



## MASSACHUSETTS ACCESS TO JUSTICE COMMISSION

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



## *Foreword*

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

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

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

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

## INTRODUCTION

In June 2018, Supreme Judicial Court Chief Justice Ralph Gants and Attorney Susan Finegan, in their capacities as co-chairs of the Massachusetts Access to Justice Commission (Commission), established a working group<sup>1</sup> to review the Trial Court's policies and practices regarding the use of cell phones and other personal electronic devices (PEDs)<sup>2</sup> in the courts of the Commonwealth, and to report back to the Commission with conclusions and recommendations. The impetus for this review was a March 2018 presentation to the Commission by the Massachusetts Appleseed Center for Law & Justice (Appleseed), summarizing the preliminary findings of its study of cell phone bans and the hardships they create for court users.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### SCOPE OF INVESTIGATION

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

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

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

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

### ISSUES AND CONCERNS

- Concerns raised by cell phones.

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

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

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

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

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

- Concerns raised by courthouse bans.

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

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

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

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

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

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

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

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

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

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

### MASSACHUSETTS POLICIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We have been told that this discrepancy resulted from an error made when the policy was posted on the website. In fact, all of the 56 listed courts<sup>10</sup> have been authorized to ban the possession of PEDs by non-exempt individuals. Consistent with that authorization, these courts prohibit non-exempt individuals from bringing PEDs into the building.

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

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

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<sup>10</sup> See note 3, above, for the complete list.

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

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

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

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

### POLICIES IN OTHER JURISDICTIONS

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

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

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

- General observations.

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

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

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

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

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

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

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

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

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

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

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

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

- Emerging policy trends and practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### FINDINGS, CONCLUSIONS & RECOMMENDATIONS

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

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<sup>16</sup> Judges, court employees, attorneys, and police officers are exempt.

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: April 30, 2019

## Exhibit A

### CONFERENCE OF CHIEF JUSTICES CONFERENCE OF STATE COURT ADMINISTRATORS

#### Resolution 7

##### **In Support of a Review of Courthouse Cell Phone Policies**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Exhibit B



## SUPREME JUDICIAL COURT RULES

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

EFFECTIVE DATE: 09/17/2012

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

## 1. Covert photography, recording or transmission prohibited

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

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

## 2. Electronic access by the news media

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

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

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

## **(a) Substantial likelihood of harm**

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

## **(b) Limitations**

A judge shall not permit:

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

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

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

## **(c)**

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

## **(d) Positioning of equipment**

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

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

## **(e) Advance notice**

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

## **(f) Non-exclusive access**

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

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

## **(g) Objection by a party**

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

## **3. Other recordings**

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

materials for educational or ceremonial purposes.

## 4. Definitions

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

## Exhibit C



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

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

## Definitions

### News Media

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

### Camera

Device capable only of recording images.

### Personal Electronic Device (PED)

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

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

## **Presiding Judge**

Judge presiding over the session.

## **Scope**

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

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

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

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

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

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

## Employee Use of PEDs

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

## Public Use of PEDs & Cameras

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

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

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

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

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

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

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

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

## Further Restrictions or Prohibitions

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

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

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

## Penalties

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

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

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

## Exhibit D



## POLICY STATEMENT

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

DATE: 04/09/2018

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

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

## Policy

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

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

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

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

(Exceptions: Employees, Police, Attorneys and Jurors)

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

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

## Exhibit E



## POLICY STATEMENT

# Trial Court policy on juror use of personal communication devices

DATE: 03/25/2010

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

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

## Policy

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

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

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

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

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

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

Robert A. Mulligan, Chief Justice for Administration & Management

Exhibit F

