



Massachusetts
APPLESEED | Center for
Law & Justice

Court Cell Phone Policy Project

Preliminary Findings

March 2018

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Court Cell Phone Project (CCPP) Responses

Introduction & Background

The Massachusetts Trial Court has a general policy outlining the possession and use of cameras and personal electronic devices (referred to as PEDs) within the courts,¹ but district courts are given the option to adapt the policy at the discretion of their own leadership.² While the official policy does not prohibit the entry of PEDs into courthouses, currently there are 56 Trial Court facilities across the Commonwealth with active cell phone bans.³ It is the opinion of Massachusetts Appleaseed, through our own observation and the insight of our colleagues, that these bans are unduly burdensome to litigants – especially those without representation – and have a harmful effect on access to justice in Massachusetts. In the interest of understanding this issue further and bringing it to a wider audience, we have researched the topic through a set of five core questions and one overarching objective. These are as follow:

OBJECTIVE

We seek to understand the origins of court cell phone bans in Massachusetts and the consequences of such bans both within the court system and across the broader access to justice landscape.

RESEARCH QUESTIONS

How did these policies come into place and who has the authority to change them?

What unintended consequences do these bans have for court users—and in particular, for self-represented litigants?

What are the nature of the concerns the bans are meant to address, and do these concerns justify the bans?

How do other states manage the possession and use of cameras and PEDs? Are there other ways to mitigate risks?

What differences can be observed between courts with and without this type of policy?

To MA Appleaseed the question of court cell phone access is a critical brick in any strong access to justice foundation, and we are excited and honored to be among those working on this important topic. We are drawn to its relevance, impact, and high potential for reform, and we look forward to partnering with stakeholders within and beyond the courts to continue to advance this initiative.

¹ Trial Court Policy on Possession & Use of Cameras & Personal Electronic Devices (2018), Commonwealth of Massachusetts

² Jessica Drew, Attorney, South Coastal Counties Legal Services (2/9/2018).

³ Trial Court restrictions on the possession of cellular telephones and personal electronic devices (2018), Commonwealth of Massachusetts

Project Scope

To answer the questions driving this project we are employing several lines of inquiry. We are doing internet-based research into policies in Massachusetts and around the country. We are contacting court personnel locally and nationally to solicit their perspectives on both the need for bans and the impacts that such bans have. We are also conducting phone interviews with stakeholders in Massachusetts who work with affected populations, along with individuals involved with the courts in other states to understand their experiences with alternative policies. And perhaps most importantly, we are gathering perspectives from the same court users forced to leave their phones or turn around when they arrive for a day in court. We have also made efforts to connect with judges who preside over the cell phone policies in their courthouses, but unfortunately they have been reluctant to speak with us about this issue. We are organizing our findings in such a way as to catalogue the various arguments and lay out the evidence for and against those arguments.

The following chart outlines our data sources and how we have purposed that data.

CELL PHONE PROJECT DATA

| Source | Purpose |
|--|---|
| Internet-based | |
| News articles | Understanding the history of the policy and the public's concerns |
| Academic articles | Understanding what research has been done and is being done on the policy and its effects on access to justice |
| MA Court websites | Gathering information on the current status of the policy in Massachusetts courts (i.e. the policy provisions; policies in place in various courts) |
| Other states' court websites | Gathering information on US state courts with alternative policies for comparison to Massachusetts court policies |
| Interview-based | |
| Interviews with litigants ⁴ | Understanding the effects of the ban on the litigant |
| Interviews with legal aid | Understanding the effects of the ban on attorneys and |

⁴ Court Cell Phone Project (CCPP) Litigant Responses, Massachusetts Appleseed Center for Law and Justice, September-November 2017

| | |
|---|--|
| attorneys ⁵ | their clients; gathering personal anecdotes |
| Interviews with legal aid supervisors (coordinators, directors, etc.) ⁶ | Understanding the effects of the ban on legal aid groups and their employees, as well as its second-hand effect on their clients |
| Interviews with court staff personnel ⁷ | Receiving second-hand observations of the effects of the ban on litigants and first-hand observations of the effects of the ban on court service centers |
| Additional stakeholder interviews (i.e. law school professors, social service providers) ⁸ | Understanding the effects of the ban from diverse perspectives |

Cell Phones in the Courthouse

There are a number of ways in which cell phones are needed in the courthouse. Through interviews with stakeholders, we have gathered anecdotes that outline the most common uses for cell phones by non-barred individuals in the court setting. These uses can be broken down into four main categories: Evidence, Communication, Language Access & Accessibility, and Info Gathering.

Below are descriptions of each of these uses and instances in which they most commonly occur.

EVIDENCE^{9,10}

| Description | Instances |
|--|---------------------------|
| Instances in which litigants need to use their cell phone to display evidence, most often in the form of pictures, texts, emails, and voicemails | Proof of payment |
| | Proof of communication |
| | Proof of agreement |
| | Proof of damage or injury |

⁵ CCPP Legal Aid Attorney Responses, Massachusetts Appleseed Center for Law and Justice, February 2018

⁶ CCPP Legal Aid Supervisor Responses, Massachusetts Appleseed Center for Law and Justice, February 2018

⁷ CCPP Court Staff Personnel Responses, Massachusetts Appleseed Center for Law and Justice, October-November 2017

⁸ CCPP Additional Stakeholder Responses, Massachusetts Appleseed Center for Law and Justice, November 2017-February 2018

⁹ Stacey Marz, Director of Self-Help Services, Alaska Court System (11/21/2017)

¹⁰ CCPP Legal Aid Attorney Responses, Massachusetts Appleseed Center for Law and Justice, February 2018

COMMUNICATION¹¹

| Description | Instances |
|---|--|
| Instances in which litigants need to use their cell phone to communicate with individuals outside of the courthouse ¹² | Coordinating childcare ¹³ |
| | Coordinating transportation |
| | Communicating with an employer |
| | Communicating with attorney on time/location changes |

LANGUAGE ACCESS & ACCESSIBILITY¹⁴

| Description | Instances |
|--|-------------------------------|
| Instances in which litigants need to use their cell phone to communicate with individuals inside of the courthouse | Using translation services |
| | Using hearing assistance apps |

INFO GATHERING¹⁵

| Description | Instances |
|--|--|
| Instances in which litigants need their cell phone to gather information that would allow them to enter or continue a court session on fair ground | Gathering phone-based evidence ¹⁶ |
| | Verifying information before settling an agreement ¹⁷ |
| | Reading online legal aid materials ¹⁸ |
| | Filling out and storing legal forms ¹⁹ |

¹¹ *Ibid.*

¹² Pay phones are not longer in service at the majority of MA courthouses, leaving pro se litigants with no reasonable alternatives for making phone calls

¹³ Cell Phone Ban Survey, Chelsea District Court (9/15/2017).

¹⁴ CCPP Legal Aid Attorney Responses, Massachusetts Appleseed Center for Law and Justice, February 2018

¹⁵ *Ibid.*

¹⁶ "Forms in Your Pocket: Mobile Solutions are Nearly Ready to Scale (News 2016)", Self-Represented Litigation Network.

¹⁷ CCPP Legal Aid Attorney Responses, Massachusetts Appleseed Center for Law and Justice, February 2018

¹⁸ "Forms in Your Pocket: Mobile Solutions are Nearly Ready to Scale (News 2016)", Self-Represented Litigation Network.

¹⁹ *Ibid.*

Cell phone use in the courthouse is common and varied. A litigant could need their cell phone for several of the reasons outlined in a single session, or perhaps just one. Depending on the case, the consequences of one litigant's inability to access one use could be more severe than another's inability to access several. In the instance of presenting evidence, for example, a represented litigant may have the option of presenting an affidavit,²⁰ while a pro se litigant would miss out on the opportunity to show their evidence at all. In this scenario, the pro se litigant is put at a disadvantage for reaching a fair agreement.²¹ The following section explores this topic further, relaying our understanding of the wide range of complexities that come with the litigant's inability to access a cell phone for these purposes.

Stakeholder Concerns

It's horrible, I can't believe it. I was going to use it to show the original traffic violation. There's nothing on the notice saying cell phones aren't allowed and there should be. It's also going to make people late to their court appointments!

—Anonymous Litigant, Boston Municipal Court²²

While the tables above show the instances in which cell phones are most commonly needed in the courthouse, they do not show the full complexities that can arise in specific circumstances. **Confidentiality** can become an issue if a litigant who is hard of hearing has to communicate with their attorney at a shouting volume.²³ **Settling an agreement** may be rushed, and consequently unfair, if a litigant in housing court is not able to call their family to verify move-out dates.²⁴ **Providing a witness** can be very difficult if the witness needs to be on-call for their occupation (an attorney can arrange for this to be allowed;²⁵ a self-representing litigant is essentially forced to testify without the witness). **Proving a payment** can be impossible if a litigant needs to call their bank to do so.²⁶ **Obtaining emergency relief** could be impeded if a victim of domestic violence seeking an order of protection or a tenant illegally locked out of apartment arrives at the court seeking relief and is denied entry into the courthouse with their cell phone.²⁷

²⁰ Jessica Drew, Attorney, South Coastal Counties Legal Services (2/9/2018).

²¹ *Ibid.*

²² Interview with litigant (Anonymous), South Boston Division, Boston Municipal Court (11/21/2017).

²³ Jessica Drew, Attorney, South Coastal Counties Legal Services (2/9/2018).

²⁴ Liliana Ibara, Attorney, Greater Boston Legal Services (2/21/2018).

²⁵ Susan Hegel, Attorney, Greater Boston Legal Services (2/26/2018).

²⁶ Jade Brown, Attorney, Greater Boston Legal Services (2/21/2018).

²⁷ Susan Hegel, Attorney, Greater Boston Legal Services, (3/14/2018)

The lack of cell phones for pro se litigants is an enormous information disadvantage for them. They have no way to check what opposing counsel is telling them.

—Liliana Ibara, Greater Boston Legal Services²⁸

Many stories of litigants experiencing these complexities were told through our stakeholder interviews. In one interview, a person at the South Boston Division, Boston Municipal Court was unaware of the no-cell phone policy and stated that she was going to use her phone to show a traffic violation.²⁹ Two scenarios observed serve as contrasting case studies. In the first scenario, at a courthouse with no cell phone ban, a woman called her father during her Court Service Center appointment to attain a missing detail about his SSI.³⁰ The second scenario took place at courthouse with an active cell phone ban, where a litigant meeting with a Court Service Center Manager did not have necessary information on hand about her landlord, which was stored on her phone, and the Manager had to spend approximately 15 minutes looking online for the information.³¹ The simple act of gathering information is polarized by these two anecdotes; easy and time-efficient for the first litigant but difficult and time-wasting for the second. This distinction demonstrates the potential secondary effects of the ban.

Because many litigants are unaware of this policy until their arrival at the courthouse, they are often forced to make quick, irrational decisions with their cell phones. Many litigants, so as not to be late to their session, hide their phones in bushes around the courthouse.³² Three self-represented litigants once stashed their phones in a stranger's bike bag outside of the courthouse.³³ One litigant once left their phone with their cab driver.³⁴ Several stakeholders described vendors near the courthouses that hold cell phones for varying rates; some litigants utilize these vendors, but many cannot afford it.³⁵ In an informal survey, several litigants expressed acute frustration with having to store their phones at these nearby vendors for a fee and with the cell phone ban in general, stating that banning cell phones was a bad policy because someone could have an emergency.³⁶

The most severe effect of this policy, however, may be the common inclination to avoid entering the courthouse at all, or avoid returning.

²⁸ Liliana Ibara, Attorney, Greater Boston Legal Services (2/21/2018).

²⁹ CCPP Litigant Responses, Massachusetts Appleseed Center for Law and Justice, September-November 2017

³⁰ Springfield Court Service Center (7/26/2017).

³¹ Worcester Court Service Center (7/20/2017).

³² For example, see "Chaos in the Courthouse, with no Place to Stash Smartphones", Chicago Tribune, April 6, 2016.

³³ Jade Brown, Attorney, Greater Boston Legal Services (2/21/2018).

³⁴ *Ibid.*

³⁵ CCPP Legal Aid Attorney Responses, Massachusetts Appleseed Center for Law and Justice, February 2018

³⁶ CCPP Litigant Responses, Massachusetts Appleseed Center for Law and Justice, September-November 2017

For clients with limited English proficiency, they may not come to court unless a friend or relative is able to come with them to translate. However, if they were able to bring their cell phones, they may feel more comfortable coming to court, because they would be able to get clarification by calling a friend or using a language service or application on their phone.

—Jade Brown, Greater Boston Legal Services³⁷

This dissuasive effect can occur for a number of reasons, such as the litigant’s inability to reach someone to change an appointment or the litigant’s inability to access the information they need.³⁸ Many times this effect occurs because the litigant does not feel comfortable hiding their phone and cannot afford to pay for it to be stored. In many instances, individuals are without transportation home because they had to use their T fare to store their phone.³⁹ Moreover, the litigant understands that being stripped of their cell phone means leaving their personal life at the door, and they may not enter the courthouse because of it.

Despite the long list of difficulties faced by court users due to cell phone bans, there are strong arguments for why restrictive policies should remain in place, and why suggested alternatives to it may not be feasible. Some examples of these arguments are as follows:

ARGUMENTS IN SUPPORT OF THE BAN

| Argument Type | Specific Concerns |
|---|--|
| Arguments from court stakeholders as to why the policy should remain in place | Individuals may use their phones to record (photo, video and/or audio) victims, witnesses, jurors or court employees to threaten or intimidate them ⁴⁰ , or even to transmit/broadcast the court proceedings to outside parties. The privacy concerns are significant since smartphones make it so easy to post pictures or videos on social media. |
| | Cell phones could be a source of disruption during a trial or a hearing. Cell phones distract litigant attention from judges, attorneys, and the proceedings. |

³⁷ Jade Brown, Attorney, Greater Boston Legal Services (2/21/2018).

³⁸ Dina Afek, Volunteer Attorney Program Director, New Mexico Legal Aid (11/28/2017).

³⁹ Nina Darby, Court Collaborative Manager, Rosie’s Place (11/28/2017).

⁴⁰ “Witness Harassment Has Gone Digital, and the Justice System is Playing Catch-Up”, ABA Journal, August 2013.

| | |
|--|---|
| | Cell phone bans may help prevent witnesses from informing one another about testimony when other witnesses have been sequestered and increase clients' attention to courtroom proceedings and attorney/client conversations while in court. ⁴¹ |
| Arguments from court stakeholders as to why suggested alternatives to the ban are not feasible | Cell phone lockers can be used to store contraband. Also, phones could be used to trigger an explosive device. |
| | The Trial Court may not be able to afford to pay for additional security personnel to oversee storage lockers. |
| | Using a locker system would be difficult because courts are already short-staffed on security officers. |

While these arguments are based in valid concerns and legitimate cautionary measures, Massachusetts Applesseed believes that court policies concerning electronic devices can be designed in a way that handles these concerns without degrading access to justice in the courthouse.

Policy Brief

Draft Policy Brief – September 2017 (Revised February 2018)



There appears to be a building consensus that the restriction of cell phones in the Massachusetts courthouses places an additional burden on those who are already at a disadvantage in the justice system. Attorneys and court employees are permitted to bring phones into courthouses, and attorneys are often able to take in their clients' phones as well. However, pro se litigants, who often store personal and legal information on their phones, are unable to access this information under the phone bans. If there are no storage facilities in the courthouse for phones, individuals accessing courthouses by public transportation are not able to leave their phone in a car, and often there is no one with whom they can entrust their phone during their time in court. In addition to the issue of pro se litigants accessing evidence and information, anyone utilizing childcare, location maps for travel assistance, or who may need additional physical, mental, or medical support at short notice are among those most severely affected by this policy. The concern is that, while intended to protect the integrity of the justice system, these bans are in fact preventing Massachusetts from realizing its 100% access to justice goal.

⁴¹ Kristen Graves, District Court Staff Attorney, CPCS, Public Defender Division (12/11/2017).

Allowing cell phones in courtrooms significantly increases access to information for pro se litigants. Today, legal forms and other legal help tools are increasingly available to the public online and through smartphone applications such as “Court Whisperer,” which allows individuals to complete, submit, and save court documents on their phone without having to access a printer.⁴² A smartphone is a commonplace and essential daily tool for communication, information and document storage, and safety and security. The smartphone’s ability to complete court documents and store important case information only increases its relevance in promoting access to justice and promoting a positive and productive experience for individuals in the court system.

Reasons commonly referenced for banning cell phones hinge on disruption, privacy, and witness intimidation issues. The presence of camera-equipped smartphones in courthouses does create a real risk of individuals inappropriately capturing photographs of witnesses.⁴³ The threat of witness intimidation is increased by the ability of smartphone users to instantly post pictures and video to social media websites. In addition to witnesses, individuals with cell phones could potentially photograph or record jurors and prosecutors involved in trial hearings.

Understanding the inherent risks of allowing cell phones into courthouses, there are various solutions that would allow individuals to bring their phones while still minimizing disruption. Many courthouses supply lockers which are available for phone storage, sometimes charging individuals a fee of a few dollars for the service. If the storage of contraband is a concern to the court, it could easily place these lockers in a location beyond the entrance security stations.⁴⁴ Other courts, such as Barnstable District Court, allow individuals to switch off and keep their phone if they are unable to leave their phone in a vehicle or with another person outside of the courthouse.⁴⁵ Still other courts, such as the Superior Court of California San Bernardino, permit camera phones so long as no photographs, broadcastings, or recordings are made without prior approval.⁴⁶ Violating these rules may result in confiscation of the phone with citations or monetary sanctions. Here in Massachusetts, Greenfield has recently enacted a policy whereby cell phones are allowed, but judges have the right to prohibit the entry of phones into the courtroom for specific cases at their discretion.⁴⁷

When individuals are not offered a simple solution to the cell phone ban, the results are often extreme. Many individuals resort to hiding their phones in bushes and other areas around the courthouse; these phones are often stolen. Others choose to stay outside of the courthouse with their phones, but may miss their hearings and have default judgments entered against them as a

⁴² “Forms in Your Pocket: Mobile Solutions are Nearly Ready to Scale (News 2016)”, Self-Represented Litigation Network.

⁴³ “Witness Harassment Has Gone Digital, and the Justice System is Playing Catch-Up”, ABA Journal, August 2013.

⁴⁴ “Courthouse Cell Phone Policy Guilty as Charged”, Chicago SunTimes, April 5, 2016.

⁴⁵ “New cell phone Ban Stymies District Court Visitors”, Cape Cod Times, March 19, 2017.

⁴⁶ Cell Phone Policy, Superior Court of California, County of San Bernardino, 2017.

⁴⁷ Mary Klaes, Court Service Center Manager, Franklin County Justice Center (03/22/2018).

result.⁴⁸ In this technology-driven, and often technology-dependent era, it is highly problematic for individuals to have to choose between carrying a cell phone and attending an appointment in court.

The solution that seems to best facilitate access to justice for pro se litigants is the universal adoption of a policy that allows all phones so long as no photographs, recordings, or broadcasts are taken without prior permission. This would allow pro se litigants full access to any relevant personal or legal information on their phones. To complement such a policy, courthouses could designate marked calling areas, which would allow individuals to make important calls for purposes of childcare, transportation, emergencies, or other legal issues with minimal disruption. Courts could balance this liberal policy by implementing strict fines or penalties to discourage inappropriate conduct.

If a particular court is firmly unwilling to allow cell phones into the courthouses, the next-least restrictive solution would be to require that phones are stored in courthouse lockers inside the courthouse. Phones could still be permitted to complete forms and gather relevant personal and legal information, but then could be checked in lockers before individuals proceed to trial. Another possibility is the use of Yondr pouches, wherein a litigant keeps their phone on their person, but it is sealed in such a way as to prevent its use.⁴⁹ At a minimum, the Court should provide sufficient and consistent notice to litigants, in their own language, to enable them to plan accordingly for their trips to court (understanding that this would only be helpful to those individuals with scheduled court affairs, and not, for instance, someone dropping by to use a Court Service Center).

Cell phones are an integral part of daily life for most of the population, and their restriction in a public space such as the Trial Court should be treated with the appropriate gravity. Living in a democratic society demands a constant balancing of security with liberty and equality; and we would encourage the Court to ensure this balance is not being too hastily dismissed. Access to justice is often an elusive concept—and one with which the Massachusetts Trial Court will surely be grappling for many years to come—but the removal of cell phone bans is one concrete and demonstrable step toward the Court’s goal of 100% access across the Commonwealth.

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⁴⁸ “Chaos in the Courthouse, with no Place to Stash Smartphones”, Chicago Tribune, April 6, 2016.

⁴⁹ “How it Works”, Yondr, <https://www.veryondr.com/howitworks/>, February 2018.