4d099.html

⁸ Terry Hillig, *Cellphone ban in Edwardsville courts shows security differences*, St. Louis Post-Dispatch (March 19, 2012), <https://www.stltoday.com/news/local/crime-and->

Some also have said that cellphones could be used to trigger an explosive device. At least one court has cited concerns over terrorists using camera phones and technology to detonate bombs as the basis for banning cellphones from the courthouse.⁹

The possibility that cellphones could be used to capture images to study courthouse security was cited as the basis for a total ban of all cellphones in Albuquerque, N.M. courts.¹⁰

Despite these concerns, there are few actual examples of cellphones being detonated or used as weapons in courthouses. As one source observed, “Nationwide, there is no agreement in the federal system on whether telephones, pagers, laptop computers and other electronic devices pose a threat to court security or are just a ring-a-ding nuisance. The rule has been in effect for more than a decade, but why it exists eludes easy answer.”¹¹

c. Protection of witnesses and trial participants

Witness intimidation in the criminal courts appears to be the most significant and often cited reason for cellphone bans. Cellphone bans do not only protect witnesses and jurors from intimidation in high-profile criminal cases. Such bans also can protect the identity of minors and can prevent jurors, or potential jurors, from being exposed to biased opinions or messages concerning the case that may appear on the Internet.¹² However, safety of witnesses and jurors in criminal cases remains a paramount consideration.

Because smartphones are equipped with cameras and video functionality, there is a real risk of individuals inappropriately capturing photographs or even testimony of victims, witnesses, jurors or court employees, which could easily be posted

[courts/cellphone-ban-in-edwardsville-courts-shows-security-differences/article_218c8069-4776-5797-8909-181384be275a.html](https://www.securityinfowatch.com/government/news/10594865/delaware-courthouse-restricts-cell-phones-to-improve-security)

⁹ *Delaware Courthouse Restricts Cell Phones to Improve Security*, Security Infowatch (September 26, 2005), <https://www.securityinfowatch.com/government/news/10594865/delaware-courthouse-restricts-cell-phones-to-improve-security>

¹⁰ Chris Ramirez, *Metro Court Bans Cell Phones*, Albuquerque Journal (January 12, 2004), <https://www.abqjournal.com/news/metro/132158metro01-12-04.htm>

¹¹ Henry Pierson Curtis, *Court's Cell Phone Ban Rings Sour Note*, Orlando Sentinel (December 1, 2003), <https://www.orlandosentinel.com/news/os-xpm-2003-12-01-0312010028-story.html>

¹² Schober, *supra* note 5.

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online and used to threaten or intimidate witnesses. People could also use smartphones to broadcast the court proceedings to outside parties.¹³

Numerous instances of witness intimidation during high-profile criminal cases have been documented in large cities and urban areas during the early 2000s, when many cellphone bans were being implemented. The danger of such a scenario is aptly illustrated by this description:

You're sitting on the witness stand in a Philadelphia courtroom, about to provide incriminating eyewitness testimony in a Philadelphia homicide trial. You've overcome all the fear that comes along with living in a city that, according to the district attorney's office, has a "near epidemic" level of witness intimidation. People in the gallery aren't supposed to use their cellphones, but as you're testifying somebody in the crowd takes one out and snaps a picture... Before you're even off the stand, the photo has been uploaded to a social media website for all the world to see.¹⁴

In 2007, a Massachusetts judge explained that cellular phones equipped with cameras could be used to intimidate jurors or witnesses or to identify undercover police officers, and told of an incident when a witness's grand jury testimony was printed out and posted throughout the neighborhood.¹⁵

Likewise, a Circuit Court judge explained the basis for a 2014 cellphone ban in Edgard, Louisiana that encompassed the entire building: "[T]he impetus for the complete ban was the result of someone secretly using a phone to record a court hearing then posting the recording to a social media site to intimidate witnesses."¹⁶

In the Cook County Criminal courthouse in Chicago, Illinois, a court official noted that gang members had taken pictures of judges and witnesses with their phones and texted testimony to their friends awaiting trial.¹⁷

¹³ *Cell Phones in the Courthouse: An Access to Justice Perspective*, Massachusetts Appleseed Center for Law and Justice (July 24, 2018), <http://massappleseed.org/wp-content/uploads/2018/07/Cell-Phones-in-the-Courthouse.pdf>

¹⁴ Kevin McCorry, *Quashing the Witness Intimidation Culture - Could cell phone ban in Philly courts lessen witness intimidation?* (April 13, 2013), <https://www.nbcphiladelphia.com/news/local/Could-Cell-Phone-Ban-in-Philly-Courts-Lessen-Witness-Intimidation-202573431.html>

¹⁵ *Cell Phones Evolve from Courthouse Nuisance to Safety Risk*, MassBar Association Lawyers Journal (May 2007), <https://www.massbar.org/publications/lawyers-journal/lawyers-journal-article/lawyers-journal-2007-may/cell-phones-evolve-from-courthouse-nuisance-to-safety-risk> [hereinafter, Nuisance to Safety Risk]

¹⁶ Latisse Bacon-Blood, *Cell phones banned in the courthouse: Good idea, or what?*, NOLA.Com (April 24, 2014), https://www.nola.com/crime/2014/04/cell_phones_banned_from_edgard.html

¹⁷ Meyer, *supra*, note 6.

In a television news interview in 2013, Cook County Circuit Court Chief Judge Timothy Evans said he believed the ability for courthouse visitors to photograph or film testimonies had absolutely led to the murder of witnesses. “Absolutely,” Evans said. “No question in my mind....”¹⁸

One of the most famous cases of cellphone use for possible witness intimidation was during the December 2018 trial of notorious drug kingpin Joaquin ‘El Chapo’ Guzman, who was accused of international drug trafficking and conspiracy to commit murder.¹⁹ Although electronics are strictly forbidden in the Brooklyn federal courthouse, El Chapo’s wife was caught bringing four cellphones into the courtroom, and was actively using them during trial proceedings. Mrs. Guzman told a security officer that “her attorney” gave her one of the cellphones. The presiding U.S. District Judge issued an order banning both attorneys from using cellphones inside the court for one year.

III. How Cellphone Bans Affect Access to Justice

a. Cellphone Bans Impinge on Presentation of Evidence, Communications, Language Access and Legal Research

Cellphones, and particularly smart phones, are a part of everyday life and dependence on cellphones cannot be overstated. A growing body of literature demonstrates that bans pose an inconvenience for all litigants, but particularly burden those without representation.

In a comprehensive report examining how bans affect access to justice, the Massachusetts Appleseed Center for Law and Justice categorized the problems into four distinct areas: evidence; communication and logistics; language access and accessibility; and information gathering and legal research.²⁰

Evidence is often kept on cellphones. Examples in which self-represented litigants might need to use their cellphones to display evidence include proof of payment, proof of communication, proof of an agreement, and proof of property damage or injury. Litigants might use their cellphone to present this evidence in the form of

¹⁸ *Court Cell Phone Ban: Chicago Criminal Court Judge Thinks Ban Could Prevent Witness Murder*, CBS News, Chicago (April 13, 2013) <https://chicago.cbslocal.com/2013/04/12/evans-no-question-witnesses-have-been-killed-after-courtroom-cell-phone-recordings/> [hereinafter, *Ban could prevent witness murder*]

¹⁹ *El Chapo’s wife caught with banned cellphone in court*, Emily Saul, New York Post (November 26, 2018), <https://nypost.com/2018/11/26/el-chapos-wife-caught-with-banned-cell-phone-in-court/>; Sonia Moghe, *Amid unprecedented security, two ‘El Chapo’ lawyers are banned from using cell phones in court*, CNN (December 20, 2018), <https://www.cnn.com/2018/12/20/us/el-chapo-lawyers-sanctioned-cell-phones/index.html>

²⁰ *Cell Phones in the Courthouse: An Access to Justice Perspective*, Massachusetts Appleseed Center for Law and Justice (July 24, 2018), <http://massappleseed.org/wp-content/uploads/2018/07/Cell-Phones-in-the-Courthouse.pdf> [hereinafter, *Appleseed*].

texts, emails, pictures, or voicemails. For instance, they might show photographs of allegedly damaged property or text messages documenting custody disputes.²¹ Self-represented litigants are unable to access and present such evidence, if cellphones are banned from the courthouse.

The report also identified instances in which pro se litigants need to use their cellphones to *communicate* with individuals *outside* the courthouse, such as coordinating transportation, coordinating childcare, or communicating with employers. Producing a witness can be very difficult if the witness needs to be on-call at his or her job and the pro se litigant cannot use his or her cellphone to communicate with the witness.

The report also identified *language access* and *accessibility issues* for people who need to use their cellphones to communicate with individuals *inside* the courthouse. The hearing impaired need mobile devices to access translation services and hearing assistance applications to understand and communicate in the courtroom as their cases are being presented. Confidentiality may become an issue if a litigant who is hard of hearing has to communicate with his or her attorney at a shouting volume.

The necessity of using cellphones to connect the hearing-impaired with the world around them was demonstrated in 2016 when the highest court in the land set aside its policy against cellphones in the courtroom so that 12 members of the Deaf and Hard of Hearing Bar Association could be sworn into the United States Supreme Court Bar. The lawyers used their mobile devices to receive a real-time transcription of the swearing-in ceremony through a service called Communication Access Real-time Translation (CART). With the help of the transcription service on their mobile devices, the members were able to see and understand the proceedings as they were being sworn in.²²

Lastly, the report identified instances in which self-represented litigants need their cellphone for *information gathering* and *legal research*²³. For example, unrepresented individuals can use mobile devices to gather phone-based evidence, verify information before settling an agreement, obtain online legal aid materials, perform legal research, and fill out and store legal forms.²⁴

b. Cellphone Bans Create Storage Issues for Litigants

Still another significant obstacle for unrepresented litigants is the delay, angst and distress they experience when they arrive at a courthouse and realize they are not allowed to bring their phones inside. Many pro se litigants are unaware of the

²¹ *Appleseed, supra*, note 20.

²² Amanda Ziadeh, *SCOTUS ditches cell phone ban to swear in hearing-impaired lawyers*, GCN (April 25, 2016), <https://gcn.com/articles/2016/04/25/scotus-wifi.aspx>

²³ *Appleseed, supra*, note 20, citing “Forms in Your Pocket: Mobile Solutions are Nearly Ready to Scale (News 2016)”, Self-Represented Litigation Network, cited in *Cell Phones in the Courthouse: An Access to Justice Perspective*.

²⁴ *Appleseed, supra*, note 20.

cellphone policy until they arrive. Caught off guard, they are suddenly faced with figuring out what to do with their cellphones so they do not miss their court dates. This is especially problematic for people who use public transportation. The difficulty of having to determine what to do with a cellphone at the last minute, can present quite a significant barrier for unrepresented litigants trying to get to a hearing on time.

On the first day a court ban on recording and photography devices took effect in Onslow County, North Carolina, half of the court's 566 visitors brought cellphones and were turned away. People appearing for jury duty and custody hearings were among those who left rather than lose their cellphones. A sheriff's deputy described the scene as "pandemonium, chaos." One person had appeared for jury duty, but had nowhere to take her phone, which she needed to call for a ride. Others left the courthouse entry point to take cellphones back to their cars.²⁵

When the Cook County criminal courthouse began implementing a 60-day trial cellphone ban in March 2017, officers had to turn visitors away, many of whom had nowhere to store their devices. One couple whose mother dropped the couple off, had nowhere to store their phones, so the girlfriend held their phones in her hands while waiting outside in the cold.²⁶

A spokesperson for the court said "For venues where many are dependent on public transportation it is unrealistic that they would leave a phone at home." The spokesperson said that people who did not drive to the courthouses were hiding their phones under trees, or asking their attorneys to get the devices into the building for them.

In 2016 at the Leighton criminal courthouse in Chicago, those arriving were told they could not bring their cellphones into the building, and there was no place to store them. One person said: "In 2016, everyone has a cell phone. Are people who arrive on public transportation supposed to throw their phones away?"²⁷

Being turned around at the courthouse doors because you have cellphone can be particularly burdensome for people with children. This is illustrated by the experience of a grandmother who traveled to a Virginia courthouse to file paperwork. She was babysitting three of her grandchildren, ages 8, 5, and 2 and took them with her. When she approached security, she was told she could not

²⁵ *Cell phone ban causes 'pandemonium, chaos' at courthouse lobby*, the daily news, Jacksonville North Carolina (August 3, 2015),

<https://www.jdnews.com/article/20150803/NEWS/150809781>

²⁶ Haven Orecchio-Egresitz, *New cellphone ban stymies district court visitors*, Cape Cod Times (March 19, 2017), <https://www.capecodtimes.com/news/20170319/new-cellphone-ban-stymies-district-court-visitors>.

²⁷ Sun-Times Editorial Board, *Courthouse cell phone policy guilty as charged*, Chicago Sun Times, (April 5, 2016), <https://chicago.suntimes.com/opinion/courthouse-cell-phone-policy-guilty-as-charged/>

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bring her cellphone inside. After she figured out where she needed to go to store her cellphone, she rounded up the three children, crossed light rail tracks and headed to the general District Court building, where she paid for a locker to store her phone. She then made the return trip back to the Circuit Court, but it was not until she made it back to the Circuit Court that she realized the information she needed for paperwork was stored on her phone.²⁸

For victims of domestic violence, having a cellphone can be a matter of life and death. Obtaining emergency relief could be impeded if a victim of domestic violence seeking an order of protection, or a tenant illegally locked out of an apartment arrives at the court and is denied entry into the courthouse with their cellphone.²⁹ Recognizing this possible consequence of cellphone bans has led some court officials to consider alternate solutions.³⁰

When a cellphone ban first went into effect at Cook County criminal court people due in court had to leave to find storage for their phones. The courthouse provided a limited amount of storage at a cost of \$3. But several people who did not have enough money for the kiosks were asking others for cash to cover the fees. One person was heard asking a reporter outside the courthouse, "Could you hold my phone while I go to court? I don't have money for the machine."³¹

IV. Alternatives to Cellphone Bans

Courts have the difficult task of regulating cellphones in a world where nearly 450 million people own them. Regulating cellphones in courtrooms for different purposes in different contexts only adds to the difficulty. Creating cellphone policies that take into account numerous competing interests; that honor the rights of all; and make sure litigants, represented or not, are not unduly affected, is a delicate balancing act. Can courts protect the interests of orderly justice and the safety of witnesses and jurors, while at the same time ensuring that unrepresented litigants and other vulnerable populations, such as the elderly, disabled, and domestic violence victims, have access to justice? How have courts throughout the country managed this balancing act?

a. Regulatory Efforts

²⁸ Patrick Wilson, *Safety vies with practicality in courthouse phone ban*, the Virginia-Pilot (Aug 9, 2013), https://pilotonline.com/news/government/local/article_dd37bfb4-b6f5-5419-838b-701fdd55b9a5.html

²⁹ *Appleseed*, supra note 20-.

³⁰ Whet Moser, *Concern From Domestic Violence Advocates Causes Pushback on Courtroom Cell Phone Ban*, Chicago Magazine (January 8, 2013), <https://www.chicagomag.com/Chicago-Magazine/The-312/January-2013/Concern-From-Domestic-Violence-Advocates-Causes-Pushback-on-Courtroom-Cell-Phone-Ban/>

³¹ Meyer, supra, note 6.

Most courts regulate cellphone usage in some form. The National Center for State Courts reports that 33 states (including Hawaii and Guam) have promulgated policies governing electronic device use. The policies are set by Courtroom Rules of Conduct, Administrative Orders, Chief Judge Orders, Orders of Administrative Office of Courts, Supreme Court Rules, Local Court Rules, Office of Court Management, Supreme Court Order, and Rules of Professional Conduct.³² Statutes and regulations also govern the ability to regulate possession and use of electronic devices in some states.³³

There is no uniform policy in courts regarding cellphones. What is appropriate in one jurisdiction may be unnecessary in another. Moreover, the same policy may not even apply equally to every courthouse within the same judicial district. For example, the presiding judge in Bedford Circuit Court in Virginia allows cellphones as long as they are not a disruption. Next door, in the Lynchburg Virginia General District Court, cellphones have been banned since November 2016.³⁴ Some courts have come full circle - from completely banning cellphones to later loosening those restrictions.

Judicial bodies at the federal level have promulgated guidance for the *development* of personal electronic device policies. For instance, the United States Office of the Courts Committee on Court Administration and Case Management (CACM) has provided guidance for the development of Portable Communication Devices to all federal judicial systems. The guidance sets out a comprehensive list of factors to consider when formulating policy, such as security; who should develop the policy; to whom the policy applies; public notice of the policy; use of devices by the media; the impact of workload on security officers; and processes for taking custody of devices.³⁵

³² National Center for State Courts, Cell Phone and Electronic Device Policies (April 2019), [https://www.ncsc.org/Topics/Media/Court-Websites/State-Links.aspx?cat=Cell%20Phone%20and%20Electronic%20Device%20Policies;Michigan Code of Judicial Conduct - Canon 3A2 and Michigan Rules of Professional Conduct \(MRPC\)](https://www.ncsc.org/Topics/Media/Court-Websites/State-Links.aspx?cat=Cell%20Phone%20and%20Electronic%20Device%20Policies;Michigan%20Code%20of%20Judicial%20Conduct%20-%20Canon%203A2%20and%20Michigan%20Rules%20of%20Professional%20Conduct%20(MRPC)) <https://www.washtenaw.org/1137/Courtroom-Etiquette-Attire> [hereinafter, [Michigan Code of Judicial Conduct](#)]

³³ For example, Virginia Code 19.2-266: [a] Judge may limit or ban the possession or use of any Portable Electronic Device if possession or use of the Portable Electronic Device may or does interfere with the administration of justice or cause any threat to safety or security, or for any other reason.

<http://www.courts.state.va.us/courts/gd/Culpeper/elecdevicepolicy.pdf>

³⁴ Mahoney, *supra*, note 1.

³⁵ Administrative Office of the Courts, Judicial Conference, Committee on Court Administration and Case Management, Guidance on Portable Communication Devices in Courthouses (June 2017),

https://www.uscourts.gov/sites/default/files/portable_comm_devices_policy.3.12.17.pdf

[hereinafter, Admin. Off. Cts. Guidance]

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A model policy issued last year by the Virginia Supreme Court also is instructive.³⁶ The policy states that visitors to Virginia's circuit and district courts should be allowed to bring devices including cellphones inside, as long as they comply with restrictions set in each courthouse, such as placing the devices on silent mode and only using them in public spaces, designated for such use. The model policy prohibits use of the device to take photographs or audio or video recordings. In explaining the model policy, the Supreme Court cited the growing role of cellphones in everyday life, access to data and representation as compelling reasons to allow them. Those needs must be tempered with the potentials for abuse and security threats, the policy states.³⁷

b. Different Types of Policies

A survey of cellphone policies throughout the country shows there are three general categories of policy.

- Some jurisdictions allow cellphones in the courthouse and courtrooms with no formal restrictions.
- Some jurisdictions allow cellphones in the courthouse and courtrooms, but place restrictions on their use in and around the courtroom.³⁸ For example, they may have to be turned off or silenced.
- Some jurisdictions prohibit devices in the courthouse; but grant exemptions to certain users. Court personnel, law enforcement, building tenants, and attorneys are afforded the greatest levels of access. Jurors typically have more restricted access to devices.

i. Bans with Exemptions

Some courthouses bar all electronic devices unless approved by the court³⁹. The Leighton Criminal courthouse in Cook County was the first major metropolitan area to ban cellphones in courthouses in 2013. The ban exempted lawyers; judges; reporters; law enforcement officers; many government workers; jurors; building maintenance workers; domestic violence advocates and counselors; those seeking an order of protection or involved in the domestic violence assistance program; anyone required to wear an electronic monitoring device; and people with

³⁶ The Virginia Access to Justice Commission Model Policy on the Use of Portable Electronic Devices in Courthouses was initially endorsed December 7, 2017.

³⁷ Mahoney, *supra*, note 1.

³⁸ Terry Hillig, *Cellphone ban in Edwardsville courts shows security differences*, St. Louis Post-Dispatch (March 19, 2012), https://www.stltoday.com/news/local/crime-and-courts/cellphone-ban-in-edwardsville-courts-shows-security-differences/article_218c8069-4776-5797-8909-181384be275a.html

³⁹ *See, e.g.* Loudon County, Virginia Policy on Court Security and Etiquette, <https://www.loudoun.gov/2198/Court-Security-Etiquette>

disabilities who need electronic devices to communicate.⁴⁰ In an order revising Cook County's cellphone policy, Chief Judge Tim Evans expanded the list of those exempt from the ban to include domestic violence advocates and victims. Others listed as exempt included current or former judges, members of the media, and city, state and federal employees.⁴¹

In 2016 in the Lancaster County, Pennsylvania Court of Common Pleas, employees, attorneys, emergency responders, jurors and law enforcement officials were exempted from a cellphone ban. Members of the press are required to apply in advance for an exception to the prohibition.⁴² An order in the Culpeper County, Virginia courthouse prohibits video and audio recording equipment, except for use at events such as investitures, ceremonies, and weddings.⁴³ A 2018 administrative order banning cellphone use in the Pitt County, North Carolina criminal court is applicable to everyone, even lawyers. Only courtroom security personnel are allowed to have cellphones.⁴⁴

A District of Columbia court policy provides that electronic devices (e.g., cellphones, iPads, and computers) may not be used in any courtroom. Anyone who violates the provisions may be subject to arrest, expulsion, or may be banned from entering D.C. Court buildings.⁴⁵

ii. Phones Allowed with Restrictions

In some courthouses, cellphones are allowed but they must be turned off or kept silent, and may be seized if they ring during a court proceeding and violators may have to pay a fine for the phone's return.⁴⁶

The Circuit Court for Anne Arundel County, Maryland, allows people to bring electronic devices into their facilities, subject to a list of enumerated restrictions.

⁴⁰ *Court Cell Phone Ban: Chicago Criminal Court Judge Thinks Ban Could Prevent Witness Murder*, CBS News, Chicago (April 13, 2013) <https://chicago.cbslocal.com/2013/04/12/evans-no-question-witnesses-have-been-killed-after-courtroom-cell-phone-recordings/> [hereinafter, *Ban could prevent witness murder*]

⁴¹ Meyer, *supra*, note 6.

⁴² *Lancaster Cellphone Policy*, *supra*, note 7.

⁴³ Order, In the Circuit Court for the County of Culpeper, VA, RE: Possession and Use of Portable Electronic Devices (March 18, 2019) <http://www.courts.state.va.us/courts/gd/Culpeper/elecdevicepolicy.pdf> [hereinafter, Culpeper County Ct. Order]

⁴⁴ Morgan Newell, *Pitt County Criminal Court no longer allowing cell phones*, WCTI News (September 4, 2018), <https://wcti12.com/news/local/pitt-county-criminal-court-no-longer-allowing-cell-phones>

⁴⁵ District of Columbia Courts Code of Conduct for the Public, District of Columbia Website, <https://www.dccourts.gov/sites/default/files/divisionspdfs/Public-Code-of-Conduct.pdf>

⁴⁶ Beth LeBlanc, *Clinton County courts: Leave cellphones at home*, Lansing State Journal (July 1, 2016), <https://www.lansingstatejournal.com/story/news/local/2016/07/01/clinton-county-courts-leave-cellphones-home/86547372/>

The restrictions prohibit photographs and video; interference with court proceedings or work; and devices in jury deliberation rooms. Further, cellphone possession or use may be restricted by court order when warranted by security or privacy issues in a particular case.⁴⁷

The Virginia Model Policy states that visitors should be able to bring devices into the courthouse, but may use mobile devices in the courtroom only with authorization by a presiding judge. Judges have the discretion and authority to impose cellphone prohibitions in their courtrooms for particular cases, or place further reasonable restrictions. Judges and security officers may confiscate devices for violations of policy.⁴⁸ Some courts have revised their cellphone policies to apply only to certain floors of the courthouse, as a convenience for those doing business on the main floors.

In January 2019, three Circuit Judges in Harrisonburg, Virginia signed an order revising the court's previous order that had prohibited electronic devices from the entire courthouse. The new order lifted the ban on the floor where the clerk's office is located so as to avoid inconvenience for those simply wanting to complete a clerk-related task, such as apply for a passport or concealed-carry permit.⁴⁹

iii. Storage Locker Availability

To accommodate individuals who appear at the courthouse with cellphones, some courthouses are supplying storage lockers that are available for a small fee. This service is especially important for individuals who arrive by public transportation or park far away. Having a safe place to store their cellphones may prevent such individuals from being late for a court hearing.

In Culpeper County, Virginia, a recent court order mandates the provision of storage lockers for those who otherwise have no means of storage available to them.⁵⁰ Courthouses in Norfolk and Virginia Beach, Virginia, have lockers for the

⁴⁷ Circuit Court for Anne Arundel County Website, <http://www.circuitcourt.org/maryland-rule-16-110-cell-phones-other-eletronic-devices-cameras>

⁴⁸ Mahoney, *supra*, note 1.

⁴⁹ Pete Delea, *Courthouse to Lift Cellphone Ban*, *Daily News Record* (January 7, 2019), http://www.dnronline.com/news/harrisonburg/courthouse-to-lift-cellphone-ban/article_686ddb2b-7ad3-56ab-94e4-72bd6abbc3c6.html; *see infra* note * (discussing subsequent policy change).

⁵⁰ “If possession of portable electronic devices in the courtroom is prohibited or restricted, then storage for the devices shall be provided at the security entrance to the courthouse for anyone who is not authorized to bring their devices into the courtroom. Storage of devices may be limited to persons who represent to security personnel at they have no means of storage available to them, such as a vehicle parked on or near the courthouse premises.” Culpeper County Ct. Order, *supra*, note 51.

public.⁵¹ When the McLean County Law and Justice Center in Kentucky enacted a cellphone ban in 2017, visitors were allowed to secure their phones in storage lockers at the Sheriff's Department's Patrol Division.⁵² The U.S. Supreme Court building in Washington D.C. has coin-operated lockers where visitors may store their belongings, including cellphones.⁵³

An alternative storage device is the use of Yondr pouches, in which litigants keep their phone on their person, but it is sealed in such a way as to prevent its use.⁵⁴ This method is used, for example, in the Criminal Division of the Philadelphia Court of Common Pleas.

For some courthouses where cellphone storage is unavailable, nearby businesses provide cellphone storage lockers, for example, behind their sales counters. The fees provide the proprietor additional income, while offering a solution for those who need to temporarily store their cellphones. Some individuals have even sought court approval to install kiosks immediately outside the courthouse.⁵⁵ Advertisements for cellphone storage lockers, displaying different models with pricing, have popped up online.⁵⁶

c. Penalties for Violations

Courts have imposed various penalties for violations of a court's cellphone policies, including confiscating the user's phone. Judges may issue penalties of increasing severity, including stiff fines and arrest for contempt of court. "If it rings, it is subject to confiscation," said a Williamsburg County Virginia Clerk of Court. The owner

⁵¹ Wilson, *supra*, note 28.

⁵² *Cell phone ban begins Nov. 1 at the Logan County Courthouse*, The Courier (October 18, 2017), <https://www.lincolncourier.com/news/20171018/cell-phone-ban-begins-nov-1-at-logan-county-courthouse>

⁵³ *Lancaster Cellphone Policy*, *supra*, note 7.

⁵⁴ "How it Works," Yondr (February 2018), <https://www.veryondr.com/howitworks>

⁵⁵ Cell Phone Storage Lockers Solves Courtroom Phone Ban Issue: Cellphones Banned From Court Creates New Market Opportunity For Cell Phone Storage Lockers, The Mailbox Works (February 23, 2015), <https://www.mailboxworks.com/blog/cellphone-storage-lockers-courtrooms/> [hereinafter, New Market Opportunity]

⁵⁶ One such advertisement targets courthouses: the "wall-mounted cell phone storage lockers...assist patrons of the court with their desire to follow the law while keeping their cell phones closes safe. Cell phone lockers allow patrons to swiftly secure their cell phone and a small locker storage unit either by secured combination lock or keylock." See, "Cell Phone Storage Lockers Solves Courtroom Phone Ban Issue: Cellphones Banned From Court Creates New Market Opportunity For Cell Phone Storage Lockers, The Mailbox Works" (February 23, 2015), <https://www.mailboxworks.com/blog/cellphone-storage-lockers-courtrooms/> [hereinafter, New Market Opportunity]

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will get his or her cellphone back if it is taken away, but only after a stern warning by deputies.⁵⁷

A defendant in an Orlando, Florida courtroom was sentenced to five days in jail for using a cellphone while sitting in the audience of the courtroom, as she continued to use her cellphone to check emails, despite being told to turn it off.⁵⁸

A Cleveland Ohio judge overseeing a murder trial in 2009 had two trial attendees arrested for pointing cellphones towards a jury. The two men, one the defendant's friend, and the other the defendant's cousin, were seen pointing their devices at the jury during trial testimony from where they were seated in the back row of the courtroom. The judge ordered the two men arrested for contempt of court and also declared a mistrial.⁵⁹

d. Other Stakeholders

The news contains many examples illustrating that other stakeholders, such as the media and even attorneys, also have received penalties for violating court cellphone policies.

In one courtroom with a well-publicized prohibition against cellphone use after the start of proceedings, a media blogger covering a trial was removed from the courtroom for sending a text during the proceedings. He was banned from the courtroom, but was permitted to watch the trial in an overflow room.⁶⁰

e. Notice Requirements

Courthouses give notice of cellphone bans in a variety of ways. They include signage throughout the courthouse; printed notices on subpoenas and summons; and notices on county webpages.

Whatever policy is adopted, ample notice should be provided. This is especially important for unrepresented litigants who do not have an attorney to guide them through the process. Signs should be posted conspicuously outside the

⁵⁷ Monique Angle, *Ring of Contempt: Cell Phones Can be Trouble in Courthouses*, Daily Press (July 23, 2004), <https://www.dailypress.com/news/dp-xpm-20040723-2004-07-23-0407230006-story.html>

⁵⁸ *Should people go to jail for using their cellphone in a courtroom?*, WESH2 (March 12, 2015) <https://www.wesh.com/article/should-people-go-to-jail-for-using-their-cellphone-in-a-courtroom/4440735>

⁵⁹ Eric P. Robinson, *Trial Judges Impose Penalties for Social Media in the Courtroom*, Digital Media Law Project (March 3, 2010), <http://www.dmlp.org/blog/2010/trial-judges-impose-penalties-social-media-courtroom>

⁶⁰ Robinson, *supra*, note 59.

courthouse and at security entrances. The policy should be displayed on the court's website and in notices provided to all parties, as well as to jurors.⁶¹

The above policies and consequences show that here are various solutions that would allow entry of phones while still minimizing disruption.

V. Conclusion

As demonstrated above, there are legitimate security risks presented by cellphone use in courthouses, including possible threats to the safety of witnesses, jurors, prosecutors, or other trial participants, as well as the need to ensure proper decorum and prevent disruptions in courtrooms.

On the other hand, being unable to bring one's cellphone into the courthouse may result in being unable to present evidence; conduct legal research; or for those with disabilities, understand or communicate during the proceedings. As a result, the ability to use cellphones may make the difference between winning and losing a case, or presenting crucial evidence and receiving a just outcome.

The unrepresented and low-income populations are the most likely to be adversely impacted by inability to bring their cellphones into the courthouse. Such litigants may be unaware of cellphone restrictions and may expect to offer evidence on their cellphones that may be necessary to prevail in their cases; may expect online self-help resources, such as online forms or financial calculation tools; or may anticipate using their cellphones for language accessibility.

The American Bar Association should endorse policies that address court administration concerns, while promoting access to justice for all.

Respectfully submitted,

Palmer Gene Vance II
Chair, Litigation Section
August 2019

⁶¹ Admin. Off. Cts. Guidance, *supra*, note 35.

GENERAL INFORMATION FORM

Submitting Entity: ABA Litigation Section

Submitted By: Palmer Gene Vance II, Chair, Litigation Section

1. Summary of Resolution(s). The Resolution urges courts, as well as their respective bar associations, to carefully review their policies on use and admittance of cellphones in courthouses, to ensure meaningful access to our judicial system, balancing the security risks posed by cellphone use with the needs of litigants, and in particular, those who are self-represented or of lower income.
2. Approval by Submitting Entity. This Resolution has been adopted by the Section of Litigation Council on May 6, 2019.
3. Has this or a similar resolution been submitted to the House or Board previously? No.
4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? None.
5. If this is a late report, what urgency exists which requires action at this meeting of the House? Not applicable.
6. Status of Legislation. (If applicable) Not applicable.
7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. The ABA Section of Litigation will publish the Resolution on its website and distribute the Resolution to federal and state courts throughout the United States.
8. Cost to the Association. (Both direct and indirect costs) None.
9. Disclosure of Interest. (If applicable) No interests of the Access to Justice Committee, or its members, are implicated by this Resolution.

10. Referrals.

Criminal Justice Section
Commission on Homelessness and Poverty
Family Law Section
Judicial Division
Tort Trial and Insurance Practice Section

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*)

Eileen M. Letts
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EXECUTIVE SUMMARY1. Summary of the Resolution

The Resolution urges courts, as well as their respective bar associations, to carefully review their policies on use and admittance of cellphones in courthouses, to ensure meaningful access to our judicial system, balancing the security risks posed by cellphone use with the needs of litigants, and in particular, those who are self-represented or of lower income.

2. Summary of the Issue that the Resolution Addresses

Courts' policies on cellphone use and admittance to courthouses vary widely. Policies banning use and/or admittance of cellphones to courthouses is an access to justice issue because, on the one hand, there are legitimate security reasons to disallowing such use, while on the other, bans can harm the legitimate needs of litigants, disproportionately affecting those who are self-represented or of lower income.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The Resolution will urge courts, as well as their respective bar associations, to carefully review their policies on use and admittance of cellphones in courthouses, to ensure meaningful access to our judicial system, balancing the security risks posed by cellphone use with the needs of litigants, and in particular, those who are self-represented or of lower income.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.

**Personal Electronic Device Review Committee
December 18, 2020**

Honorable Michael K. Newell – Chief Judge, Family Court
Honorable Paul Fioravanti – Vice Chancellor, Court of Chancery
Honorable Vivian Medinilla – Judge, Superior Court
Honorable Monica Horton – Judge, Court of Common Pleas
Michael Iglie – Chief of Uniform Services, Justice of the Peace Court
Elmer Setting – Deputy Court Administrator, Administrative Office of the Courts
Major Michael Downs – Deputy Chief, Capitol Police
Sonia Augusthy, Esquire – Assistant Public Defender, serving as representative for DSBA
Tim Maguire, Esquire – Deputy Attorney General, Department of Justice representative
Dan Atkins, Esquire – Executive Director, Community Legal Aid Society, Inc.
Stephanie Volturo, Esquire – Chief Conflicts Counsel, Office of Defense Services representative
Ellie Torres, Esquire – Counsel to the Chief Judge, Family Court
Addie Asay, Esquire – Director of Legal Affairs, Family Court
Charlotte Granison, Esquire – Law Clerk for Chief Judge Newell, Family Court

- Chief Judge Newell opened by reviewing the charge from Chief Justice Seitz and discussed the Order creating this Committee.
- Current personal electronic device policy has been in effect since 2005 and bans cell phones from State courthouses unless a person qualifies for an exemption.
- The personal electronic device prohibition can create an access to justice barrier for self-represented litigants.
- A number of organizations (listed in the Order from Chief Justice Seitz) have recommended that courthouse personal electronic device bans be reviewed and revised in favor of addressing the needs of litigants while balancing security issues.
- This Committee will review the Judicial Branch's current policy and discuss modification.
- Chief Judge Newell asked the group if there were any other participants that should be added to the Committee. Dan Atkins was invited to represent the Community Legal Aid Society, which is a statewide agency. He has expertise on the needs of low income litigants.
- Judge Medinilla stated that although she is a Judge in NCC, she will receive input from Superior Court Judges in Kent and Sussex County.
- Vice Chancellor Fioravanti stated that the Court of Chancery does not have the same challenges with security because they have no jury trials. There is a desire among counsel to allow devices into the courtroom, as currently attorneys are required to leave cell phones in the anteroom outside of the courtroom.
- Judge Horton stated that many litigants appear pro se in the Court of Common Pleas for civil and some criminal cases, which would likely make possession of personal electronic devices a good thing, but she mentioned that there are challenges

Personal Electronic Device Review Committee

Meeting Date: December 18, 2020

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regarding the issues of videotaping, witness intimidation, and the capturing of intimate information that is not intended to be public.

- Michael Iglio stated there are specific challenges based on the JP Court locations. Currently, litigants are hiding phones in bushes, some courts do have phone storage areas. He stated that he is open to phones in the JP Court lobbies, but is concerned about the courtroom because there is no security in JP courtrooms.
- Judge Medinilla stated that there are several security risks that phones present in Superior Court. She specifically mentioned concerns about witness intimidation, videotaping, retaliation, how to manage with the current resources available, and gang participation cases with multiple felony offenses and multiple defendants, which are already challenging to manage in the courtroom. Superior Court does not have as many pro se litigants as other courts and does have public access to the courtrooms in a way others may not. She also raised a concern related to jurors accessing information about the case via their phones.
- Michael Downs from Capitol Police mentioned the importance of a balance because the nature of and need for phone use has changed since 2005, but we still want the courthouses to be secure and he has concerns about the practicality of applying a new policy. He also noted that managing litigants with cell phones is one thing, but having 25-30 individuals who are not litigants come and watch trials is a different thing. CPD cannot determine who is a litigant when they walk in a courthouse.
- Tim Maguire echoed the concerns of Judge Medinilla. He stated that there is the potential for people in the courtroom to share information on social media without the Judge or attorneys knowing.
- Sonia Augusthy stated that people often say they have evidence on their phones and then do not have their phone and cannot present it effectively, which is an inconvenience and can lead to a continuance. She stated that the issue seems to be one involving the logistics of what parameters will be in place. Who can have what, when, and where it can be stored.
- Stephanie Volturo agreed and stated that this issue involves a balance being struck and allowing clients access to phones they depend on.
- Dan Atkins stated that this is an access to justice issue because 80% of civil legal litigants are self-represented which is a large group of people that are required to advocate for themselves.
- He mentioned that litigants need personal electronic devices for evidentiary issues, important scheduling, communication with their employment or childcare, and to avoid the stress of being disconnected from their phone. However, he stated that he is sensitive to security concerns in Superior Court. The challenge for the group is to address different court needs.

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- Dan Atkins believes that the policy should shift to reflect a presumption to allow personal electronic devices with exemptions to allow each court to tailor the policy to their individual security needs.
- Elmer Setting believes that phones have become more than just for placing a call, but he has concerns about the burden a change in policy would place on Capitol Police because they will ultimately have to enforce violations in the policy.
- Chief Judge Newell mentioned that represented litigants have the ability to pass their phones to their attorneys and have them in the courthouse which is an unfair practice.
- Addie Asay mentioned that we need to weigh the safety and security concerns to find a compromise for the policy and Ellie Torres agreed.
- Report is due to the Chief Justice on April 2, 2021.
- Ellie Torres suggested the Committee review the policy for the federal courthouse in Wilmington.
- Dan Atkins asked if there was agreement to have a general rule to allow PEDs and then focus on exceptions for specific courts.
- Judge Medinilla stated because she is representing the interests of the Superior Court statewide with many security risks and she could not say at this time that her court will agree to changing policy.
- Judge Horton, Vice Chancellor Fioravanti, and Tim Maguire stated that they were not prepared to take a position during the first meeting.
- Sonia Augusthy stated that she supports increased access to personal electronic devices. She asked if there were statistics for each courthouse regarding who comes in, where are they going, and their purpose.
- Deputy Chief Downs stated that Capitol Police has entrance screening numbers for how many people come through security, but they include employees and do not exclude reentry for employees during the day. He stated that he would provide the 2019 entry numbers because they more closely reflect the typical movement in the courthouse.
- Stephanie Volturo stated she supports a shift in the presumption, and Elmer Setting stated he concurred.
- Chief Judge Newell mentioned including storage concerns. What storage does each courthouse have, and is it sufficient? Are there alternatives such as the Yondr pouches discussed in the Massachusetts report that would work well and what is the expense associated with those options or additional storage?
- There was a concern about the availability of the network to support increased traffic of more cell phone use by the public. It was suggested JIC representation be added to this Committee. Elmer Setting will reach out to Ken Kelemen.

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- Issues to be addressed include security, storage, and access to justice and convenience for litigants and jurors.
- Dan Atkins suggested compiling a list of concerns from each court and a list from security.
- Stephanie Volturo, Dan Atkins, Addie Asay, and Charlotte Granison will be part of a client-centered group to look at solutions to include best practices from existing rules and available exceptions that could be applied in Delaware.
- Judge Medinilla said she would work with Elmer Setting and Major Downs on security concerns. Tim Maguire also wants to be involved with the security discussion and will talk to the attorneys in the Family Division as well.

DRAFT

Personal Electronic Device Review Committee
January 19, 2021

Honorable Michael K. Newell – Chief Judge, Family Court
Honorable Paul Fioravanti – Vice Chancellor, Court of Chancery
Honorable Vivian Medinilla – Judge, Superior Court
Honorable Monica Horton – Judge, Court of Common Pleas
Michael Iglie – Chief of Uniformed Services
Major Michael Downs – Capitol Police
Sonia Augusthy, Esquire – Assistant Public Defender, serving as representative for DSBA
Tim Maguire, Esquire – Deputy Attorney General, Department of Justice representative
Dan Atkins, Esquire – Executive Director, Community Legal Aid Society, Inc.
Stephanie Volturo, Esquire – Chief Conflicts Counsel, representing Office of Defense Services
Ellie Torres, Esquire – Counsel to the Chief Judge, Family Court
Ken Kelemen, Deputy State Court Administrator – Information Systems Manager
Addie Asay, Esquire – Director of Legal Affairs, Family Court
Charlotte Granison, Esquire – Law Clerk for Chief Judge Newell, Family Court

I. Approval of December 18, 2020 Minutes (previously circulated)

There were no revisions or objections to the minutes.

II. Updates and Feedback from Courts and Agencies

Judge Medinilla reviewed comments she made during the prior meeting and shared concerns from Superior Court judicial officers including intimidation, participation, and retaliation. Specifically, Superior Court has the following concerns:

1. Personal electronic devices could increase the fear factor of reluctant witnesses. A similar concern exists for jurors who may fear participation if there is a perception that their image can be captured electronically. A similar impact may occur for litigants in sexual assault cases or for undercover police officers.
2. The public is coming in and out of the courtroom throughout the proceedings and court staff may not be able to monitor them. During gang trials there may be intimidation through recording testimony, even if the court room is restricted.
3. Social media will allow for real-time posting which could expose or endanger people during the proceedings.
4. Disruption and distraction from ringing phones and making noise (i.e., vibration) could disrupt a witness, attorney, or court reporter. Cell phones could be a source of distraction when a proceeding is less interesting.
5. Evidentiary issues with admitting electronic evidence and requiring litigants to turn over their phone.

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Superior Court would like to “get to a yes” and allow personal electronic devices in some capacity, but want to consider how that goal is to be achieved, such as limiting electronics to parties or specific types of proceedings, or using judicial orders to allow specific people to bring their phones into the courthouse.

Judge Horton reported that the Court of Common Pleas supports allowing individuals to bring cell phones into the courthouses because it would allow greater access to calendars and the outside world, such as contacting their children.

Vice Chancellor Fioravanti stated that the Court of Chancery does not have the same challenges as other courts because there are no juries, and most cases involve parties that are represented by counsel. He expressed concern about the issues of security raised by the other courts and how they may broadly impact the courthouses. He would like to see how jurisdictions with gang issues and high volume have addressed these security concerns.

Chief Iglio stated that the JP Court echoed the security concerns mentioned by Superior Court. In JP Court, there is only one CSO available and there are no bailiffs inside the courtroom, so counter surveillance is a huge concern. There is the potential for a party with a cell phone to identify vulnerabilities for a future pre-planned attack. He expressed concerns about items concealed inside of a cell phone, like an explosive, or using a personal electronic device to detonate explosive device. Also, there are guns that look like cell phones.

In 2019, JP Court 7 did a pilot with Yondr pouches and from conversations with security and judges, he believed that pilot was deemed a failure. Litigants walked off with the pouches and did not return them or the pouches were returned damaged and unusable.

Sonia Augusthy stated that the bar has a vast range of opinions, but security is paramount and we must consider the needs of various courts and proceedings. Family Court and Court of Common Pleas have a higher number of *pro se* litigants and higher volume, and it may be more important for litigants to have access to their phones.

Stephanie Volturo stated that she supports allowing phones as much as possible for ODS clients with necessary restrictions to address the security concerns of the group. She would like to look to policies in other jurisdictions and be as inclusive as possible in our policy.

Ken Kelemen stated that the public can use the guest net access and that cyber security is not an issue. However, there may be challenges with having a large number of people with devices pulling on the courthouse bandwidth. He has already seen this with people working with mobile devices throughout the buildings.

There are a few areas where the public could potentially connect a cable to a state asset and pose a data security risk. There are public access terminals which are locked down, but could pose a risk if people wanted to breach the system. There are separate connections

for the different WiFi networks and the data never intersects with the other networks. However, simultaneous connection could have a drain on bandwidth.

Ellie Torres asked if JIC could limit access to certain web pages. Ken Kelemen stated that this could be possible, but it would have to be done through DTI. He did not know if this could be accomplished just for the judicial branch without impacting other state agencies. Ken stated he would inquire with DTI in a meeting on Thursday.

Family Court does not have a public access terminal, but Superior Court has a number that can provide people read-only access to CMS system through PCs that are for the public to use.

III. 2019 Entry Numbers into Courthouses (Chief Judge Newell, Major Downs)

Major Downs provided 2019 courthouse entrance numbers requested by the group. He noted that Capitol Police does not keep a separate count for those that enter through the attorney line and the general public line. He also mentioned that these numbers include all people that entered the building including those that left and returned.

Leonard L. Williams Justice Center - 588,319

Kent County Courthouse- 36,979

Sussex County Courthouse -100,278

Sussex Chancery Court - 13,439

Kent County Family Court - 117,625

Sussex County Family Court - 116, 220

Major Downs spoke to Marshall McGowen from the District Court. The District Court Chief Judge sets the cell phone policy and the court does not track their entrance screening numbers. Most of their cases are civil, but if there is a criminal trial or the need for guidelines, it is established by the individual judges. He mentioned that it varies by district and as an example, the Southern District of New York has no cell phone policy, so individuals have to obtain permission from a judge.

IV. Workgroup Updates

A. Best Practices from Other Jurisdictions (S. Volturo, D. Atkins, A. Asay, C. Granison)

Addie reported that the group has been sharing best practices ideas from other jurisdictions and will apply the feedback concerns received from this meeting to practices in other courts. Some of the best practices reviewed were the Yondr pouches, which they will discuss with JP Court to determine what did and did not work in their pilot, and onsite storage with secondary screening for specific courtrooms. The group will review how

policies have functioned in states where they have been applied and how security has been maintained.

B. Security Concerns (Judge Medinilla, Major Downs, T. Maguire)

Major Downs raised concerns that if there is a new policy, it will be challenging or impossible to police the policy. He gave an example of a possible confrontation in the courthouse that does not currently exist, such as if a person is permitted to bring a cell phone in and the bailiff asks them to stop using the phone or silence it. If the person declines to do so, then the bailiff has to call Capitol Police and possibly engage in a confrontation.

A changed cell phone policy takes Capitol Police away from ensuring that the facilities are safe for court business and he does not want to tie up officers in court rooms to resolve cell phone issues. If litigants are allowed to bring phones, and are accompanied by friends and family that have no reason to bring a device, Capitol Police will not have time sort out who is allowed to have a phone and who is not, particularly when there are already concerns about long lines.

Tim McGuire stated that he spoke with his supervisors and they echoed the listed concerns mentioned by Judge Medinilla and Major Downs. There are case-specific concerns with gang cases (retaliation) and real-time social media posting. He mentioned that parties currently leave to tell people outside to attend a specific part of a trial, but he worried that this practice would increase with social media posts from the courtroom. There are also concerns that victims may experience trauma related to cell phone possession and be reluctant to come forward. There is potential that statements could be recorded or put on the internet.

In drug cases with undercover officers, a picture of the officer could be given to the public. Tim McGuire worries that there may be unmanageable use of cell phones and wonders how to protect witnesses and jurors.

Judge Medinilla discussed proposed solutions to the security concerns from the work group, which included limiting use to specific parties, specific types of proceedings, and permission by specific judges or cases. She acknowledged that it will be challenging to monitor the possession of cell phones if there is a policy with disparate permissions. This could create problems for Capitol Police and judges trying to manage the courtroom.

The security workgroup proposed a solution using free lockers to allow public to store devices in the courthouse, outside of the secure area. In the Leonard L. Williams Justice Center this could be in the exit hallway.

Elmer Setting was not present for this meeting, but informed Judge Medinilla that the group could determine the need for the lockers and he could accommodate the demand and cost of these lockers. The workgroup believes this resolves the access to justice issues for those that need devices to present their cases. It would enable access to the outside

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world, provide immediate access to devices, lessens security issues, increases availability of phones in civil matters, diminishes monitoring problems, and court specific issues/enforcement. The Court would cover the cost of storage.

Chief Judge Newell clarified that a person could not get beyond the security check point with a cell phone regardless of the court and it would be up to the individual court or judge to allow a person to come back and get their cell phone. Chief Judge Newell asked about the cost of the lockers.

Judge Medinilla stated that Elmer Setting believed 250 lockers would address the daily need for storage.

Dan Atkins expressed concern that this number of lockers would not be sufficient.

Judge Medinilla relayed that Elmer Setting did not seem concerned about locker numbers and thought it was a viable option.

Ken Kelemen said there may be issues with liability.

Judge Horton mentioned that she was interested in a procedure where litigants could bring their phone into the courthouse in a Yondr pouch.

Addie asked if the group has considered permission for non-litigants. There are people that come into the courthouse for information on filing and to access the pro se resource centers who may need phones and not have access to a judicial order.

Chief Judge Newell mentioned that other jurisdictions have encountered some of these concerns. Massachusetts completed a report and recently Virginia, Georgia, and Michigan changed their personal electronic device policies. He suggested a presentation from someone in one of those jurisdictions or another with a recently changed policy to attend the next meeting.

V. Next Meeting: February 22, 2021 @ 8:30am

**Personal Electronic Device Review Committee
February 22, 2021**

Honorable Michael K. Newell – Chief Judge, Family Court
Honorable Paul Fioravanti – Vice Chancellor, Court of Chancery
Honorable Vivian Medinilla – Judge, Superior Court
Honorable Monica Horton – Judge, Court of Common Pleas
Michael Iglio – Chief of Uniformed Services
Major Michael Downs – Capitol Police
Elmer Setting – State Deputy for Security, Administrative Office of the Courts
Sonia Augusthy, Esquire – Assistant Public Defender, serving as representative for DSBA
Tim Maguire, Esquire – Deputy Attorney General, Department of Justice representative
Dan Atkins, Esquire – Executive Director, Community Legal Aid Society, Inc.
Stephanie Volturo, Esquire – Chief Conflicts Counsel, representing Office of Defense Services
Ellie Torres, Esquire – Counsel to the Chief Judge, Family Court
Addie Asay, Esquire – Director of Legal Affairs, Family Court
Charlotte Granison, Esquire – Law Clerk for Chief Judge Newell, Family Court

I. Approval of January 19, 2021 Minutes (previously circulated)

Judge Mendenilla moved to approve the minutes from the January 19, 2021 meeting and Vice Chancellor Fioravanti seconded the motion. The minutes were approved by the Committee with no oppositions, and no abstentions.

II. Presentation from *Working Group on Possession and Use of Cell Phones and Similar Devices in the Courts of Massachusetts*

Members from the *Working Group on Possession and Use of Cell Phones and Similar Devices in the Courts of Massachusetts* presented to the Committee: Judge Paul A. Chernoff (ret.), Judge Cynthia Cohen (ret.), and Jeffrey P. Morrow, Director of Security for the Massachusetts Courts. Jeffrey Catalano, Esquire, another member of their working group, had planned to present could not due to a conflict. Mr. Catalano is willing to discuss his efforts with members of the Massachusetts bar in a separate conversation.

1. Judge Chernoff – Role of Group and Outreach

Judge Chernoff was a judge in the District Court and Superior Court for 35 years.

- Judge Chernoff shared his experiences as cell phones became more prevalent in courtrooms. He explained that courts started the ban because it was easier for the judges and security staff with fewer phone disruptions.
- He explained that policies banning cell phones looked fine until you thought about who was being allowed to bring phones in – lawyers, social workers, employees, but not the public. About half of Massachusetts’ 100 courthouses had bans and there was a groundswell to examine this issue. There were concerns that the cell phone ban was unfair and could be considered discriminatory. “No lawyer, no phone” rule unless you could be found to have an exception.
- Massachusetts Appleseed Center for Law and Justice, a nonprofit organization, presented concerns of discrimination and fairness to the Access to Justice Commission. It is not fair to parents who cannot contact children or childcare

providers, and is also unfair to low income and minority groups that use public transportation.

- Appleseed prepared a persuasive report, but lacked access to interview people in the court system and provide the court's perspective on the issue.
- The late Chief Justice Ralph Gants established the *Working Group on Possession and Use of Cell Phones and Similar Devices in the Courts of Massachusetts* tasked with investigating the issue from the judicial perspective.
- The group examined the issues and made findings of fact and recommendations for changes. The group visited courthouses with and without bans, talked to judges for and opposed to bans, talked to security staff, and met with chief justices in various district courts. They also travelled to Pennsylvania, Maryland, and the District of Columbia to discuss their policies and considerations. Finally, the group submitted a comprehensive report in 2019 and Jeff Morrow, head of trial court security, began implementing changes. Judge Chernoff commented that COVID-19 has altered some planned changes, but has also provided opportunities.

2. Judge Cohen – Discussion of Findings and Recommendations

Judge Cohen worked as a litigator in private practice for 26 years and served as an Appeals Court Justice for 16 years.

- Judge Cohen explained that the Working Group had to determine how to balance security risks of cell phone use in courthouses while meeting the needs of court users, especially self-represented litigants.
- Half of Massachusetts courthouses had cell phone bans, some established before smart phones, which were more related to a concern with noise in the courtroom than security.
- The group looked at 90 court systems around the country and found fewer than 20 had a cell phone ban. The group found the trend is moving away from bans. She mentioned that the 2018 resolution from the Council of Chief Justices likely influenced this shift.
- Bans were viewed by the group as an unacceptable impediment to access to justice, evidence, information, calendars, the ability to copy court documents, and communication with childcare and employers. They found it was not fair to deny this essential tool when attorneys in the case had their devices with them.
- The group agreed that cell phones can create serious security issues, but concluded that restrictions must be tailored to the needs of specific courts. Security issues related to informants and undercover officers had to be considered. However, without specific risks, bans should not be used to prevent annoyance-related issues with cell phones when other less restrictive measures can be used. The courts can address security risks without prohibiting people from bringing their cell phones into the courthouse.
- From their review of courts without bans, the group found that some courthouses had challenging environments but kept things safe. High-risk courthouses implemented effective measures short of bans, like Yondr pouches. A visible active

court security presence was maintained in the courtrooms and hallways. Posted signage and audio announcements were used to inform the public of rules and consequences for inappropriate use of cell phones. Judges received information about courtroom management for cell phone interruptions and how to monitor cell phone use in court to address annoyance issues.

- Based on their research of other courts, the group recommended a pilot with Yondr pouches as a substitute to complete bans. Phones can be pouched at building entrances, or courtroom entrances depending on the need. These pouches were already being used for concerts, Boston public schools, and the bar exam which hosted over 1500 people.
- The overall finding of the report was that no citizen should be denied access to a courthouse because they are in possession of a cell phone or PED. Phones can be taken or regulated, but the public should not be turned away.
- In July 2020, the Supreme Judicial Court determined there was a greater need for phones during the COVID-19 pandemic and issued a temporary order suspending all statewide bans. Overnight, security had to rise to the challenge but things have gone well so far. However, the courts are not at full capacity at the moment.

3. Jeffrey Morrow – Implementation of Recommendations

Jeffrey Morrow is a former federal police officer that moved to the courts in 2013 when he became the Director of Security for the Massachusetts Trial Courts. His security department comprises over 1,000 employees covering almost 100 courthouses statewide.

- Mr. Morrow was charged with implementing the recommendations. Initially, he was skeptical about removal of bans because they are effective and simplify security procedures. He also noted inconsistencies because half of the courthouses had bans and half did not. Some courts that should have bans from a risk and security perspective did not, while other courts which were less likely to encourage security issues had bans. Court officers had strong feelings about bans related to decorum and disruption, but these did not present actual security issues.
- There were security concerns regarding witness intimidation, photographing jurors, and summoning associates to the courthouse.
- Mr. Morrow separated bans between those related to security issues and those related to decorum. He reviewed the bans in August 2019 and at that time, 40 of the courthouses in the State had bans. He applied criteria which included reviewing security staffing levels, the number of public visitors coming to each courthouse, volume and opportunity, criminal case filings, and used a Massachusetts Fusion Center study to look at gang activities across the state. Applying these objective criteria, he reduced the number of bans in the State by nearly half, removing 19 of the 40 bans. This left 21 courthouses with cell phone bans.
- Mr. Morrow next implemented a Yondr pouch pilot in Framingham, Massachusetts,¹ a court with a moderate volume of criminal cases. Cell phones were put in the pouches when entering the building. Unlocking devices were placed at the exit, in

¹ According to a google search, Framingham Massachusetts had a population of 72,308 in 2019.

courtrooms, clerk's offices, and probation offices. Framingham ran the pilot program for 180 days and the feedback was uniformly positive. Court users were relieved to not have to hide their phone or leave them in their car. It was noted that security officers had less conflict at the screening point because litigants could have their phone, even if it was in the pouch.

- After Framingham, the group looked to address the remaining 21 bans and expanded the Yondr pilot to a larger, busy courthouse in Worcester, Massachusetts, and a courthouse in Boston with more security issues. When COVID-19 hit, the plans were delayed.
- The group looked at eliminating bans responsibly and where bans were appropriate, replaced with Yondr pouch usage.
- In July 2020, to address litigant challenges during COVID-19, the Supreme Judicial Court issued an emergency order removing and rescinding all bans. Chaos that was expected has not happened and there have been no significant security issues involving cell phones. Essential services remain in-person, but the traffic in courthouses is about 25% of what it was before. Arraignments, violations of probation, and other functions have continued in the courthouse, which has allowed for a test of cell phone permissions in a controlled situation. The results have been encouraging and there is consideration of a permanent removal of the remaining bans. It was noted that the pouches have not been used during this time because there are questions about the best way to sanitize them.

4. Q&A

- Delaware has shared courthouses. What advice is there for shared courthouses from Massachusetts?
 - There are a mix of stand-alone and shared courthouses where bans were repealed. The group looked at foot traffic, history of violent incidents and gang violence in making recommendations.
 - Judge Chernoff mentioned that in Washington, DC and Montgomery County, MD, Yondr pouches are used for individual hearings and not the whole courthouse.
- What did the signage and messaging say? Did it explain the rules and consequences of noncompliance and what steps would be taken for enforcement?
 - Judge Cohen indicated that the signs state phones are to be turned off in the courtroom and can be confiscated. Violating the rules could result in removal from the courthouse that day. If the phone is being used for purposes such as intimidation, criminal charges can be pursued. Asking someone to leave the courthouse for disruptive behavior is not uncommon and judges can use their power to enforce.
- Has there ever been any consideration for free external public storage?
 - Judge Cohen indicated that the group considered lockers instead of Yondr pouches. Internal storage was not feasible in older courthouses due to lack of space. There were concerns that lockers could store contraband. It was determined that storage was not an attractive option. Although it was a

recommendation, there was no investigation into that option. Urban courts might not have a place to put them externally.

- Major Downs asked how the Yondr pouch process works at the entrance to the courthouse.
 - Mr. Morrow explained that a security officer stationed at the entrance instructs members of the public to turn off the phone and place it in the pouch. The pouch is placed in a dish and run through the metal detector. The individual walks through the metal detector, picks up the phone in the pouch, and takes it with them. If the phone is needed while in the courthouse, openers are available in the courtrooms and the clerk's office.
 - The courts worked with the court officer union to hire an additional officer for this function and worked with Yondr to get enough openers for key locations and enough pouches to address the max number of visitors at one time.
- Michael Iglio asked if they considered Faraday bags because Yondr pouches do not block cell phone signals.
 - Mr. Morrow responded that they did not consider the Faraday bags due to their size and additional constraints.
- Judge Horton asked how long it takes to get the public through security and the phones into the pouches?
 - Mr. Morrow stated that it took about 15 seconds to ask litigants to turn off their phones and place them in the pouch.
 - Judge Cohen mentioned that Yondr pouches were used for 1500 bar examinees that came through at the start of the session and then had to unlock at the end. It went smoothly and took little time.
- Judge Horton asked how many pouches were lost to shrinkage (theft) and damage?
 - Mr. Morrow said approximately 10% of the pouches were damaged or taken from the courthouse. The contract with Yondr included replacement of those pouches at no cost. Pouches were occasionally found torn. Yondr was testing making them out of untearable fabric, but Mr. Morrow did not know the status.
- Tim Maguire asked what policy is in place if, for example, someone is caught recording. Can security access or delete the recording?
 - Mr. Morrow explained there is no specific policy but mentioned that ground rules indicated improper use could lead to dismissal or confiscation of the cell phone. If a crime was being committed, such as intimidation, security officers can seize the phone as evidence. Therefore, there is no need for a specific policy.

III. Next Meeting: March 18, 2021 at 12:30pm

Trial Court Emergency Administrative Order 20-10
Order Concerning Trial Court Policy on Possession & Use of Cell Phones & Personal Electronic Devices

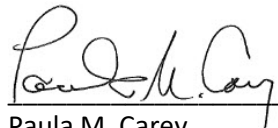
In accordance with the Supreme Judicial Court Third Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic (SJC Order) issued on June 24, 2020 and effective as of July 1, 2020;

It is hereby ORDERED pursuant to my authority as set forth in G.L. c. 211B, § 9, that the [Trial Court Policy on Possession & Use of Cameras & Personal Electronic Devices](#), effective as of August 14, 2015 is temporarily suspended effective July 13, 2020. In accordance with the SJC Order, cell phones and other personal electronic devices (PEDs), as defined in the SJC Order,¹ shall not be banned from any courthouse.

Court visitors may use cell phones and other PEDs in the public areas of the courthouse, as long as the activity does not disrupt or disturb court business or proceedings. No cell phone, PED or camera may be used to take photographs or video in a courtroom, or anywhere else inside a courthouse, with the following exceptions: (1) news media in accordance with existing policy; or (2) photographing or recording of court documents with permission of a judge, clerk, register, chief probation officer, or their designee. Cell phones, PEDs or cameras belonging to members of the public must be turned off or set to silent mode and stowed away prior to entering a courtroom. Counsel, court staff, and others conducting business before the court may use cell phones and PEDs in a courtroom with the consent of the presiding justice.

Violation of this Order may result in confiscation of the device for the duration of the court visit, or expulsion from the courthouse.

Dated: June 24, 2020
Effective: July 13, 2020



Paula M. Carey
Chief Justice of the Trial Court

¹ The SJC Order defines a “personal electronic device” or “PED” as “any device capable of communicating, transmitting, receiving, or recording messages, images, sounds, data, or other information by any means, including but not limited to a computer, tablet, cell phone, camera, or Bluetooth device.”

POLICY CONCERNING THE USE OF CELLPHONES & PERSONAL ELECTRONIC DEVICES (PEDs)



Court visitors may use cellphones and other PEDs in the public areas of the courthouse, as long as the activity does not disrupt or disturb court business or proceedings.



No PED, camera, or cellphone may be used to take photos or video in a courtroom or anywhere else inside a courthouse, except for:

- news media in accordance with existing policy
- photographing/recording of court documents with permission of a Judge, Clerk/Register, Chief Probation Officer, or their designee.



PEDs, cameras, or cellphones belonging to members of the public must be turned off or set to silent mode and stowed away prior to entering a courtroom.



Counsel, court staff, and others conducting business before the court may use cellular telephones and PEDs in a courtroom with the consent of the presiding justice.



Violation of this policy may result in confiscation of the device for the duration of the court visit or expulsion from courthouse.

