



## **Detroit Justice Center's Comments on Proposed Amendment to Rule 8.115 of the Michigan Court Rules**

The Detroit Justice Center writes this comment to express our support of the proposed amendment to Rule 8.115 of the Michigan Court Rules (ADM File No. 2018-30), in addition to our continued objection to Michigan's 36th District Court's ban on the public's ability to bring cell phones into the courthouse.<sup>1</sup> We appreciate the Michigan State Planning Body for proposing this necessary amendment and the Michigan Supreme Court for its thoughtful consideration.

### **Who We Are**

The Detroit Justice Center is a nonprofit organization committed to making Detroit a more just and equitable city. We believe that justice and equity cannot be accomplished without acknowledging and addressing the effects of mass incarceration on the city of Detroit and its residents. Among the types of legal services that we provide, our attorneys represent low-income Detroiters with traffic matters in various district courts to help stem the de facto process of criminalizing poverty and incarcerating the poor for an inability to pay fines and fees.

### **Background**

Detroit Justice Center attorneys attended a Detroit City Council hearing on March 14, 2019, where Chief Judge of the 36th District Court, Nancy M. Blount, was called upon to justify the rationale behind the 36<sup>th</sup> District Court's ban on cell phones and writing utensils for non-attorneys. The Detroit Justice Center commented at the City Council hearing and followed-up with a letter to Chief Judge Blount, dated April 12, 2019.<sup>2</sup> In this letter, we admonished that courthouse aesthetics and desire for order should not outweigh the public's rights to effectively engage with their own cases by using their own writing utensils and displaying evidence on their phones. We further testified to: the hardship imposed on the public as a result of policies banning non-attorneys from bringing both cell phones and writing utensils into the courthouse; the way such policies infringe upon the constitutional rights of court patrons; the faulty rationale behind the court's policies; and effective alternative policy options.

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<sup>1</sup> The proposed amendment is attached as Exhibit A.

<sup>2</sup> The letter dated April 12, 2019 to Chief Judge Blount is attached as Exhibit B.

Chief Judge Blount responded by (1) removing pencils from the ban, but keeping pens on the court's prohibited items list; (2) (ironically) increasing the number of pens and pencils available to the public in the court, upon the citizens' affirmative request to borrow them; and (3) highlighted the court's recent policy of allowing litigants to upload various forms of digital evidence ahead of hearings via the 36th District Court's website.<sup>3</sup> Chief Judge Blount also noted that the 36<sup>th</sup> District Court believes that the public is aware that the court does not allow cell phones in the courthouse, as the court does not receive many calls from the public regarding cell phones. Finally, Chief Judge Blount noted that the 36<sup>th</sup> District Court would not lift its ban on cell phones, unless or until Michigan Court Rule 8.115 is changed for the entire state.

In this comment, the Detroit Justice Center seeks to reiterate its arguments in favor of allowing cell phones in Michigan courts, and express support of the proposed amendment as it applies to the entire state of Michigan. We begin by sharing a few first-hand accounts of the unnecessary hardship caused by the cell phone policy, follow with a discussion on how the proposed amendment to Rule 8.115 will increase access to justice for low-income clients across Michigan, and end with our comments and research on how the cell phone ban compromises effective Due Process and First Amendment rights. Although the proposed amendment and bulk of this comment address only policies regarding cell phones in Michigan courts, the Detroit Justice Center still also vehemently objects to the 36<sup>th</sup> District Court's arbitrary policy prohibiting litigants from bringing pens into its courthouse.

### **Experience Representing Low-Income Clients Demonstrates Urgency of Lifting Cell Phone Ban**

The Detroit Justice Center ( has numerous clients who have been affected by the prohibition on cell phones. One such client is Ms. Monica Burns<sup>4</sup>, a Detroit resident who had a traffic case in a suburban court far from her home. Because Ms. Burns' traffic matter had resulted in suspension of her license, she could not legally drive to her hearing. Instead, she had to rely on the fickle bus system for transportation, which required her to leave home hours before the hearing to allow time for her to transfer buses and for likely delays. She also had to leave her phone at home before walking to the bus stop, as there would be nowhere to store her phone when she concluded her hours-long journey and arrived at the courthouse.

Additionally, leaving her phone at home meant she could not check in with her childcare provider, as her three children were too young to accompany her to court. It also meant she could not see when the next bus was set to arrive or depart or have any communication with her attorney during transit for any reason.

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<sup>3</sup> Chief Judge Blount's response letter dated June 6, 2019 is attached as Exhibit C.

<sup>4</sup> This name has been changed to protect the client's privacy.

On the morning of her scheduled sentencing hearing, Ms. Burns' DJC attorney received a call from the court indicating that the hearing would be cancelled and rescheduled because the judge was sick. The attorney tried calling Ms. Burns multiple times so that she would not make the unnecessary trip to the suburban court on her fixed income. However, because she had already left her home to take the bus, she did not have her cellphone and did not receive any messages. Ms. Burns arrived at the court only to be informed that her hearing had been cancelled and that she would need to make the long journey back home. She was also informed that, despite the court's short cancellation notice, she would need to make another trek out to the court for the rescheduled hearing or be subject to a warrant for her arrest.

Similarly, Mr. Richard Smith<sup>5</sup> navigated an equally frustrating situation due to the cell phone ban. Mr. Smith, who was unfamiliar with the policy prohibiting cell phones, arrived at a courthouse in Detroit without a car or anywhere to store his phone. Although he could not enter the building with his phone, attempting to return home via bus to store the phone there would have made him miss his hearing and caused a warrant to be issued for his failure to appear. Instead, Mr. Smith attempted to hide his phone in the bushes behind the court, hoping the device would be there after his court appearance. When Mr. Smith went back to his hiding spot after the hearing, his phone had been stolen. Thus, he had no ability to contact his DJC attorney, as the number was stored in his cell phone contacts. His attorney also had no way to contact him to remind him about his future hearings.

Finally, Mr. Kevin Marshall<sup>6</sup>, a third client of the DJC was left stranded for hours after leaving a suburban district court early due to a successful resolution of his case. Mr. Marshall had received a ride to court from his cousin, because his license was suspended by the case for which he had court. Because the court did not allow cell phones, he left his cell phone with his girlfriend, who was not available to come pick him up until later in the day, which the client believed would be when his hearing was over. However, because Mr. Marshall was able to enter into a plea agreement, he was able to leave court approximately two hours before he expected, and approximately two hours before his girlfriend planned to come get him. Mr. Marshall also could not contact his cousin, who had given him a ride, because he did not have his cellphone. Similarly, he had no way to look up what public transit options, if any, were available. Thus, he was left to wait in a suburban community that was unfamiliar to him, in a city where people of color are often racially profiled. Specifically, Mr. Marshall expressed concerns that if he could not get a ride, he would be harassed by police for loitering outside the courthouse. Had he been able to bring his cell phone to court, this would not have been an issue.

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<sup>5</sup> This name has been changed to protect the client's privacy.

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## Allowing Cell Phones in Courts Would Improve Access to Justice for Low-Income Litigants, Without Burdening Court Administration

The stories above illustrate ways that the proposed amendment to allow cell phones into Michigan courts would greatly improve access to justice, especially for low-income litigants. Cellphones are a crucial aspect of modern life.<sup>7</sup> As mentioned above, barring cell phones from courts often effectively leads to a bar on anyone with a cellphone, especially litigants too poor to have a car in which to leave their cellphones.<sup>8</sup> A 2018 study detailed crucial uses litigants have for cell phones in court.<sup>9</sup> We discuss some of the uses highlighted by the report below, while also including our own observations of ways clients' use of cell phones in court, to demonstrate that these devices are not only beneficial, but necessary. Additionally, we rebut some of the most common assertions about eliminating the court's ban on cell phones.

- **Evidence:** First, cell phones often contain evidence relevant to litigants' court cases, such as proof of payment, proof of communication in the form of texts, video evidence and pictures. For unrepresented litigants, or litigants represented by courtroom counsel, which pieces of evidence are important and relevant often cannot be anticipated prior to coming to court, meaning they have no way of preparing by making hard copies of evidence stored on their phone. Additionally, in the event that they can anticipate what evidence is helpful, they may still have no mechanism to print this evidence if they do not have a printer at home. Finally, while some district courts throughout the state offer places to email evidence or upload it online before a hearing,<sup>10</sup> 40% of Detroiters have no internet access and may have an insufficient data plan to access the internet. Thus, bringing their cell phones to court is often the easiest, and perhaps the only, accessible mechanism for a low-income litigant to display evidence.<sup>11</sup>

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<sup>7</sup> Andrew D. Selbert & Julia Ticano, *Supreme Court Must Understand: Cell Phones Aren't Optional*, WIRED (Nov. 29, 2017), <https://www.wired.com/story/supreme-court-must-understand-cell-phones-arent-optional/>, (attached as Exhibit D with relevant sections highlighted).

<sup>8</sup> Emily Badger & Quoc Trung Bui, *In 83 Million Eviction Records, a Sweeping and Intimate New Look at Housing in America*, The N.Y. Times (Apr. 7, 2018), <https://www.nytimes.com/interactive/2018/04/07/upshot/millions-of-eviction-records-a-sweeping-new-look-at-housing-in-america.html>.

<sup>9</sup> Mass. Appleseed, *Cellphones in the Courthouse: An Access to Justice Perspective* (2018) available at <https://massappleseed.org/wp-content/uploads/2018/07/Cell-Phones-in-the-Courthouse.pdf>, (attached to these comments as Exhibit E).

<sup>10</sup> *Submit Electronic Evidence*, 36th District Court, <https://www.36thdistrictcourt.org/online-services/submit-electronic-evidence> (last visited Aug. 29, 2019)

<sup>11</sup> Kate Abbey-Lambertz, *Trapped In An Internet Desert, Detroit Teens Struggle To Stay Online*, HUFFPOST (Mar. 29, 2018), [https://www.huffpost.com/entry/detroit-internet-teens\\_n\\_5abfb34e4b06409775cc5ea](https://www.huffpost.com/entry/detroit-internet-teens_n_5abfb34e4b06409775cc5ea) (“Nearly 40% of households have no home internet and more than 15% only have cellular data plans, according to U.S. census estimates.”)(attached as Exhibit F).

- **Logistics:** Second, cell phones allow litigants to coordinate important logistics like childcare and employment. Such communication is especially crucial when those with power over litigants, for example employers, may expect them to communicate if a hearing will be running long, causing their tardiness to work. Similarly, a childcare provider may need to get in contact with a litigant to convey an emergency, but cannot do so if the litigant does not have their phone. While cell phones have created an expectation that people should always be responsive and accessible, the prohibition on cell phones in courts eliminates this ability, which can have serious repercussions for clients.
- **Transportation:** Third, if people are heading to court because of driving offenses, as is often the case in Michigan district courts, these people may be prohibited from operating their vehicles. Thus, individuals might need their phones to see when the next bus is arriving or to notify their attorney that they are running late to avoid a failure to appear warrant. They might also need their phone to call a rideshare service for transportation at the conclusion of the proceeding. The length of court hearings can be dramatically different and unpredictable, and without a way to communicate these changes with one's loved ones using a cellphone, litigants can be both literally and figuratively stranded if they were relying on someone for a ride. Thus, under the current policy, litigants are essentially presented with two options: risk theft by hiding the device outside the courthouse or leave their phone at home, neither of which are reasonable options.
- **Language Access:** Fourth, cellphones can help litigants with limited English proficiency to communicate with court staff and their own attorneys, especially in courts without dedicated, in-person, translation services.
- **Legal Self-Help:** Fifth, cell phones allow litigants to access online information, including self-help legal aid materials for unrepresented litigants, and other online documents that could help them make informed decisions about how to proceed. Thus, by denying litigants, especially unrepresented litigants, access to cellphones, the court dramatically handicaps their ability to participate in their own cases, including cases, like landlord tenant cases, where they may be facing a sophisticated and represented opponent.

The common justifications for banning cell phones in courthouses do not survive closer scrutiny, and have simple alternative solutions that do not block access to justice. The principal argument for banning cellphones is that these devices will be a distraction if used in the courtroom or that people will record the proceedings or take pictures on their phones. However, these concerns can easily be addressed, while allowing phones into the courthouse.

First, judges can request at the beginning of the proceedings that all phones be silenced or placed on airplane mode. They can also prohibit the public from taking calls during the proceedings, and instead designate a specific area in the court where calls can be made. If a more restrictive measure is needed, the court could also have small cell phone lockers, specifically for storing electronic devices, that could be used by the parties unless they specifically inform security that there is evidence relevant to the proceeding on their device.

Second, as proceedings in Michigan courts are already open to the public, and various local courts successfully navigate the frequent attendance of the media at high profile cases and posts of footage to YouTube and other platforms, the court can similarly adapt to deal with cell phones in the courthouse as technology continues to evolve. Furthermore, in highly sensitive cases, the court could restrict cell phone use and recording in the actual courtroom, just as it restricts the press in these instances.

Such alternatives are not mere speculation. Many of these policies already exist and work well in other Michigan courts, including 3rd Circuit Court (except Frank Murphy Hall of Justice), Lincoln Hall of Justice, and Wayne County Friend of the Court, which allow the public to bring phones in the building, but restrict their use to designated phone areas outside the courtroom. Likewise, courts across the country are recognizing the importance of allowing litigants access to their cellphones as a way to ensure they have access to justice.<sup>12</sup>

### **Prohibiting Cell Phones Implicates the First Amendment and the Due Process Clause**

Finally, many of the examples above illustrate the ways in which prohibiting cell phones, not only inconveniences litigants, but also affects their First Amendment and Due Process rights. The First Amendment gives the public the right to access courts in a way that lets the public document and discuss the court's proceedings.<sup>13</sup> However, when cell phones are prohibited, litigants cannot do basic things such as utilize technology to record questions for their attorneys, take notes to keep in a private and safe place such as their phone's notes application, photograph or use scan apps to store important paperwork so that it will not be lost, communicate with other

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<sup>12</sup> Ned Oliver, *Richmond courthouse will no longer turn away people with cellphones after New York Times story*, RICHMOND TIMES-DISPATCH (May 16, 2018), [https://www.richmond.com/news/local/city-of-richmond/richmond-courthouse-will-no-longer-turn-away-people-with-cellphones/article\\_25e8dbec-1a51-5b5a-8201-06c3a1855d73.html](https://www.richmond.com/news/local/city-of-richmond/richmond-courthouse-will-no-longer-turn-away-people-with-cellphones/article_25e8dbec-1a51-5b5a-8201-06c3a1855d73.html); Matt Murphy, *Mass Courts Plan to Soften Cellphone Ban*, WBUR News (May 30, 2019), <https://www.wbur.org/news/2019/05/30/court-cellphone-ban-access-to-justice>.

<sup>13</sup> See *Globe Newspaper Co v Superior Court for the County of Norfolk*, 457 US 596, 606 (1982) (First Amendment requires public access to courts for purposes of public discussion of legal proceedings); *Goldschmidt v Coco*, 413 F Supp. 2d 949, 952-953 (ND Ill. 2006) (banning note-taking in courts violates First Amendment rights because it limits public discussion and documentation of court proceedings).

observers through text message, or display relevant evidence. Additionally, allowing cell phones provides a community check and public oversight on the fair dispensation of justice. By having their cell phones accessible, litigants can record abuses of power or ill treatment, and instances of ineffective assistance of counsel, eventually deterring such occurrences.

Moreover, banning cell phones poses a consistent threat to litigants' Due Process rights, by creating barriers to preparing for their own legal proceedings, by restricting litigants' ability to remember the date and time of their matters, and by literally restricting their access to the courthouse building.<sup>14</sup> In almost all other settings, people use cell phones to record important appointments and dates in their calendar—clients in court are no different. For example, our experience shows that cell-phones can be crucial for litigants to view their calendars to know of any existing conflict with dates for future hearings that the court might propose, to remember upcoming court dates in the event that service of a notice is not timely received via mail, and to record their attorney's contact information and other data. Additionally, the choice to prohibit entrance to the court with a cell phone, in many ways, comes from a position of privilege that infringes on litigants' rights to attend their hearings. If a litigant is unfamiliar with the policy and brings their phone with nowhere to store it, they cannot enter the building and must skip their hearing or risk the loss of their property altogether.

In conclusion, carrying a cell phone is a requirement for participating in modern life, as evidenced by attorneys' need to bring their phones into the courtroom.<sup>15</sup> The general public's needs of the efficiencies of cell phones are not lessened simply because they do not have a law degree and bar card. By requiring that courts allow cell phones, the Michigan courts help ensure both First Amendment and Due Process rights are protected for all Michigan litigants, but especially those with limited income.

One of our principal missions at the Detroit Justice Center is to combat the impact of mass incarceration, racial profiling and overpolicing in marginalized communities. We do this by empowering community members and protecting their access to the justice system. The practice of precluding community members from bringing cell phones into court buildings disempowers the public and undermines its access to legal proceedings, further stigmatizing an already dispossessed segment of the community. For all the reasons discussed, we strongly support this court's proposed rules allowing cellphones in Michigan's courts.

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<sup>14</sup> *E.g. Gefstos v. Lincoln Park*, 39 Mich. App. 644, 652 (1972) (“due process has been interpreted to require both “notice” and “hearing,” the absence of either will result in a denial of due process”). In most cases, the right to participate is the right to meaningfully participate. *E.g. In re McCullough*, 2014 Mich. App. LEXIS 1791, \*11 (“the question . . . [is] whether the court denied . . . due process in refusing him meaningful participation in the . . . hearing.”).

<sup>15</sup> Andrew D. Selbert and Julia Ticano, *Supreme Court Must Understand: Cell Phones Aren't Optional*, WIRED (Nov. 29, 2017), <https://www.wired.com/story/supreme-court-must-understand-cell-phones-arent-optional/>

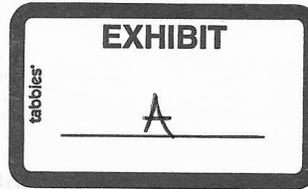
# Order

Michigan Supreme Court  
Lansing, Michigan

May 15, 2019

Bridget M. McCormack,  
Chief Justice

ADM File No. 2018-30



David F. Viviano,  
Chief Justice Pro Tem

Proposed Amendment of  
Rule 8.115 of the Michigan  
Court Rules

Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

On order of the Court, this is to advise that the Court is considering an amendment of Rule 8.115 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and  
deleted text is shown by strikeover.]

Rule 8.115 Courtroom Decorum; Policy Regarding Use of Cell Phones or Other Portable Electronic Communication Devices

(A)-(B) [Unchanged.]

(C) Use of Establishment of a Policy Regarding Portable Electronic Communication Devices in a Courthouse.

(1) Purpose. This rule specifies the permitted and prohibited uses of portable electronic devices in a courthouse. A court must use reasonable means to advise courthouse visitors of the provisions of this rule. This rule does not modify or supersede the guidelines for media coverage of court proceedings set forth in AO No. 1989-1.A facility that contains a courtroom may determine use of electronic equipment in nonjudicial areas of the facility.

(2) The chief judge may establish a policy regarding the use of cell phones or other portable electronic communication devices within the court, except that no photographs may be taken of any jurors or witnesses, and no photographs may be taken inside any courtroom without permission of the court. The policy regarding the use of cell phones or other portable electronic communication devices shall be posted in a conspicuous location outside

~~and inside each courtroom. Failure to comply with this section or with the policy established by the chief judge may result in a fine, including confiscation of the device, incarceration, or both for contempt of court.~~  
Definitions. The following definitions apply in this rule:

- (a) “portable electronic device” is a mobile device capable of electronically storing, accessing, or transmitting information. The term encompasses, among other things, a transportable computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone, or other wireless phone; a camera and other audio or video recording devices; a personal digital assistant (PDA); other devices that provide internet access; and any similar items.
- (b) A “courthouse” includes all areas within the exterior walls of a court building, or if the court does not occupy the entire building, that portion of the building used for the administration and operation of the court. A “courthouse” also includes areas outside a court building where a judge conducts an event concerning a court case.
- (c) “Courtroom participant” includes a litigant (plaintiff or defendant), witness, or juror who is present in the courtroom as part of a proceeding.
- (3) Photography and audio or video recording or broadcasting. The following restrictions apply to photography, audio recording, video recording or broadcasting in a courthouse.
- (a) In a courtroom: In a courtroom, no one may use a portable electronic device to take photographs or for audio or video recording or broadcasting unless that use is specifically allowed by the Judge presiding over that courtroom.
- (b) Outside a courtroom: In areas of a courthouse other than courtrooms, no one may photograph, record, or broadcast an individual without that individual’s prior express consent.
- (c) Jurors: No one may photograph, record, or broadcast any juror or anyone called to the court for jury service.
- (d) Local orders: By local administrative order, a court may adopt further reasonable limits on photography and audio or video recording or broadcasting in a courthouse that are not inconsistent with this rule.

- (e) Violations of this subsection: Violations of this subsection are punishable by appropriate sanctions up to and including contempt of court as determined in the discretion of the court.
- (4) Jurors and witnesses. The following restrictions apply to use of portable electronic devices by jurors, including prospective jurors, and by witnesses.
- (a) Jurors: Jurors must turn off their portable electronic devices while present in a courtroom. A court may order jurors to turn over to the court their portable electronic devices during deliberations. If so, the court must provide jurors with a phone number where they can be reached in case of an emergency during deliberations.
- (b) Witnesses: A witness must silence any portable electronic device while in a courtroom, and may use a device while testifying only with permission of a judge.
- (5) Attorneys, parties, and members of the public. The following provisions apply to use of portable electronic devices in a courtroom by attorneys, parties, and members of the public. Any allowed use of a portable electronic device under this paragraph is subject to the authority of a judge to terminate activity that is disruptive or distracting to a court proceeding, or that is otherwise contrary to the administration of justice.
- (a) Allowed uses: Attorneys, parties, and members of the public may use a portable electronic device in a courtroom to retrieve or to store information (including notetaking), to access the Internet, and to send and receive text messages or information. Attorneys, parties, and members of the public may use a portable electronic device to reproduce public court documents in a clerk's office as long as the device leaves no mark or impression on the document and does not unreasonably interfere with the operation of the clerk's office.
- (b) Prohibited uses: Attorneys, parties, and members of the public must silence portable electronic devices while in the courtroom. A portable electronic device may not be used, without permission of the court, to make or to receive telephone calls or for any other audible function while court is in session. Portable electronic devices may not be used to communicate in any way with any courtroom participant including, but not limited to, a party, a witness, or juror at any time during any

court proceedings. Additional prohibited uses related to photography, recording, and broadcasting are found in 8.115(C)(3) above.

- (6) Use of a portable electronic device outside a courtroom; limitations. Except as provided in paragraphs (3), (4) and (5) of this rule, a person may use a portable electronic device in a courthouse, subject to the authority of judges, Clerks of the Court, or court administrators to limit or terminate activity that is disruptive to court operations or that compromises courthouse security. Such limitations and terminations must be consistent with this rule.
- (7) Violations of this rule. If these rules are violated, the presiding judge may confiscate the device for the remainder of the day or order that the phone be turned off and put away. After a serious intentional violation, or multiple violations, the presiding judge may impose any other appropriate sanction, including contempt of court and/or the removal of person or persons from the courtroom during a time when they are not actively involved in the case being heard.

*Staff comment:* The proposed amendment of MCR 8.115, submitted by the Michigan State Planning Body, would explicitly allow the use of cellular phones (as well as prohibit certain uses) in a courthouse. The proposal is intended to make cell phone and electronic device use policies more consistent from one court to another, and broaden the ability of litigants to use their devices in support of their court cases when possible.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by September 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2018-30. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 15, 2019

Clerk

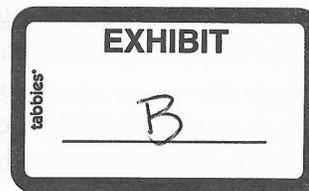


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April 12, 2019

Hon. Nancy M. Blount  
36<sup>th</sup> District Court  
421 Madison Street  
Suite 528  
Detroit, MI 48226



Dear Chief Judge Blount:

We write this letter to express our objection to 36th District Court's ban on the public's ability to bring writing utensils and cell phones into the courthouse. As the Chief Judge of Michigan's 36th District Court, the Honorable Nancy M. Blount has the authority to initiate policies concerning the court's internal operations. In 2017, the list of items prohibited in the 36th District courthouse was amended to include writing instruments. Cell phones were already forbidden. The 36th District is the only district court of the thirty-seven district courts in the tri-county area that appears to ban pens, pencils, highlighters, markers, and other writing utensils, in addition to cell phones. Moreover, the United States Supreme Court and all federal circuit courts allow writing utensils.

At a City Council hearing on March 14, 2019, Judge Blount detailed the rationale behind the court's ban on the ability of non-attorneys to bring writing utensils into the courthouse. Judge Blount explained that 36th District Court invested resources to make the courthouse more visually appealing by having murals painted on several walls. She then noted that the "clientele" of 36th District Court was different than that of other courts, such as probate court, and expressed concern about the public using writing utensils to deface courthouse art. Courthouse aesthetics should not outweigh the public's rights to effectively engage with their own cases or the court by using their own writing utensils.

On the related subject of cell phones, Judge Blount reasoned that since Michigan's federal courts ban cell phones, state courts should prohibit them as well. She also mentioned that any evidence contained on litigants' cell phones could be uploaded prior to any hearing through 36th District Court's website. In 2019, where cellular phones are an integral part of most

Americans' daily life, such archaic policies must be amended, as many courts around the country have already recognized.

This letter addresses our opposition to the 36th District Court's policy and the hardship imposed on the public as a result. It also discusses the way such policies infringe upon the constitutional rights of court patrons. Finally, it unpacks the faulty rationale behind the court's policies, proposing effective alternatives that would be much less restrictive.

## **The Court's Ban on Writing Utensils and Cellphones Silences Speech and Infringes Upon Due Process**

### **Writing Utensils**

First, the court's rule prohibiting non-attorneys from bringing writing utensils into the court violates the First Amendment. The United States Supreme Court has made clear that the right of public access to trials is a core First Amendment right, because it is necessary for an informed discussion of government function. In *Goldschmidt v. Coco*, the Northern District of Illinois held that a policy restricting note-taking by spectators of a trial violated the First Amendment because note-taking was so closely tied to access to the information in the trial itself. The court found note-taking to be inseparable from the right to access public trials. Specifically, the court noted:

In our society, starting no later than junior high school, students are taught and expected to take notes at lectures, seminars, and in libraries so that they may have the ability to revisit what they have heard or read. This allows them more fully and accurately to evaluate and communicate the subject matter. Notes are taken to insure accuracy. The defendant's rule interdicts all who quietly take notes at a public trial, be they teachers, students, lawyers representing non-parties who may have similar interests, and courtroom monitors and evaluators of judicial performance representing public interest groups, or simply interested members of the public. A prohibition against note-taking is not supportive of the policy favoring informed public discussion; on the contrary it may foster errors in public perception.

Yet, where the local court in *Goldschmidt* barred only note-taking in the courtroom by non-litigants, the 36th District Court's policy is much more restrictive, barring all non-attorneys from even bringing writing utensils into the court. Notably, the Policy restricted the Detroit Justice Center's attempts to conduct documentation of legal proceedings, when law students in the organization's "Court Watch" program could not be admitted to the building with their pens. Even more troubling, the policy violates the First Amendment rights of litigants themselves, many of whom appear unrepresented or represented by "courtroom counsel" whom they meet moments before their hearing begins. Writing down questions or other comments one has for their attorney is vital to a person's ability to readily assist in their own defense and to otherwise clarify their understanding of what is happening when their liberty is at stake. To restrict these individuals from taking notes clearly infringes upon their First Amendment right to access the courts.

Similarly, the 36th District Court's policy compromises litigants' right to procedural due process. Where a party is a defendant in civil or criminal litigation, due process requires, at minimum, the right to know what one is being charged with, and an opportunity to participate in the proceedings. From the beginning of a case to its final disposition, defendants need writing utensils to keep track of essential information. This includes everything from specific logistical details such as hearing dates and times, courtroom numbers, and telephone numbers of court clerks, to more substantive information such as the nature of the charges against them, facts of the case in criminal proceedings, or opposing parties' contact information in civil proceedings. Many people are already feeling very nervous and intimidated simply by being in a courtroom. They should not have their anxieties further exacerbated by having to approach a bailiff or other officer of the court to borrow a pen, which this person can then refuse to give them. Thus, the court's ban on writing utensils is far from a minor inconvenience for litigants—it fundamentally inhibits their ability to participate in their own cases. Such a burden violates their right to meaningfully participate in court proceedings, and therefore infringes on due process.

### **Cell Phones**

Much like the policy on writing utensils, the ban on individuals bringing cellphones in the courthouse infringes on the public's First Amendment and due process rights. The First Amendment gives the public the right to access courts in a way that lets the public document and discuss the court's proceedings. Like writing utensils, cellphones are often crucial to that right. In almost all other settings, people use cell phones to record important appointments and dates in their calendar, to record important information in their notes application, to save important phone numbers, and to take pictures of important documents they might misplace. In short, for most people, carrying a cell phone is a requirement for participating in modern life, as evidenced by attorneys' need to bring their phones into the courtroom. The general public's needs of the efficiencies of cell phones are not lessened simply because they do not have a law degree and bar card.

Moreover, prohibiting entrance to the court with a cell phone is in many ways a position of privilege that infringes on litigants' due process rights. For example, if people are heading to court because of driving offenses, as is often the case in 36th District Court, they may be prohibited from operating their vehicles. Thus, individuals might need their phones to see when the next bus is arriving or to notify their attorney that they are running late to avoid a failure to appear warrant. They might also need their phone to contact their childcare provider or employer if court is running long, or to call a rideshare service for transportation at the conclusion of the proceeding. Moreover, where 40% of Detroiters have no internet access to upload evidence online, and where many people have no printer access, a cell phone is the easiest mechanism for the average litigant to display evidence. Therefore, people are essentially presented with two options: risk theft by hiding the device outside the courthouse or leave their phone at home, neither of which are reasonable options.

## **Unpacking the Current Ban and Exploring Effective Alternatives**

### **Writing Utensils**

Two commonly used justifications for the 36th District Court's ban on writing utensils are to prevent the use of these implements as weapons and to prevent the defacement of court artwork. However, both of these rationales are faulty and certainly fail to supercede the hardship imposed on the public and infringement on their rights.

First, banning the public from bringing their own writing utensils cannot reasonably be a safety issue, as clients are permitted to use writing utensils *supplied by the court* for the limited purpose of signing their "advice of rights" forms and other court documents. Thus, if someone wanted to use an implement for the purpose of harming another person, they would already have this opportunity under the current policy. Furthermore, the armed guards throughout the courthouse, along with the numerous armed police officers reporting to testify, should serve as sufficient protection in the unlikely event that a pencil attack should arise.

Second, there are several ways to prevent the defacement of court property, especially the murals which were seemingly of particular concern, without prohibiting writing utensils. For example, a sign could be displayed next to the murals requesting that people do not draw on the walls. Where there are cameras throughout the courthouse, using signage to gently remind the public that their conduct is being observed, could also be a sufficient deterrent. Additionally, a velvet rope could be placed in front of the murals as a signal that these are works of art and should not be touched. This is the strategy used our local museums, which do not ban writing utensils but maintain beautiful, million dollar exhibits, including a rare mural painted by Diego Rivera. Finally, if a more extreme measure is truly needed, a glass casing or enclosure could also be placed over the murals to prevent their destruction.

### **Cell Phones**

A few commonly used justifications for the 36th District Court's ban on cell phones are that these devices will be a distraction if used in the courtroom or that people will record the proceedings or take pictures on their phones. However, these concerns can easily be addressed, while allowing phones into the courthouse. First, judges can request at the beginning of the proceedings that all phones be silenced or placed on airplane mode. They can also prohibit the public from taking calls during the proceedings, and instead designate a specific area in the court where calls can be made. If a more restrictive measure is needed, the court could also have small cell phone lockers, specifically for storing electronic devices, that could be used by parties unless they specifically inform security that there is evidence relevant to the proceeding on their device.

Second, as proceedings at 36th District Court are already open to the public, and various local courts successfully navigate the frequent attendance of the media at high profile cases and posts of footage to Youtube and other platforms, the court can similarly adapt to deal with cell phones in the courthouse as technology continues to evolve. Furthermore, in highly sensitive cases, the court could restrict cell phone use and recording in the actual courtroom, just as it restricts the press in these instances.

Such a policy seems to work well in other local courts that serve the same clients, including 3rd Circuit Court, Lincoln Hall of Justice, and Wayne County Friend of the Court, and

allow the public to bring phones in the building, but restrict their use to designated phone areas outside the courtroom.

The Detroit Justice Center was founded on the belief that we cannot build a just and equitable City without addressing the legacy and impact of mass incarceration on those incarcerated, as well as on the community from which they came. To that end, we work to eliminate persistent and systemic obstacles impeding community members' access to justice. We regard the 36 District Court policy banning writing implements and cell phones from the courthouse as such a barrier.

For these reasons, we implore you (1) to lift 36th District Court's ban on the public's ability to bring writing utensils into the courthouse, and (2) to develop reasonable and contemporary rules regarding cell phone use in the court. We undoubtedly respect the court and its efforts to create a beautiful, safe, and orderly environment for its visitors. However, we also firmly believe that these goals can be accomplished without compromising the rights of the court's visitors and without enforcing antiquated policies in the age of technology.

Respectfully,

Desiree M. Ferguson  
Legal Director / Senior Staff Attorney

cc: Hon. Bridget McCormack, Chief Justice, Michigan Supreme Court  
Hon. James Tate, Detroit City Council



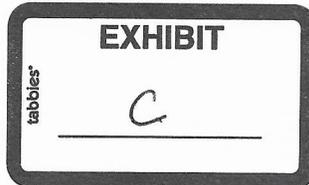
NANCY M. BLOUNT  
CHIEF JUDGE

State of Michigan  
36th District Court  
421 Madison  
Suite 528  
Detroit, Michigan 48226

(313) 965-8736  
FAX: (313) 965-2211  
Nancy.Blount@36thdistrictcourt.org

June 6, 2019

Ms. Desiree Ferguson  
Legal Director  
Detroit Justice Center  
1420 Washington Blvd., Suite 301  
Detroit, MI 48226



Dear Ms. Ferguson:

I am writing in response to your previous correspondence, which listed your concerns with the 36<sup>th</sup> District Court's prohibited items list.

Since my last letter, I have met with State Court Administrator Milton L. Mack, Jr. to discuss this subject. Based upon our meeting, I have made additional pens and pencils available to the public throughout the Court. I have also had the Court's website updated to advise the public that writing instruments can be obtained once they enter the courthouse and will have additional signage posted in the courtrooms providing notice of where to obtain pencils. I have removed pencils from the Court's Prohibited Items List.

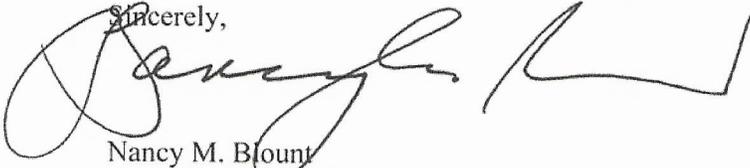
I recognize that in today's society people are increasingly dependent upon their cell phones. The Court widely "advertises" the fact that cell phones are not allowed so that individuals will know they need to print any text messages or photos from their phones if they contain something that the party would like to use as evidence.

We have also implemented new and innovative policies to adjust for this reality. Just one example is that litigants now have the ability to directly send any text messages, photos, or other digital media directly to Court before their hearing date. In that situation, a Court Clerk prints the documents and they are made available to the parties and the judge at the hearing. This new system is exceedingly successful, and user-friendly. Additionally, while our staff receives many calls per day about what is and is not allowed into the Court, cell phones are rarely inquired about. We believe that the public is aware that our Court, along with the majority of others within the state, has not allowed cell phones in the courthouse for a number of years.

I would however like to make you aware of a proposed amendment to Michigan Court Rule 8.115, which would "explicitly allow the use of cellular phones, as well as prohibit certain uses, in a courthouse" if adopted. The 36<sup>th</sup> District Court will not lift its ban on cellular phones, unless or until this MCR is changed for the entire state.

I understand and appreciate the thoughts expressed by your organization, as well as the others listed in your response to my previous correspondence. I hope that you can appreciate my concerns as the official ultimately responsible for safety at 36<sup>th</sup> District Court. This correspondence will serve as my response to your inquiry, and no meeting will be scheduled at this time.

Sincerely,



Nancy M. Blount  
Chief Judge, 36th District Court

cc: Larry D. Williams, Jr., Chief Judge Pro Tem  
Kelli Moore Owen, Court Administrator  
James Tate, Councilmember, City of Detroit  
Dana Ziegler, Lakeshore Legal Aid  
National Conference of Black Lawyers, Michigan Chapter  
National Lawyers Guild, Detroit / Michigan Chapter

# Supreme Court Must Understand: Cell Phones Aren't Optional

Opinion: The US argues that police can access cell phone data freely because customers volunteer that information. But cell phones are no longer optional.

Andrew D. Selbst Julia Ticona 11.29.2017 07:00 AM



David Ramos/Getty Images

You may not realize it, but the cell phone in your pocket creates a time-stamped map of everywhere you go: where you shop, where you receive medical care, and how often you frequent a church, school, or gun range. That's because cell phones automatically connect to the nearest cell phone tower, and by doing so, constantly determine and record the user's location.

## WIRED OPINION

### ABOUT

Andrew D. Selbst (@ASelbst) is a postdoctoral scholar at Data & Society Research Institute and a visiting fellow at the Yale Information Society Project who researches law and technology. Julia Ticona (@JuliaTicona1) is a postdoctoral scholar at Data & Society Research Institute who researches technologies of work, inequality, and culture.

Today the Supreme Court will hear arguments in *Carpenter v. United States*, a major Fourth Amendment case that questions whether the police can access your phone's location data without a warrant. The government argues that it should always be entitled to that information, no questions asked, because the 95 percent of American adults who own cell phones choose to give up that information "voluntarily." Because cell phones transmit that data automatically, however, cell phone users have no choice in revealing their location. Therefore, the only action that could be "voluntary" is owning or using a cell phone.

The problem is that cell phones are no longer meaningfully voluntary in modern society. They have become central to society's basic functions, such as employment, public safety, and government services. The cell phone is a revolutionary technology, but its real value comes not from its technical capabilities, but from its near-universal adoption.

Whether you have a job or are looking for one, there's a good chance you need a cell phone. If you work in an office, you're familiar with the demands of work email. But low-wage workers are often even more dependent on phones. Many hourly jobs use on-call scheduling, a practice that requires employees to call in to their workplace several hours before a shift starts to find out if they're needed. Up to 90 percent of retail workers are subject to last-minute scheduling changes, which functionally require that workers have a phone within reach at all times. Many workers at large-scale retailers like Starbucks, McDonalds, and Old Navy use apps to trade and schedule shifts.

What's more, cell phones are crucial for finding employment. More than half of job-seekers between ages 18 and 29, and 40 percent of 30- to 49-year-olds, have looked for work using their smartphones. The leading job recruiting websites report that most of their traffic comes from mobile devices; 60 percent of Indeed.com's 200 million unique visitors per month are using their phones to check out listings on that site.

Cell phones are also an important public safety tool. Federal and local governments use mobile alerts to push information out about threats to public safety, missing children, and dangerous weather.

After Hurricane Harvey damaged emergency call centers and the 911 system was overloaded with requests, Houston residents turned to social media sites like Facebook and Twitter for help, primarily via cell phone.

Social media use was so common at the time that the US Coast Guard tweeted to remind people that they should still report emergency assistance needs through 911. And when hurricanes Irma and Maria destroyed Puerto Rico's wireless networks, the hunt for cell phone service caused traffic jams on the sides of highways and packed parking lots outside of hotels. In fact, even outside of natural disasters, 80 percent of 911 emergency calls are made by cell phones.

Government at all levels increasingly relies on cell phones to provide important services. The federal government made big investments to create mobile apps and mobile-optimized websites for its food stamp program, for managing social security benefits, and for accessing US Citizenship and Immigration services. Citing the 12 percent of Americans who rely exclusively on their mobile phones for access to the internet, the bipartisan Connected Government Act, which would require federal agencies' public-facing websites to be mobile friendly, is currently making its way through the House and Senate.

Major cities such as New York, Boston, Philadelphia, Chicago, and Los Angeles have mobile apps where residents can submit 311 service requests for city maintenance issues like potholes and graffiti. The mobile app NYC Votes lets New Yorkers register to vote and monitor their registration status.

Cell phones are especially crucial for some of the most vulnerable in society. Younger, lower-income, and non-white Americans are particularly likely to own smartphones, but not have broadband in their homes. Smartphones are a cheaper on-ramp to essential services than a laptop and home broadband services. A recent study found that for smartphone users in low-income households, 63 percent report mostly using their cell phone to go online (versus only 21 percent of high-income users). Despite meager resources, homeless people often make cell phones a priority because they

are necessary to access critical services and maintain social ties.

Along with 15 other scholars, we at Data & Society, an independent, nonprofit research institute focused on the social and cultural issues arising from data-centric technologies, filed a friend-of-the-court brief in *Carpenter*, explaining the necessity of cell phones to the public.

When they hear oral argument this morning, the Supreme Court justices will have already learned that cell phones have become basic social infrastructure necessary for jobs, for safety, and for crucial social services. The justices will surely understand that without any alternatives for accessing online services, vulnerable (and over-policed) populations will be unable to make meaningful choices to protect their privacy, amplifying the disadvantages they already face. The justices will have to confront the fact that absent a ruling that requires police departments to obtain warrants to retrieve cell phone location data, cell phones will render our lives involuntarily transparent.

At its core, the *Carpenter* case is about whether Americans' rights to privacy should turn on whether they "voluntarily" choose to have a cell phone. We hope the Court realizes that it's really no choice at all.

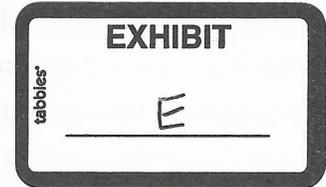
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Featured Video

**[How to Lock Down Your Facebook Security and Privacy Settings](#)**



# Cell Phones in the Courthouse: An Access to Justice Perspective



July 2018

Introduction.....1  
 Project Scope.....2  
 Cell Phones in the Courthouse.....3  
 Ban Consequences.....6  
 Policy Responses.....9  
 Recommendations.....11  
 Conclusion.....14

*Appendices:*

*State Policy Overview*

*Detailed Policy Analysis Sample*

*Virginia Model Policy*

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

*Massachusetts Trial Court restrictions on the Possession & Use of Cameras & Personal Electronic Devices*

*Map of Massachusetts Trial Court restrictions on the Possession & Use of Cameras & Personal Electronic Devices*

# Introduction

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The Massachusetts Trial Court has a general policy outlining the possession and use of cameras and personal electronic devices (referred to as PEDs) within the courts,<sup>1</sup> but district courts are given the option to adapt the policy at the discretion of their own leadership.<sup>2</sup> While the official policy does not prohibit the entry of PEDs into courthouses, currently there are 56 Trial Court facilities across the Commonwealth with active cell phone bans.<sup>3</sup> It is the opinion of Massachusetts Appleseed, through our own observation and the insight of our colleagues, that these bans are unduly burdensome to litigants — especially those without representation — and have a harmful effect on access to justice in Massachusetts.

There appears to be a building consensus that the restriction of cell phones in the Massachusetts courthouses places an additional burden on those who are already at a disadvantage in the justice system. Attorneys and court employees are permitted to bring phones into courthouses, and attorneys are often able to take in their clients' phones as well. However, pro se litigants, who often store personal and legal information on their phones, are unable to access this information under the phone bans. Self-represented litigants without cell phones are not able to access legal precedents that may be referenced by opposing counsel in court. If there are no storage facilities in the courthouse for phones, individuals accessing courthouses by public transportation are not able to leave their phone in a car, and often there is no one with whom they can entrust their phone during their time in court. In addition to the issue of pro se litigants accessing evidence and information, anyone utilizing childcare, location maps for travel assistance, or who may need additional physical, mental, or medical support at short notice are among those most severely affected by this policy. The concern is that, while intended to protect the integrity of the justice system, these bans are in fact preventing Massachusetts from realizing its 100% access to justice goal.

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

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

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

# Project Scope

## OBJECTIVE

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

## QUESTIONS

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

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

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

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

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

To answer these questions, we employed several lines of inquiry. We conducted internet-based research into policies in Massachusetts and around the country. We contacted court personnel locally and nationally to solicit their perspectives on both the need for bans and the impacts that such bans have. We also conducted phone interviews with stakeholders in Massachusetts who work with affected populations, along with individuals involved with the courts in other states to understand their experiences with alternative policies. And perhaps most importantly, we gathered stories and opinions from the same court users forced to leave their phones or turn around when they arrive for a day in court. We have also made efforts to connect with judges and security staff who enforce the cell phone policies in their courthouses, but unfortunately they have been reluctant to speak with us about this issue.

# Cell Phones in the Courthouse

There are numerous ways in which cell phones are used in the courthouse. Through interviews with stakeholders, we developed an outline of the most common uses for cell phones by non-barred individuals in the court setting. These uses can be broken down into four main categories: Evidence, Communication & Logistics, Language Access & Accessibility, and Info Gathering & Legal Research. Below are descriptions of each of these uses and instances in which they most commonly occur.

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

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

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

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

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

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

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

<sup>7</sup> Pay phones are not longer in service at the majority of MA courthouses, leaving pro se litigants with no reasonable alternatives for making phone calls

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

|  |                                                      |
|--|------------------------------------------------------|
|  | Communicating with attorney on time/location changes |
|--|------------------------------------------------------|

## LANGUAGE ACCESS & ACCESSIBILITY<sup>9</sup>

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

## INFO GATHERING & LEGAL RESEARCH<sup>10</sup>

| Description                                                                                                                                        | Examples                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Instances in which litigants need their cell phone to gather information that would allow them to enter or continue a court session on fair ground | Gathering phone-based evidence <sup>11</sup>                                   |
|                                                                                                                                                    | Verifying information before settling an agreement <sup>12</sup>               |
|                                                                                                                                                    | Reading online legal aid materials and conducting legal research <sup>13</sup> |
|                                                                                                                                                    | Filling out and storing legal forms <sup>14</sup>                              |

Cell phone use in the courthouse is common and varied. A litigant could need their cell phone for several of the reasons outlined in a single session, or perhaps just one. Sometimes a cell phone provides a barely noted convenience; and sometimes it will make a major substantive difference in a case. This list is not meant to be exhaustive, as the uses of cell phones are myriad and constantly expanding.

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

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

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

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

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

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

## CELL PHONE ASSOCIATED RISKS AND COMPLICATIONS

There are some very important security concerns at stake with regard to cell phone use in the courthouse. While this report does not focus extensively on these issues, we do acknowledge their importance. Reasons commonly referenced for banning cell phones hinge on disruption, privacy, and witness intimidation issues. The presence of camera-equipped smartphones in courthouses does create a real risk of individuals inappropriately capturing photographs of witnesses.<sup>15</sup> The threat of witness intimidation is increased by the ability of smartphone users to instantly post pictures and video to social media websites. In addition to witnesses, individuals with cell phones could potentially photograph or record jurors and prosecutors involved in trials or hearings.

| Argument Type                                                                 | Specific Concerns                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Arguments from court stakeholders as to why the policy should remain in place | <p>Individuals may use their phones to record (photo, video and/or audio) victims, witnesses, jurors or court employees to threaten or intimidate them<sup>16</sup>, or even to transmit/broadcast the court proceedings to outside parties. The privacy concerns are significant since smartphones make it so easy to post pictures or videos on social media.</p> <p>Cell phones could be a source of disruption during a trial or a hearing. Cell phones distract litigant attention from judges, attorneys, and the proceedings.</p> <p>Cell phone bans may help prevent witnesses from informing one another about testimony when other witnesses have been sequestered and increase clients' attention to courtroom proceedings and attorney/client conversations while in court.<sup>17</sup></p> |
| Arguments from court stakeholders as to why                                   | Cell phone lockers can be used to store contraband. Also, phones could be used to trigger an explosive device.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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

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

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

|                                                    |                                                                                                                      |
|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| suggested alternatives to the ban are not feasible | The Trial Court may not be able to afford to pay for additional security personnel to oversee storage lockers.       |
|                                                    | Using a locker system would be difficult because courts are already short-staffed with respect to security officers. |

While these arguments are based in valid concerns and legitimate cautionary measures, Massachusetts Applesseed believes that court policies concerning electronic devices can be designed in a way that addresses these concerns while still promoting access to justice in the courthouse.

## Ban Consequences

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

—Anonymous Litigant, Boston Municipal Court<sup>18</sup>

While the tables in the previous section highlight instances in which cell phones are commonly needed in the courthouse, they do not show the full complexities that often arise as a direct result of these bans. Confidentiality can become an issue if a litigant who is hard of hearing has to communicate with their attorney at a shouting volume.<sup>19</sup> Settling an agreement may be rushed, and consequently unfair, if a litigant in Housing Court is not able to call their family to verify move-out dates.<sup>20</sup> Providing a witness can be very difficult if the witness needs to be on-call for their occupation (an attorney can arrange for this to be allowed;<sup>21</sup> a self-representing litigant is essentially forced to testify without the witness). Proving a payment can be impossible if a litigant

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

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

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

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

needs to call their bank to do so.<sup>22</sup> Obtaining emergency relief could be impeded if a victim of domestic violence seeking an order of protection or a tenant illegally locked out of an apartment arrives at the court seeking relief and is denied entry into the courthouse with their cell phone.<sup>23</sup>

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

—Liliana Ibara, Greater Boston Legal Services<sup>24</sup>

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

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

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

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

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

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

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

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

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

Two scenarios observed serve as contrasting case studies in efficiency. In the first scenario, at a courthouse with no cell phone ban, a woman called her father during her Court Service Center appointment to attain a missing detail about his social security claim.<sup>29</sup> The second scenario took place at a courthouse with an active cell phone ban, where a litigant meeting with a Court Service Center Manager did not have necessary information on hand about her landlord, which was stored on her phone, and the Manager had to spend approximately 15 minutes looking online for the information.<sup>30</sup> The simple act of gathering information is polarized by these two anecdotes; easy and time-efficient for one litigant and CSC Manager but difficult and time-consuming for the others.

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

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

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

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

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

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

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

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

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

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

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

—Jade Brown, Greater Boston Legal Services<sup>36</sup>

This dissuasive effect can occur for a number of reasons, such as the litigant’s inability to reach someone to change an appointment or the litigant’s inability to access the information they need.<sup>37</sup> Many times this effect occurs because the litigant does not feel comfortable hiding their phone and cannot afford to pay for it to be stored. In many instances, individuals are without transportation home because they had to use their bus or subway fare to store their phone.<sup>38</sup> Moreover, the litigant feels that leaving their cell phone means leaving their personal life at the door, and they may not enter the courthouse because of it.

## Policy Responses

Understanding the inherent risks of allowing cell phones into courthouses, there are various solutions that would allow individuals to bring their phones while still minimizing disruption. Many courthouses around the country supply lockers which are available for phone storage, sometimes charging individuals a fee of a few dollars for the service. (Such a charge, however, raises its own complications). Still other courts, such as the Superior Court of California San Bernardino or the

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

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

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

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

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

Here in Massachusetts, the Greenfield District Court has recently enacted a policy whereby cell phones are allowed, but judges have the right to prohibit the entry of phones into the courtroom for specific cases at their discretion.<sup>41</sup> At the Barnstable District Court a trial policy was implemented in March of 2018 to allow individuals to switch off and keep their phone if they are unable to leave their phone in a vehicle or with another person outside of the courthouse.<sup>42</sup> Massachusetts Federal Courthouses do not allow cell phones, but anyone entering the courthouse is able to check their device at the door where they are stored in a locked cubbyhole.<sup>43</sup>

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

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

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

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

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

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

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

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

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

## Recommendations

### 1. Universal Permissive Policy

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

### 2. Cell Phone Restrictions

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

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

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

sound is off, no disruption occurs, and that person is sitting in a designated area.<sup>48</sup>

In New Jersey, cell phone use is permitted and can be used in common areas for any purpose other than taking photos, recording and/or broadcasting.<sup>49</sup>

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

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

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

### **4. Alternative Solutions**

- a. Lockers: If a particular court or judge is firmly unwilling to allow cell phones into the courthouses, the next-least restrictive solution would be to require that phones are stored in lockers inside the courthouse. Phones could still be permitted to complete forms and gather relevant personal and legal information, but then could be checked in lockers before individuals proceed to trial. An example can be found

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

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

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

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

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

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

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

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

- b. Pouches: Another possibility is the use of Yondr pouches, wherein a litigant keeps their phone on their person, but it is sealed in such a way as to prevent its use.<sup>55</sup> In the Criminal Justice Center in Philadelphia, Pennsylvania, pouches are used by individuals to seal their cell phones when they enter, carry it around with them, and unseal at the unlocking station on their way out. About 20-30 cases were reported of people mutilating or destroying these pouches without visiting the official unlocking station. Some people allegedly found out how to turn on their phones by touch and use the phone through Siri. Philadelphia court officials are now working to improve pouches so that they are more resistant and larger to fit newer, larger cell phones.<sup>56</sup> The Massachusetts Board of Bar Overseers also uses Yondr pouches during Bar exam administration.<sup>57</sup>
- c. Notice: At a minimum, the Court should provide sufficient and consistent notice to litigants, in multiple languages, to enable them to plan accordingly for their trips to court (understanding that this would only be helpful to those individuals with scheduled court affairs, and not, for instance, someone dropping by to use a Court Service Center). For example, in Maryland Courts, the official policy specifies that notice regarding any limitations or prohibitions on cell phones and electronic devices "shall be included prominently on all summonses and notices of court proceedings".<sup>58</sup>
- d. Entry List: Judges, attorneys, or clerks could provide the names of litigants allowed to bring in their devices to security officers.

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

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

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

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

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

# Conclusion

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Allowing cell phones in courtrooms significantly increases access to information for pro se litigants. Today, legal forms and other legal help tools are increasingly available to the public online and through smartphone applications that allow individuals to complete, submit, and save court documents on their phone without having to access a printer.<sup>59</sup> A smartphone is a commonplace and essential daily tool for communication, information and document storage, and safety and security. The smartphone's ability to complete court documents and store important case information makes it a critical tool for expanding access to justice and promoting a positive and productive experience for individuals in the court system.

When individuals are not offered a simple solution to the cell phone ban, the results are often extreme. Many individuals resort to hiding their phones in bushes and other areas around the courthouse; these phones are often stolen. Others choose to stay outside of the courthouse with their phones, but may miss their hearings and have default judgments entered against them as a result.<sup>60</sup> In this technology-driven, and often technology-dependent era, it is highly problematic for individuals to have to choose between carrying a cell phone and attending an appointment in court.

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

*Our thanks to interns Elveera Lacina, June Han, and Michael Jakubowski for helping us to make this project a reality. A special thanks to Rochelle Hahn of the Massachusetts Law Reform Institute for encouraging us to pursue this issue, and to all the individuals and organizations who made time to share their experiences and insight.*

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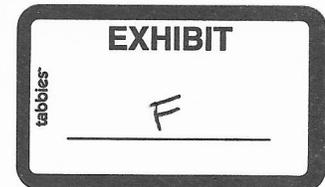
<sup>59</sup> "Forms in Your Pocket: Mobile Solutions are Nearly Ready to Scale (News 2016)", Self-Represented Litigation Network.

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

# Trapped In An Internet Desert, Detroit Teens Struggle To Stay Online

Many without computers or reliable internet rely on free computer labs or public WiFi networks to do their homework.

Kate Abbey-Lambertz On Assignment For HuffPost



Melanie Rayford

Melanie Rayford, 18, doesn't have a computer or a reliable internet connection at home. To do her schoolwork, she uses computers wherever she can — like at her high school's computer lab, shown here.

DETROIT — Melanie Rayford, 18, plans to study software engineering when she enters college this fall. It's a notoriously unwelcoming field for women of color, but she's ready for it. Ideas for apps are already popping into her head, like one to streamline route planning for student bus systems.

A few hours each day, in addition to her usual classes at one of the city's

top public high schools, Rayford attends an academic and athletic youth program. She's taken several tech-focused workshops at the nonprofit [Downtown Boxing Gym](#), located on a stretch of road where many of the buildings have been torn down and greenery is reclaiming the empty spaces.

## ***HUFFPOST***

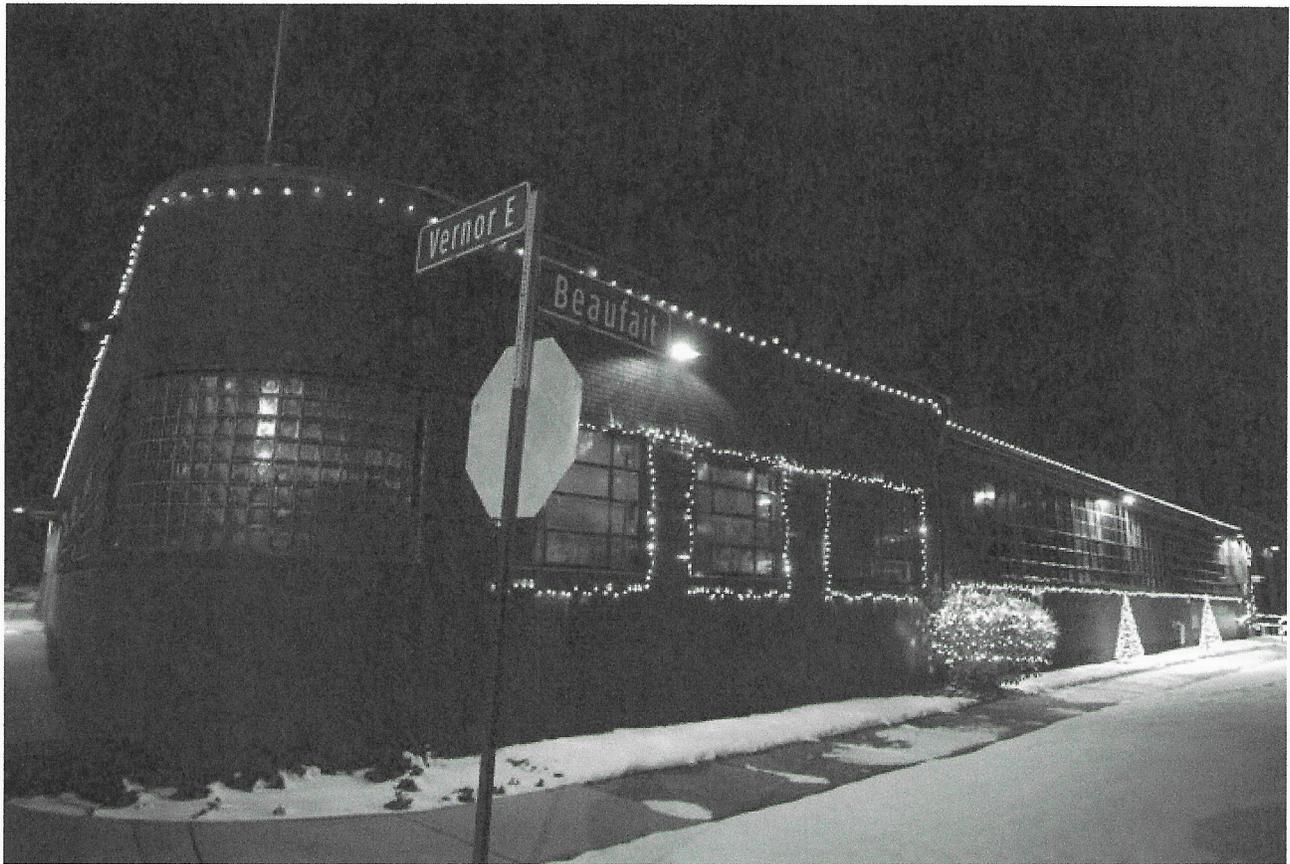
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In addition to teaching kids proper combat footwork and punching techniques, the gym also offers free programs for academic achievement and career readiness. It's where Rayford learned how to set up a wireless network, take apart a computer and test out a 3-D printer. She was failing math when she started at the gym as a sophomore; a tutor helped pull up her scores.

Rayford still occasionally trains with a boxing coach, but most days she heads straight to the gym's computer lab to do homework or write scholarship essays. With no computer at home and unreliable internet, every minute counts.



Tasos Katopodis via Getty Images

Detroit's Downtown Boxing Gym, where Rayford uses the computer lab before and after school.

If she doesn't finish her schoolwork at the gym, she'll set up shop on a computer at Cass Technical High School, occasionally skipping a class to complete an assignment for another teacher. There are other obstacles: A recent project required Microsoft Word, but the school had stopped paying for the software. So Rayford figured out a workaround, Google Docs, which she now uses to tap out essays on her phone at night.

"Everything is so zoomed in, and it's harder to spell-check and make sure your paragraphs are spaced right," she told HuffPost. "You know what you're doing on a computer, compared to a phone."

Cobbling together computer time frustrates Rayford, but it's an ordinary

burden for students in Detroit. The largely African-American city of 675,000 has the lowest rate of internet connection in the country. Nearly 40 percent of households have no home internet and more than 15 percent only have cellular data plans, according to U.S. census estimates. Twenty percent have no computer or smartphone. (Nationwide, 5 million school-age kids don't have internet at home, according to the Pew Research Center.)

Recent research in Detroit indicates that most teens have some kind of access to the internet — but far fewer have reliable internet and computers at home. Many students have more tenuous connections, relying on schools and libraries to get online, or else hopping on and off public WiFi connections from their mobile phones.

As technology becomes increasingly essential for achievement and employment tasks, advocates worry Detroit's digital divide shuts students out of opportunities they desperately need — most kids live in poverty, and young adult unemployment is more than double the national rate.

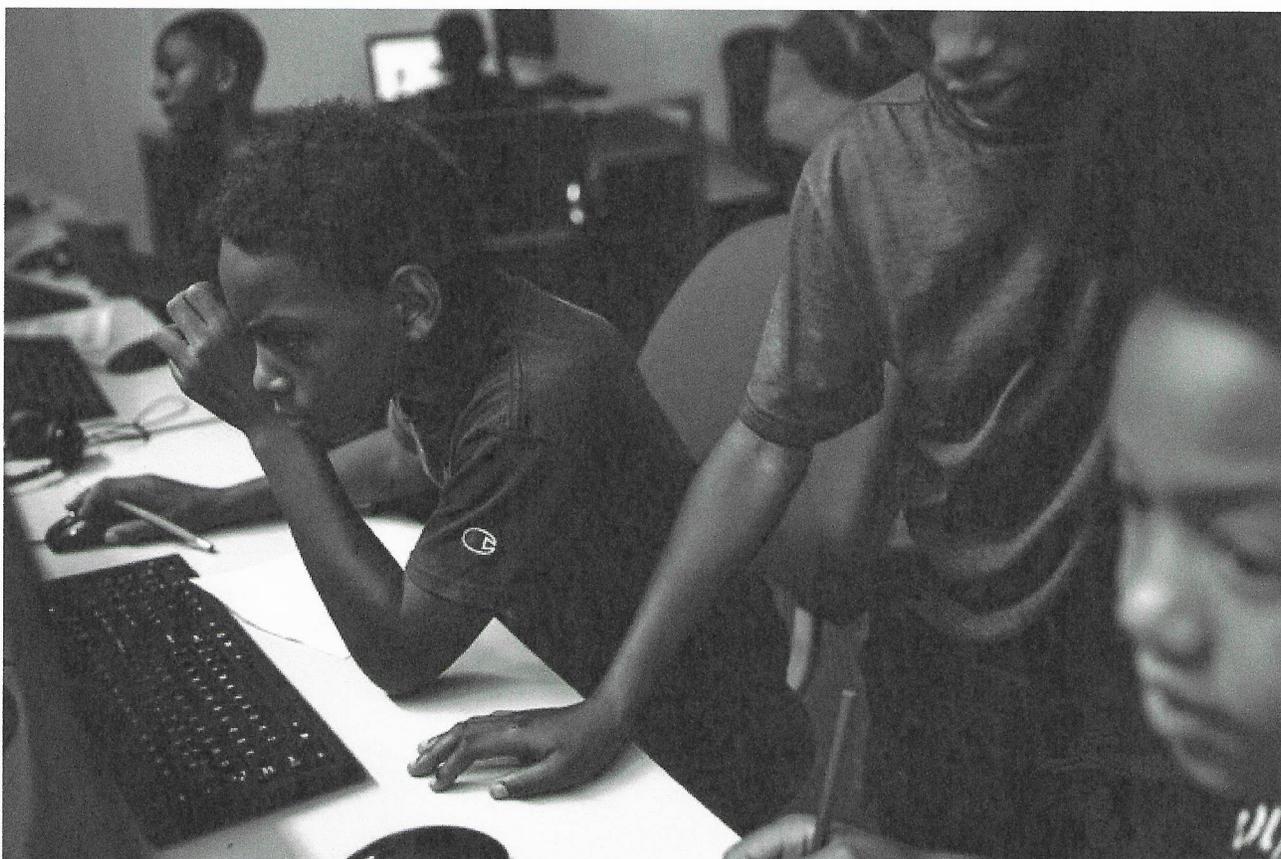
Connectivity is "the gateway to so many pieces of life and the economy that the lack of access to internet is really contributing to many of the disparities that we see in urban areas," said Vernice Anthony, interim chief executive of Focus: Hope. The civil rights nonprofit offers education programs and job training, including information technology certifications.

National figures gloss over the real divide in Detroit's internet ecosystem, Michigan State University researchers suggested in a January report. Instead of a total lack of internet access, they see a "mobile-only divide." They mailed surveys about internet use to more than 500 residents in three neighborhoods. Nearly all respondents reported using the internet, which surprised William Dutton, MSU professor of media and information policy and co-author of the report. Dutton told HuffPost he was specifically

impressed by teens' ingenious strategies for getting online — whether tracking public locations with open networks or befriending classmates with WiFi at home.

Nearly half the residents in the survey said they primarily used the internet on their phones. Many of them, particularly teens, don't see that as a disadvantage — but those users, with limited device capabilities and data caps, were less likely to report "productive" uses, such as homework and job searches.

"The strong dependence on mobile phones — while it mitigates some of the worst digital divides somewhat — may be holding Detroiters back," the report warns.



Downtown Boxing Gym

Many of the students who frequent the Downtown Boxing Gym's computer lab have trouble getting online at home.

Bridging the digital divide isn't just about providing cheap, fast internet. Computer access matters, as Dutton explained. And tools aren't that useful if students aren't taught how to use them.

Qumisha "Q" Goss, who runs tech programs at the Parkman library branch near Focus: Hope, said adults often overlook kids' digital literacy, assuming they'll intuit technology they grew up with. But when students, who can be experts in social media, use library computers for school, she finds, they're unfamiliar with basics like how to fill out a spreadsheet or how to double-space a document.

"That part is kind of heartbreaking for me, because I feel like they're being neglected," Goss said.

One of the classes Goss developed is Parkman Coders. She's taught kids programming with Minecraft, a popular computer game, and by using cheap, cutting-edge hardware built for learning, like [Raspberry Pi mini-computers](#) and [micro:bits](#). When former students rack up fees on overdue coding books, Goss is happy to forgive their fines.

Parkman and the Downtown Boxing Gym ignite some students' untapped passion for tech and give useful digital skills to more. Of the 300 kids who have gone through the gym's youth learning program, all have graduated high school, compared with a [78 percent graduation rate](#) in Detroit's public school district last year. And Parkman has students returning summer after summer for the coding programs.

A smattering of other local organizations are doing similar work or expanding digital equity. However, community programs ultimately serve only a fraction of Detroit's disconnected students. (The gym currently

serves 185 kids but has more than 800 on its waiting list.) Closing the digital divide on a broader level is more challenging.

Nine years ago, Focus: Hope and other partners taught computer skills to 6,000 residents, gave out thousands of discounted computers and worked with an initiative that brought free broadband to a few hundred people. Despite the program's impact, it ended when federal funding dried up, and residents lost internet after the service provider went bankrupt.

Internet providers help some get past the cost hurdle, with \$10 monthly plans for low-income families. One in 20 residents gets internet through Comcast Essentials, which also offers cheap laptops, free routers and classes. However, the program's slow speeds still leave users behind national standards — it offers subscribers download speeds of 15 megabits per second, lower than the 25 mbps definition for broadband internet used by the Federal Communications Commission. Focus: Hope tried to help people sign up for Comcast Essentials but ended its initiative due to lack of interest — residents were turned off by the rigorous application requirements.

The failure of major internet providers to close the coverage gap spurred a grassroots movement, the [Equitable Internet Initiative](#), in which local residents have built wireless networks serving dozens of families in three neighborhoods.



Kate Abbey-Lambertz

Qumisha "Q" Goss explains how she uses the Raspberry Pi, a cheap mini-computer, to teach students programming at the Parkman branch of the Detroit Public Library.

Community efforts could move the needle more if organizers collaborated and shared their knowledge, Goss and others said, and the city needs to take the lead on tackling the digital divide across all neighborhoods. Officials reportedly plan to release recommendations to expand internet access soon. The school district is also looking to improve digital learning.

Rayford aims to become one of those collaborators. She's already envisioning what comes after her high school graduation: She'll attend Wayne State University's College of Engineering in Detroit and then plans to start a business using her engineering skills. Later she'll give back by launching a community organization inspired by her grandmother — who

died of complications from alcoholism — to support teen girls struggling with mental health issues. Rayford wants to teach them tech skills, unlocking the same doors for them that she’s walked through already.

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