

# Cell Phones in the Courthouse

AN ACCESS TO JUSTICE PERSPECTIVE



Massachusetts  
**Appleseed**  
Center for Law & Justice



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### **MASSACHUSETTS APPLESEED MISSION**

MA Appleseed promotes equal rights and opportunities for Massachusetts residents by developing and advocating for systemic solutions to social justice issues.

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# Introduction

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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,<sup>1</sup> but district courts are given the option to adapt the policy at the discretion of their own leadership.<sup>2</sup> 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.<sup>3</sup> It is the opinion of Massachusetts Appleseed, 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.

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. Self-represented litigants without cell phones are not able to access legal precedents that may be referenced by opposing counsel in court. 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.

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

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

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

# Project Scope

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## OBJECTIVE

*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.*

## QUESTIONS

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

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 answer these questions, we employed several lines of inquiry. We conducted internet-based research into policies in Massachusetts and around the country. We contacted court personnel locally and nationally to solicit their perspectives on both the need for bans and the impacts that such bans have. We also conducted 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 gathered stories and opinions 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 and security staff who enforce the cell phone policies in their courthouses, but unfortunately they have been reluctant to speak with us about this issue.

# Cell Phones in the Courthouse

There are numerous ways in which cell phones are used in the courthouse. Through interviews with stakeholders, we developed an outline of 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 & Logistics, Language Access & Accessibility, and Info Gathering & Legal Research. Below are descriptions of each of these uses and instances in which they most commonly occur.

## EVIDENCE<sup>4, 5</sup>

Description	Examples
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

## COMMUNICATION & LOGISTICS<sup>6</sup>

Description	Examples
Instances in which litigants need to use their cell phone to communicate with individuals outside of the courthouse <sup>7</sup>	Coordinating childcare <sup>8</sup>
	Coordinating transportation
	Communicating with an employer

<sup>4</sup> Stacey Marz, Director of Self-Help Services, Alaska Court System (11/21/2017)

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

<sup>6</sup> *Ibid.*

<sup>7</sup> Pay phones are no longer in service at the majority of MA courthouses, leaving pro se litigants with no reasonable alternatives for making phone calls

<sup>8</sup> Cell Phone Ban Survey, Chelsea District Court (9/15/2017).

	Communicating with attorney on time/location changes
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#### LANGUAGE ACCESS & ACCESSIBILITY<sup>9</sup>

Description	Examples
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 GATHERING & LEGAL RESEARCH<sup>10</sup>

Description	Examples
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 <sup>11</sup>
	Verifying information before settling an agreement <sup>12</sup>
	Reading online legal aid materials and conducting legal research <sup>13</sup>
	Filling out and storing legal forms <sup>14</sup>

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. Sometimes a cell phone provides a barely noted convenience; and sometimes it will make a major substantive difference in a case. This list is not meant to be exhaustive, as the uses of cell phones are myriad and constantly expanding.

<sup>9</sup> CCPP Legal Aid Attorney Responses, Massachusetts Appleseed Center for Law and Justice, February 2018

<sup>10</sup> *Ibid.*

<sup>11</sup> "Forms in Your Pocket: Mobile Solutions are Nearly Ready to Scale (News 2016)", Self-Represented Litigation Network.

<sup>12</sup> CCPP Legal Aid Attorney Responses, Massachusetts Appleseed Center for Law and Justice, February 2018

<sup>13</sup> "Forms in Your Pocket: Mobile Solutions are Nearly Ready to Scale (News 2016)", Self-Represented Litigation Network; Pro se litigant, Leominster Housing Court (3/22/2018).

<sup>14</sup> *Ibid.*

## CELL PHONE ASSOCIATED RISKS AND COMPLICATIONS

There are some very important security concerns at stake with regard to cell phone use in the courthouse. While this report does not focus extensively on these issues, we do acknowledge their importance. 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.<sup>15</sup> 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 trials or hearings.

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 <sup>16</sup> , 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.
	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. <sup>17</sup>
Arguments from court stakeholders as to why	Cell phone lockers can be used to store contraband. Also, phones could be used to trigger an explosive device.

<sup>15</sup> "Witness Harassment Has Gone Digital, and the Justice System is Playing Catch-Up", ABA Journal, August 2013.

<sup>16</sup> "Witness Harassment Has Gone Digital, and the Justice System is Playing Catch-Up", ABA Journal, August 2013.

<sup>17</sup> Kristen Graves, District Court Staff Attorney, CPCS, Public Defender Division (12/11/2017).

suggested alternatives to the ban are not feasible	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 with respect to 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 addresses these concerns while still promoting access to justice in the courthouse.

## Ban Consequences

*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 Court<sup>18</sup>

While the tables in the previous section highlight instances in which cell phones are commonly needed in the courthouse, they do not show the full complexities that often arise as a direct result of these bans. [Confidentiality](#) can become an issue if a litigant who is hard of hearing has to communicate with their attorney at a shouting volume.<sup>19</sup> [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.<sup>20</sup> [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;<sup>21</sup> a self-representing litigant is essentially forced to testify without the witness). [Proving a payment](#) can be impossible if a litigant

<sup>18</sup> Interview with litigant (Anonymous), South Boston Division, Boston Municipal Court (11/21/2017).

<sup>19</sup> Jessica Drew, Attorney, South Coastal Counties Legal Services (2/9/2018).

<sup>20</sup> Liliana Ibara, Attorney, Greater Boston Legal Services (2/21/2018).

<sup>21</sup> Susan Hegel, Attorney, Greater Boston Legal Services (2/26/2018).

needs to call their bank to do so.<sup>22</sup> 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 seeking relief and is denied entry into the courthouse with their cell phone.<sup>23</sup>

*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 Services<sup>24</sup>

Being without a cell phone can also put pro se litigants at an even more profound strategic disadvantage in the courtroom. Cell phones are no longer just phones; they are personal computers and provide access to a wide array of resources. One pro se Housing Court litigant recounted their experience of doing extensive research prior to trial only to have the opposing attorney look up past cases and Massachusetts laws on the spot on their own phone, leaving the litigant unable to respond because they could access no new information, nor could they consult the cases being referenced.<sup>25</sup> Evidence is often stored on cell phones and many litigants arrive for a trial or hearing without having transferred that evidence to a different format. This presents problems in many types of cases, from showing photographs of damaged property to text messages documenting custody disputes. Multiple stakeholders emphasized the importance of cell phones in domestic cases, where threats are often received via text message.<sup>26</sup> In one interview, a litigant 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.<sup>27</sup>

While the bans are designed as a response to security concerns, they can also bring their own security issues. Conversations with domestic violence advocates brought to our attention some of the ways in which this population can be adversely affected by prohibitive policies. One concern at

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<sup>22</sup> Jade Brown, Attorney, Greater Boston Legal Services (2/21/2018).

<sup>23</sup> Susan Hegel, Attorney, Greater Boston Legal Services, (3/14/2018)

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

<sup>25</sup> Tracey Tobin, Litigant, Leominster Housing Court (3/22/2018).

<sup>26</sup> Sarah Singleton, Judge Pro Tem, First Judicial District Court, New Mexico (11/27/2017). Christina Paradiso, Senior Supervising Attorney, Family Law Unit, Community Legal Aid (2/29/2018). Sheriece Perry, Senior Manager of Support Services, Office of Court Management (10/11/2017).

<sup>27</sup> CCPP Litigant Responses, Massachusetts Appleseed Center for Law and Justice, September-November 2017

courthouses where litigants check their phones with a third party (such as a donut shop or Western Union) is that you could easily be leading domestic violence victims into an uncontrolled environment where their aggressor will be present at the same time. Similar risks could apply to litigants in other sensitive situations with parties in their cases, risking anything from revictimization to witness intimidation.<sup>28</sup>

Two scenarios observed serve as contrasting case studies in efficiency. 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 social security claim.<sup>29</sup> The second scenario took place at a 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.<sup>30</sup> The simple act of gathering information is polarized by these two anecdotes; easy and time-efficient for one litigant and CSC Manager but difficult and time-consuming for the others.

Because many litigants are unaware of this policy until their arrival at the courthouse, they are often forced to make quick, irrational decisions concerning what to do with their cell phones. Many litigants, so as not to be late to their session, hide their phones in bushes around the courthouse.<sup>31</sup> Three self-represented litigants once stashed their phones in a stranger's bike bag outside of the courthouse.<sup>32</sup> One litigant left their phone with a cab driver.<sup>33</sup> Several stakeholders described vendors near the courthouses that hold cell phones for varying rates; some litigants utilize these vendors, but many cannot afford it.<sup>34</sup> 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

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<sup>28</sup> Stephen Russo, Domestic and Sexual Violence Council Meeting (4/11/2018).

<sup>29</sup> Springfield Court Service Center (7/26/2017).

<sup>30</sup> Worcester Court Service Center (7/20/2017).

<sup>31</sup> For example, see "Chaos in the Courthouse, with no Place to Stash Smartphones", Chicago Tribune, April 6, 2016.

<sup>32</sup> Jade Brown, Attorney, Greater Boston Legal Services (2/21/2018).

<sup>33</sup> *Ibid.*

<sup>34</sup> CCPP Legal Aid Attorney Responses, Massachusetts Appleseed Center for Law and Justice, February 2018

cell phone ban in general—noting how problematic the ban would be in the case of an emergency.<sup>35</sup>

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

*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 Services<sup>36</sup>

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.<sup>37</sup> 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 bus or subway fare to store their phone.<sup>38</sup> Moreover, the litigant feels that leaving their cell phone means leaving their personal life at the door, and they may not enter the courthouse because of it.

## Policy Responses

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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 around the country supply lockers which are available for phone storage, sometimes charging individuals a fee of a few dollars for the service. (Such a charge, however, raises its own complications). Still other courts, such as the Superior Court of California San Bernardino or the

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<sup>35</sup> CCPP Litigant Responses, Massachusetts Appleseed Center for Law and Justice, September-November 2017

<sup>36</sup> Jade Brown, Attorney, Greater Boston Legal Services (2/21/2018).

<sup>37</sup> Dina Afek, Volunteer Attorney Program Director, New Mexico Legal Aid (11/28/2017).

<sup>38</sup> Nina Darby, Court Collaborative Manager, Rosie’s Place (11/28/2017).

Arizona Supreme Court, permit camera phones so long as no photographs, broadcastings, or recordings are made without prior approval.<sup>39</sup> At the Kansas Supreme Court cell phones are permitted and, with permission from the presiding judge or justice, pro se litigants are allowed to use their devices in the courtroom.<sup>40</sup> Violating these rules may result in confiscation of the phone with citations or monetary sanctions.

Here in Massachusetts, the Greenfield District Court 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.<sup>41</sup> At the Barnstable District Court a trial policy was implemented in March of 2018 to 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.<sup>42</sup> Massachusetts Federal Courthouses do not allow cell phones, but anyone entering the courthouse is able to check their device at the door where they are stored in a locked cubbyhole.<sup>43</sup>

At the Springfield Court Complex in Springfield MA, one of the busiest courthouses in the state, cell phones are permitted, but must be put away or silenced when the judge is present or the session has begun. Court users can make calls, but must do so from a common area. If an individual is asked multiple times to turn off their phone the device is confiscated and brought to the security officers by the front door, where it can be retrieved upon leaving. A court officer reported only two incidents over the last two years where this was necessary, but that court officers must remind litigants to turn off their phones on a daily basis. One Springfield court staff member reported benefits to the permissive policy including keeping people occupied and calm while they are waiting, also pointing out that cell phones are "more than phones now, they are computers. It's like having your wallet."<sup>44</sup> A Court Service Center (CSC) staff member highlighted how problematic it is when people who do not have phones need to make phone calls, as the only place they can do so is from the personal office phones of the CSC staff.<sup>45</sup>

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<sup>39</sup> Cell Phone Policy, Superior Court of California, County of San Bernardino, 2017.

<sup>40</sup> <http://www.azcourts.gov/Portals/20/2013%20Aug%20Rules/R%2013%200013.pdf>

<sup>41</sup> Mary Klaes, Court Service Center Manager, Franklin County Justice Center (03/22/2018).

<sup>42</sup> "New cell phone Ban Stymies District Court Visitors", Cape Cod Times, March 19, 2017.

<sup>43</sup> <http://www.capecodtimes.com/news/20170319/new-cellphone-ban-stymies-district-court-visitors>

<sup>44</sup> Court Officer, Roderick Ireland Courthouse (5/9/2018)

<sup>45</sup> Springfield Court Service Center (5/29/2018).

Many courts across the country have grappled with this issue and the policy responses are varied. Described below are some of those responses, and a more comprehensive review of court cell phone policies from other states can be found in the Appendices of this report.

## Recommendations

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### 1. Universal Permissive Policy

The solution that seems to best facilitate access to justice for pro se litigants is the statewide adoption of a policy that allows all personal electronic devices in the courts so long as no photographs, recordings, or broadcasts are taken without prior permission. The use of devices inside the courtroom for case-related tasks would be permitted unless specifically prohibited by the judge. This would allow pro se litigants full access to any relevant personal or legal information on their phones. The Model Policy drafted by the Virginia Access to Justice Commission (see Appendix), which is based off the Fairfax County policy, is a strong example of a well thought out and balanced permissive policy. The VA Model Policy allows the entry of all cell phones and other portable electronic devices subject to screening and adherence to rules of proper use.<sup>46</sup>

### 2. Cell Phone Restrictions

- a. Courtroom etiquette: Require that devices be turned off, put in airplane mode, or silenced while in courtroom unless explicitly given permission for use. In Maine and in the First Judicial court in Arkansas, cell phones must be turned off prior to entering courtroom; any usage of devices with a camera or recording may be confiscated unless authorized.<sup>47</sup>
- b. Designated Areas: Restrict phone calls to designated calling areas, which would allow individuals to make important calls for purposes of childcare, transportation, emergencies, or other legal issues with minimal disruption. In Kansas, cell phones are permitted but they must be turned off and put away out of sight in the courtroom; unrepresented parties may use a phone during court proceeding if

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<sup>46</sup> Virginia Access to Justice Commission Model Policy on the Use of Portable Electronic Devices in Courthouses, endorsed 12/7/2017.

<sup>47</sup> [http://www.courts.maine.gov/rules\\_adminorders/adminorders/JB-05-16.html](http://www.courts.maine.gov/rules_adminorders/adminorders/JB-05-16.html) (effective 5/1/2008)

sound is off, no disruption occurs, and that person is sitting in a designated area.<sup>48</sup> In New Jersey, cell phone use is permitted and can be used in common areas for any purpose other than taking photos, recording and/or broadcasting.<sup>49</sup>

- c. Case-by-Case Restrictions: Judges could have the discretion and authority to impose cell phone prohibitions in their courtroom for particular cases. The Virginia Model Policy specifies that “a judge may further limit or ban the carrying or use of any Portable Electronic Device” to “regulate media coverage”, if the device may “interfere with the administration of justice or cause any threat to safety or security” or “for any other reason.”<sup>50</sup>

### **3. Consequences for Prohibited Use**

Courts could balance a liberal policy by retaining the right to confiscate devices in the case of a violation. Courts could also decide to implement citations, fines, or other penalties to discourage inappropriate conduct. It would be important for courthouses to have clear and multilingual signage conveying these prohibitions and consequences to court users. Additionally, any added fees or fines would need to be considered in the context of their impact on low-income individuals. For example, in an Arizona court where a cell phone was not silenced, a phone of a client’s family member rang during a hearing, and the judge fined her \$50.<sup>51</sup> Some courts may confiscate cell phones, such as in Maine where cell phones are allowed if turned off, and any usage of devices with a camera may be confiscated unless authorized.<sup>52</sup> In Anne Arundel Circuit Court, MD: “Security personnel or other court personnel may confiscate and retain an electronic device that is used in violation of this Rule, subject to further order of the court or until the owner leaves the building.” Prohibited use is considered to be in contempt of court.<sup>53</sup>

### **4. Alternative Solutions**

- a. Lockers: If a particular court or judge is firmly unwilling to allow cell phones into the courthouses, the next-least restrictive solution would be to require that phones are stored in 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. An example can be found

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<sup>48</sup> <http://www.kscourts.org/kansas-courts/supreme-court/Orders/2013/2013SC62.pdf> (6/12/2013)

<sup>49</sup> <https://www.judiciary.state.nj.us/public/assets/guidelines.pdf> (effective 2/2/2015)

<sup>50</sup> Virginia Access to Justice Commission Model Policy on the Use of Portable Electronic Devices in Courthouses, endorsed 12/7/2017.

<sup>51</sup> Dina Afek, Volunteer Attorney Program Director at New Mexico Legal Aid, 11/28/2017.

<sup>52</sup> [http://www.courts.maine.gov/rules\\_adminorders/adminorders/JB-05-16.html](http://www.courts.maine.gov/rules_adminorders/adminorders/JB-05-16.html) (effective 5/1/2008)

<sup>53</sup> Md. Rule 16-208(c)(1)

in the Eastern district of Virginia which supplies lockers for phone storage.<sup>54</sup>

However, some courts may not be able to pay for additional security personnel to watch over the lockers.

- b. Pouches: 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.<sup>55</sup> In the Criminal Justice Center in Philadelphia, Pennsylvania, pouches are used by individuals to seal their cell phones when they enter, carry it around with them, and unseal at the unlocking station on their way out. About 20-30 cases were reported of people mutilating or destroying these pouches without visiting the official unlocking station. Some people allegedly found out how to turn on their phones by touch and use the phone through Siri. Philadelphia court officials are now working to improve pouches so that they are more resistant and larger to fit newer, larger cell phones.<sup>56</sup> The Massachusetts Board of Bar Overseers also uses Yondr pouches during Bar exam administration.<sup>57</sup>
- c. Notice: At a minimum, the Court should provide sufficient and consistent notice to litigants, in multiple languages, 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). For example, in Maryland Courts, the official policy specifies that notice regarding any limitations or prohibitions on cell phones and electronic devices “shall be included prominently on all summonses and notices of court proceedings”.<sup>58</sup>
- d. Entry List: Judges, attorneys, or clerks could provide the names of litigants allowed to bring in their devices to security officers.

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<sup>54</sup> Abel Mattos, Admin. Office of US Courts, 11/21/2017

<sup>55</sup> “How it Works”, Yondr, <https://www.veryondr.com/howitworks/>, February 2018.

<sup>56</sup> <http://www.philly.com/philly/news/crime/Some-find-ways-to-defeat-Phila-courts-new-locking-cellphone-pouch.html> (4/7/2017)

<sup>57</sup> <https://www.mass.gov/files/documents/2018/06/27/6.14.2018%20security%20policy.pdf>

<sup>58</sup> Md. Rule 16-208(d)(2)

# Conclusion

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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 that allow individuals to complete, submit, and save court documents on their phone without having to access a printer.<sup>59</sup> 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 makes it a critical tool for expanding access to justice and promoting a positive and productive experience for individuals in the court system.

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 result.<sup>60</sup> 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.

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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<sup>59</sup> "Forms in Your Pocket: Mobile Solutions are Nearly Ready to Scale (News 2016)", Self-Represented Litigation Network.

<sup>60</sup> "Chaos in the Courthouse, with no Place to Stash Smartphones", Chicago Tribune, April 6, 2016.

# Appendices



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State	Cell Phone Policy Overview
<b>Alaska</b>	Permitted; used regularly in family law proceedings. <sup>1</sup>
<b>Arizona</b>	Permitted; may use portable electronic devices (PED) in the courtroom to retrieve/store information, access the internet and send/receive text messages or information; prohibits calls, other audio functions, photography or recording in courtroom. <sup>2</sup> <ul style="list-style-type: none"> <li>▫ Phone of client's family member rang during a hearing, and the judge fined her \$50.<sup>3</sup></li> </ul>
<b>Arkansas (First Judicial Court)</b>	Permitted; must be turned off and if it rings in the courtroom, it may result in confiscation. <sup>4</sup>
<b>California</b>	<u>Court of Appeals</u> : permits use of computers and tablets in courtrooms during appellate oral arguments but prohibits cellphones; violators are removed. <sup>5</sup> <u>Superior Court of California San Bernardino</u> : permits phones; prohibits photography, broadcasting or recording without prior approval; violations may result in confiscation with citations or monetary sanctions. <sup>6</sup>
<b>Connecticut</b>	Permitted to only make calls, send/receive emails and/or send/receive text messages but not in a courtroom/hearing room; may use in hearing/trial with judge permission; prohibits photography, audio/video recordings and broadcasting sound, images or videos. <sup>7</sup>
<b>D.C (District Court)</b>	Cellphone lockers located at public entrances.
<b>Georgia</b>	Permitted; must be turned off or on silent and can't be used; recommends calling ahead to find out if they are allowed in the courtroom. <sup>8</sup>
<b>Idaho</b>	Permitted in court facilities or courtrooms; may be used for note taking and such notes may be transmitted; prohibits recording/transmission of sounds or images. <sup>9</sup>
<b>Illinois (Cook County)</b>	Prohibited only at the Hon. George N. Leighton Criminal Court Building; limited number of free storage lockers available. <sup>10</sup> <ul style="list-style-type: none"> <li>▫ Removed cellphone lockers because people were allegedly storing contraband.<sup>11</sup></li> </ul>
<b>Kansas</b>	Permitted; must be turned off and put away out of sight in the courtroom; unrepresented parties may use a phone during court proceeding if sound is off, no disruption occurs and that person is sitting in a designated area. <sup>12</sup>
<b>Louisiana</b>	District Courts, Family Courts & Juvenile Courts: Judge may prohibit use of cellphones in a courtroom. <sup>13</sup>
<b>Maine</b>	Permitted; must be turned off prior to entering courtroom; any usage of devices with a camera may be confiscated unless authorized. <sup>14</sup>
<b>Maryland</b>	Permitted into court facility; sending/receiving calls and messages is allowed in the courthouse but recording/transmitting photos or videos is prohibited; must be turned off in the courtroom

<sup>1</sup> Stacey Marz, Director of Self-Help Services, Alaska Court System, 11/21/2017.

<sup>2</sup> <http://www.azcourts.gov/Portals/20/2013%20Aug%20Rules/R%2013%200013.pdf> (effective 1/1/2014)

<sup>3</sup> Dina Afek, Volunteer Attorney Program Director at New Mexico Legal Aid, 11/28/2017.

<sup>4</sup> <https://courts.arkansas.gov/circuit/?q=node/2>

<sup>5</sup> <http://www.courts.ca.gov/documents/4DCA-Electronic-Devices-in-the-Courtroom.pdf>

<sup>6</sup> <http://www.sb-court.org/GeneralInfo/CellPhonePolicy.aspx>

<sup>7</sup> [https://www.jud.ct.gov/ElectronicDevices\\_superior.pdf](https://www.jud.ct.gov/ElectronicDevices_superior.pdf) (effective 3/3/2014)

<sup>8</sup> [http://municipal.georgiacourts.gov/sites/default/files/Basic%20Rules%20of%20Court%20Conduct/basic\\_rules\\_of\\_court\\_conduct.pdf](http://municipal.georgiacourts.gov/sites/default/files/Basic%20Rules%20of%20Court%20Conduct/basic_rules_of_court_conduct.pdf) (revised 2013)

<sup>9</sup> <https://isc.idaho.gov/icar49> (effective 1/1/2013)

<sup>10</sup> <http://www.cookcountycourt.org/HOME/CellPhoneElectronicDeviceBan.aspx>

<sup>11</sup> <https://chicago.suntimes.com/opinion/courthouse-cell-phone-policy-guilty-as-charged/> (4/5/2016)

<sup>12</sup> <http://www.kscourts.org/kansas-courts/supreme-court/Orders/2013/2013SC62.pdf> (6/12/2013)

<sup>13</sup> <http://www.lasc.org/rules/dist.ct/titleI.asp> (effective 1/1/2012)

<sup>14</sup> [http://www.courts.maine.gov/rules\\_adminorders/adminorders/JB-05-16.html](http://www.courts.maine.gov/rules_adminorders/adminorders/JB-05-16.html) (effective 5/1/2008)

	<ul style="list-style-type: none"> <li>▫ “Notice that the possession and use of cell phones and other electronic devices may be limited or prohibited in designated areas of the court facility shall be included prominently on all summonses and notices of court proceedings.”<sup>15</sup></li> </ul>
<b>Massachusetts</b>	Trial Courts: Permitted; must be turned off or on silent prior to entering courtroom; prohibits recording photos or videos unless authorized. <sup>16</sup> Further restrictions/prohibitions at the discretion of the First Justice/Regional Administrative Justice.
<b>Michigan</b>	Chief Judge may establish policy regarding use of cellphones, but no photographs of jurors or witnesses may be taken. <sup>17</sup>
<b>Missouri</b>	Supreme Court: prohibits cellphones in the building. <sup>18</sup>
<b>New Hampshire</b>	Permitted, unless presiding justice finds the use of a particular device disruptive; must be on silent in the courtroom. <sup>19</sup>
<b>New Jersey</b>	Permitted; can use for any purpose other than taking photos, recording and/or broadcasting in common areas; using to take notes, transcribe and receive communications and information is allowed in the courtroom only if the person executed an agreement for the Use of Electronic Devices (valid for 1 year); permission to photograph, record, broadcast and/or transmit requires a separate request. <sup>20</sup>
<b>New Mexico (First Judicial District Court)</b>	Permitted; parties are allowed to use cellphones to present evidence stored on the phone in many instances, particularly in cases with self-represented litigants (use is discretionary with the judge). <sup>21</sup>
<b>North Dakota</b>	Permitted; must be muted or turned off; prohibits photography, recording, broadcasting, storing or transmitting a proceeding without prior permission. <sup>22</sup>
<b>Pennsylvania</b>	<p>Criminal Justice Center in Philadelphia began using magnetically sealing cellphone pouches (Yondr); individuals seal their cellphones when they enter, carry it around with them, and unseal at the unlocking station on their way out (the city courts spent \$50,000 to buy 4,500 Yondr pouches).<sup>23</sup></p> <ul style="list-style-type: none"> <li>▫ About 20-30 cases of people mutilating or destroying these pouches without visiting the official unlocking station. Some people allegedly found out how to turn on their phones by touch and use the phone through Siri. Philadelphia court officials are now working with Yondr officials to improve pouches so that they are more resistant and larger to fit newer, larger cellphones.<sup>24</sup></li> </ul>
<b>Rhode Island</b>	Permitted; cellphone camera and video is prohibited in the courthouse and all usage is prohibited in courtrooms. <sup>25</sup>
<b>South Carolina</b>	Permitted; must be turned off or on silent; prohibits usage by attorneys, jurors, staff, litigants, witnesses and the public in all courtrooms in the state unless express permission of presiding judge. <sup>26</sup>

<sup>15</sup> <http://www.circuitcourt.org/maryland-rule-16-110-cell-phones-other-eletronic-devices-cameras>

<sup>16</sup> <https://www.mass.gov/location-details/trial-court-policy-on-possession-use-of-cameras-personal-electronic-devices>. For a list of Trial Court facilities that have banned the public’s use of cellphones and portable electronic devices (PED), see <http://www.mass.gov/courts/court-info/trial-court/exec-office/ocm/banned-electronic-devices.html>

<sup>17</sup> <http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/Documents/HTML/CRs/Ch%208/Court%20Rules%20Book%20Ch%208-Responsive%20HTML5/index.html#t=Court Rules Book Ch 8%2FCourt Rules Chapter 8%2FCourt Rules Chapter 8.htm>

<sup>18</sup> <https://www.courts.mo.gov/page.jsp?id=688>

<sup>19</sup> <https://www.courts.state.nh.us/supreme/orders/order011108.pdf> (1/11/2008)

<sup>20</sup> <https://www.judiciary.state.nj.us/public/assets/guidelines.pdf> (effective 2/2/2015)

<sup>21</sup> Sarah Singleton, Judge Pro Tem, First Judicial District, 11/27/2017

<sup>22</sup> <http://www.ndcourts.gov/court/rules/ndroc/rule10.1.htm> (effective 3/1/2015)

<sup>23</sup> <https://www.metro.us/philadelphia/to-crack-down-on-witness-intimidation-philly-courts-to-ban-phones/zsJqbW---FT1JB1B1hX8Q> (2/23/2017)

<sup>24</sup> <http://www.philly.com/philly/news/crime/Some-find-ways-to-defeat-Phila-courts-new-locking-cellphone-pouch.html> (4/7/2017)

<sup>25</sup> [https://www.courts.ri.gov/PublicResources/PDF/Court\\_House\\_Rules.pdf](https://www.courts.ri.gov/PublicResources/PDF/Court_House_Rules.pdf)

<sup>26</sup> <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2000-08-25-01> (8/25/2000)

<b>South Dakota</b>	The Second and Third Judicial permits cellphones in court buildings as long as they are turned off or on silent and are not used for recording or photography. <sup>27</sup> But the Fourth Judicial Circuit prohibits camera-equipped cellphones in all courthouses. <sup>28</sup>
<b>Utah</b>	Permitted; can use in common areas and also silently inside courtroom except for recording/transmitting images or sounds; judge may further restrict use in the courtroom but they are encouraged not to do so unless use of PED might interfere with administration of justice, disrupt proceedings, pose safety threat etc. <sup>29</sup>
<b>Vermont</b>	Permitted; can use in public areas and may even use in the courtroom for purposes other than oral communication (eg. text messaging); otherwise must be on silent in the courtroom. <sup>30</sup>
<b>Virginia (Eastern District of Virginia)</b>	<p>One court had a vending machine for storing phones. Some courts provided jurors with lockers for storing phones and belongings in the juror room using a quarter, which is given back once the key is returned (Abel Mattos, Admin. Office of US Courts, 11/21/2017).</p> <p>Model Policy on "Use of Portable Electronic Devices in Courthouses" (Endorsed by the Virginia Access to Justice Commission 12/7/2017)</p> <ul style="list-style-type: none"> <li>▫ Calls for a uniform statewide policy for authorizing the carrying and use of PEDs in courthouses</li> <li>▫ Recommendations: (1) allow PED, excluding purely video recording equipment, subject to screening; (2) allow device use in common areas or if needed, in designated areas; (3) allow attorneys, self-represented litigants and witnesses to use devices inside the courtroom to check calendars or present case-related information, unless the judge prohibits; (4) prohibit photography, video and audio recording/transmission; (5) any violations may result in removal from courthouse, penalties, and/or confiscation</li> </ul>

Note: Almost all of these policies allow changes, including further restrictions or prohibitions, at the discretion of judges.

<sup>27</sup> [https://ujs.sd.gov/media/secondcircuit/Tech\\_Brochure.pdf](https://ujs.sd.gov/media/secondcircuit/Tech_Brochure.pdf); [http://ujs.sd.gov/Third\\_Circuit/Local\\_Procedures/mediainfo.aspx](http://ujs.sd.gov/Third_Circuit/Local_Procedures/mediainfo.aspx)

<sup>28</sup> [http://ujs.sd.gov/Fourth\\_Circuit/Links/technology.aspx](http://ujs.sd.gov/Fourth_Circuit/Links/technology.aspx)

<sup>29</sup> [https://www.utcourts.gov/resources/rules/ucja/ch04/4-401\\_02.htm](https://www.utcourts.gov/resources/rules/ucja/ch04/4-401_02.htm)

<sup>30</sup> [https://www.vermontjudiciary.org/sites/default/files/documents/Administrative\\_Directive\\_28.pdf](https://www.vermontjudiciary.org/sites/default/files/documents/Administrative_Directive_28.pdf) (11/12/2008)

	Policy Observed	Filed/Effective	Purpose	Permissible Uses	Prohibited Uses	Consequences of Violation	Exceptions to Prohibited Uses	Exceptions to Permissible Uses	Provisions for notice	Previous/related policies
Arizona (Arizona Supreme Court; Phoenix, AZ)	Rule 122.1 (http://www.azcourts.gov/Portals/20/2013%20Aug%20Rules/R%2013%200012b.pdf)	Filed August 28th, 2013	"Specifies the permitted and prohibited uses of portable electronic devices in a courthouse."	<ul style="list-style-type: none"> <li>- Attorneys, parties, and members of the public: Retrieving/storing information, accessing the internet, sending/receiving information (texts, emails, etc.) inside the courtroom</li> <li>- ALL: Photography and audio/video recording outside of courtroom</li> <li>- ALL: Making/receiving calls and using other audible functions during a session</li> <li>- JURORS: Having device on inside the courtroom and jury room during deliberations and case-relevant discussions</li> <li>- WITNESSES: Having volume on while inside the courtroom, and using device without permission of judge while testifying</li> </ul>	<ul style="list-style-type: none"> <li>- ALL: Photography and audio/video recording inside the courtroom (in instances described in Rule 122)</li> <li>- ALL: Photography and audio/video recording of individuals without their consent outside of the courtroom</li> <li>- ALL: Making/receiving calls and using other audible functions during a session</li> <li>- JURORS: Having device on inside the courtroom and jury room during deliberations and case-relevant discussions</li> <li>- WITNESSES: Having volume on while inside the courtroom, and using device without permission of judge while testifying</li> </ul>	"A violation of this rule may be punishable as contempt."	<ul style="list-style-type: none"> <li>- ALL: When in accordance with Rules 16-109, 16-405, and 16-504 or with express permission of local administrative judge, taking/transmitting photos/videos/etc.</li> <li>- ALL: When in accordance with Rules 16-109, 16-405, and 16-504 or with express permission of presiding judge, having device on in a courtroom and using it to receive, transmit, or record sound, visual images, data or other information.</li> <li>- Attorneys, their employees, and agents: Making reasonable and lawful use of device in connection with the proceeding in a courtroom.</li> </ul>	<ul style="list-style-type: none"> <li>- Court personnel, counsel of record, and pro se litigants: Using device during a session for oral communication</li> <li>- ALL: Judge can disallow possession/use of electronic devices at a proceeding or during the testimony at any time</li> </ul>	"A court must use reasonable means to advise courthouse visitors of the provisions of this rule."	Rule 122 (http://www.azcourts.gov/Portals/20/2013%20Aug%20Rules/R%2013%200012b.pdf)
Kansas (Kansas Supreme Court; Topeka, KS)	Rule 1002 (http://www.kscourts.org/kansas-courts/supreme-court/Orders/2013/2013SC62.pdf)	Filed June 12th, 2013	"Policies developed to address the court's concerns should include enough flexibility to take into consideration that electronic devices have become a necessary tool for court observers, journalists, and participants and continue to rapidly change and evolve. The courts should champion the enhanced access and the transparency made possible by use of these devices while protecting the integrity of proceedings within the courtroom."	<ul style="list-style-type: none"> <li>- Court personnel, counsel of record, and pro se litigants: Using device during session (with sound off, sitting in a designated area) for things other than oral communication</li> <li>- ALL (Implied): Carrying device on person</li> </ul>	<ul style="list-style-type: none"> <li>- Court personnel, counsel of record, and pro se litigants: Using phone for oral communication during a session</li> <li>- ALL except for court personnel, counsel of record, and pro se litigants: Having device on, having device on, and using device in the courtroom</li> </ul>	"Violating this rule may result in the device being confiscated during the remainder of the proceeding."	<ul style="list-style-type: none"> <li>- ALL except for court personnel, counsel of record, and pro se litigants: With permission from the presiding judge or justice, having device out, having device on, and using device in the courtroom</li> </ul>	Not stated in policy	Rule 1001 (http://www.kscourts.org/rules/Media_Coverage/Rule%201001.pdf)	
Maryland (Anne Arundel Circuit Court; Anne Arundel County, MD)	Rule 16-208 (http://www.circuitcourt.org/mar/and-rule-16-110-cell-phones-other-electronic-devices-cameras)	Effective January 1st, 2011	Not stated	<ul style="list-style-type: none"> <li>- ALL: Carrying device in courthouse and using for sending/receiving calls/messages in court facility ("and for any other lawful purpose not otherwise prohibited")</li> </ul>	<ul style="list-style-type: none"> <li>- ALL: Taking photos/videos/etc. in a court facility</li> <li>- ALL: Transmitting photos/videos/etc. from or within a court facility</li> <li>- ALL: Possession of device in jury deliberation room</li> <li>- ALL (Implied): Using cell phone for audible functions ("sending/receiving calls") in or near courtroom</li> </ul>	"Security personnel or other court personnel may confiscate and retain an electronic device that is used in violation of this Rule, subject to further order of the court or until the owner leaves the building."	<ul style="list-style-type: none"> <li>- ALL: When in accordance with Rules 16-109, 16-405, and 16-504 or with express permission of local administrative judge, taking/transmitting photos/videos/etc.</li> <li>- ALL: When in accordance with Rules 16-109, 16-405, and 16-504 or with express permission of presiding judge, having device on in a courtroom and using it to receive, transmit, or record sound, visual images, data or other information.</li> <li>- Attorneys, their employees, and agents: Making reasonable and lawful use of device in connection with the proceeding in a courtroom.</li> </ul>	<ul style="list-style-type: none"> <li>- Upon a finding that the circumstances of a particular case raise special security or privacy issues that justify a restriction on the possession of electronic devices, the local administrative judge or the presiding judge may enter an order limiting or prohibiting the possession of electronic devices in a courtroom or other designated area of the facility. The order shall provide for notice of the designated areas and for the collection of the devices and their return when the individual who possessed the device leaves the courtroom or other area."</li> </ul>	Rule 16-601 to 16-608 (https://mdcourts.gov/sites/default/files/rules/reports/178supplementpart1inarkup.pdf)	
Virginia (Fairfax Circuit Court; Fairfax County, VA)	Case No. CM-2012-48700 (https://www.fairfaxcounty.gov/circuit/sites/circuit/files/assets/documents/pdf/fairfax-circuit-court-order-portable-electronic-devices.pdf)	Filed December 4th, 2012; Effective January 1st, 2013	Not stated	<ul style="list-style-type: none"> <li>- ALL: Possession of device in courthouse</li> <li>- ALL: Use of device in common areas of courthouse (i.e. lobbies, corridors)</li> </ul>	<ul style="list-style-type: none"> <li>- ALL: Taking photos/videos or audio recording and transmitting/broadcasting any of these.</li> <li>- ALL: Using device or having volume on in a courtroom</li> <li>- JURORS: During term of service, (i) using device to communicate/transmit information about the case, and (ii) using device for research related to the case</li> </ul>	Device may be confiscated from person who is ejected from the courthouse and/or found in contempt of court and subject to penalties as provided by law for contempt.	<ul style="list-style-type: none"> <li>- ALL: Audio transmission in the form of an audio telephone call</li> <li>- ALL: With written permission of the court or other authorized officer, taking photos/videos or audio recording and transmitting/broadcasting any of these.</li> <li>- ALL: With express permission from the judge, using device in a courtroom</li> </ul>	<ul style="list-style-type: none"> <li>- ALL: For the purposes of security, pedestrian traffic, order, the proper administration of justice, the court may impose a further restriction on the use of devices in common areas</li> </ul>	\$ 19.2-266 (https://law.lis.virginia.gov/vacode/title19.2/section19.2-266/) 2/Chapter15/section19.2-266/)	



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

**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 survey<sup>1</sup> 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

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<sup>1</sup> <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.

# 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.

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[Trial Court facilities that ban the public's use of cell phones and personal electronic devices](#) →





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

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.

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](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Bristol County Superior Court-Fall River](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Boston Municipal Court - Brighton Division](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Boston Municipal Court-Dorchester Division](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Boston Municipal Court-East Boston Division](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)

- [\*\*Boston Municipal Court-Roxbury Division\*\*](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [\*\*Boston Municipal Court-South Boston Division\*\*](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [\*\*Boston Municipal Court- West Roxbury Division\*\*](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [\*\*Bristol County Juvenile Court-Fall River\*\*](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [\*\*Bristol County Juvenile Court-New Bedford\*\*](#)  
(Exceptions: Employees, Police, Attorneys, Jurors and Social Workers)
- [\*\*Bristol Probate and Family Court-Fall River\*\*](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [\*\*Brockton District Court\*\*](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [\*\*Chelsea District Court\*\*](#)  
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- [\*\*Chicopee District Court\*\*](#)  
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- [\*\*Concord District Court\*\*](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [\*\*Clinton District Court\*\*](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [\*\*Dudley District Court\*\*](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [\*\*East Brookfield District Court\*\*](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [\*\*Essex County Juvenile Court - Lawrence\*\*](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [\*\*Essex County Juvenile Court - Salem\*\*](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)

- [Essex Probate and Family Court - Lawrence](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Essex Superior Court - Lawrence](#)  
(Exceptions: Employees, Police, Attorneys and Jurors)
- [Essex Superior Court - Newburyport](#)  
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- [Fall River District Court](#)  
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- [Malden District Court](#)  
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- [Marlborough District Court](#)  
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## CONTACT

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### Massachusetts Trial Court, Security Department

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[directions](#) →

#### Phone

(617) 788-8584

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