

DOCUMENT	Model Policy
ORIGINATING COMMITTEE	Access for Self-Represented Litigants
SUBJECT	Use of Portable Electronic Devices in Courthouses
ENDORSED	Virginia Access to Justice Commission, December 7, 2017

I. PURPOSE OF POLICY

Portable electronic devices – including portable personal computers, tablet computers, mobile telephones (including telephones with cameras and audio and video recording and transmission capabilities), electronic calendars, e-book readers, and “smart” watches – have become ubiquitous in society. People rely heavily on these devices for purposes ranging from mundane organizational or data storage activities to ensuring personal security. Trial courts may have policies that address the needs of attorneys, jurors, and other professionals to carry and use portable electronic devices on courthouse grounds, recognizing that such devices may be critical for scheduling, communicating, and presenting evidence. Portable electronic devices are equally critical to self-represented litigants (SRLs): emails, text messages, voice mails, still photos, and videos stored on portable electronic devices may be the SRL’s only evidence or source of information. But SRLs may not know that many courts have policies preventing them from carrying or using these devices while in the courthouse.

SRLs already are at a disadvantage due to their lack of legal training and familiarity with court practices and procedures. Policies barring portable electronic devices can prevent SRLs from effectively presenting evidence in their cases, or prevent SRLs or other court users from successfully accessing court resources or information. These policies also complicate communication with family and employers, increasing the risk of lost time from work and unmet family responsibilities, which can be especially problematic for low and moderate income individuals.

When SRLs or others carrying a portable electronic device are denied entry to a courthouse and must return the devices to their vehicles, they may be delayed in their arrival to the appropriate courtroom or office. In many cases, there is no

vehicle – many SRLs or other court users now arrive at suburban and urban courts using ride services such as Uber and Lyft. If they have no vehicle, they cannot securely store their devices, and at many Virginia courthouses, their only option in that event is to leave their devices in outside shrubbery.

A recent Pew Research Center survey¹ reveals that certain groups of Americans rely on smartphones for online access at higher levels than the general population. For example:

- Younger adults — 15 percent of Americans ages 18-29 are heavily dependent on a smartphone for online access.
- Those with low household incomes and levels of educational attainment — Some 13 percent of Americans with an annual household income of less than \$30,000 per year are smartphone-dependent. Just 1 percent of Americans from households earning more than \$75,000 per year rely on their smartphones to a similar degree for online access.
- Non-whites — 12 percent of African Americans and 13 percent of Latinos are smartphone-dependent, compared with four percent of whites.

The Virginia Access to Justice Commission believes that SRLs' and other court users' uncertain access to portable electronic devices to navigate court procedures and forms, to present evidence in litigation, and to communicate while in the courthouse, is a significant access-to-justice issue. Confiscating portable electronic devices, or refusing to allow their entry resulting in their being placed in an unsecured status can have serious impacts on personal safety, by foreclosing a person's ability to call for help or otherwise communicate with family or friends. The Commission therefore recommends that all Virginia trial courts seek to develop and prominently post policies addressing portable electronic devices.

The Virginia Access to Justice Commission also believes that a uniform statewide policy authorizing the carrying and use of portable electronic devices in courthouses for evidentiary and other purposes would improve access to justice for all Virginians and would improve judicial efficiency by establishing known processes and procedures. Towards those ends, the Commission recommends this model policy to Virginia's trial courts for consideration.

II. POLICY

PORTABLE ELECTRONIC DEVICES: Portable personal computers, tablet computers, mobile telephones (including telephones with cameras and audio and

¹ <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/>

video recording and transmission capabilities), electronic calendars, e-book readers, “smart” watches, and similar devices (hereafter, “Portable Electronic Devices”) are allowed in the courthouse, subject to screening, including through courthouse screening devices, and the following rules:

- a. **OTHER ELECTRONIC DEVICES:** Cameras, video cameras, video recording equipment and recording devices not classified as Portable Electronic Devices are not allowed in the courthouse, except for use at events such as investiture 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. **USE IN COMMON AREAS:** Court visitors may use Portable Electronic Devices in the common areas of the courthouse, such as lobbies and hallways. Further restrictions, including restricting cellphone conversations to designated areas, may be imposed as needed to maintain safety, security, proper behavior, order, and the administration of justice.

- c. **USE IN COURTROOMS:** Attorneys, self-represented litigants, and witnesses may use a Portable Electronic Device inside a courtroom to check calendars or present case-related information unless the presiding judge prohibits such use. Portable Electronic Devices must remain silent at all times. Photography, video recording, audio recording, and/or audio or video transmission or communication of any information using any media from inside the courtroom is strictly prohibited without prior written permission of the presiding judge.

- d. **CONFISCATION OF EQUIPMENT AND EJECTION OF USER:** Persons using any Portable Electronic Device in violation of this or any other Court order or policy may be removed from the courthouse and/or found in contempt of court and subject to penalties as provided by law. Any Portable Electronic Device used in violation of an order may be confiscated, and the Sheriff shall not be responsible or liable for any damage to or loss of a confiscated device.
- g. **FURTHER LIMITATIONS BY JUDGES:** A judge may further limit or ban the carrying or use of any Portable Electronic Device: (i) pursuant to Virginia Code §19.2-266 (to regulate media coverage of judicial proceedings); (ii) if carrying 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 (iii) for any other reason.