



Michigan Coalition to End Domestic & Sexual Violence

Submitted via email only

To: Clerk, Michigan Supreme Court, ADMcomment@courts.mi.gov

Re: Comments on ADM File No. 2018-30 – Proposed Amendment of MCR 8.115

Dear Clerk,

My name is Elinor Jordan and I am an attorney and Senior Program Manager of the Survivor Law Clinic with the Michigan Coalition to End Domestic and Sexual Violence. I am writing to support the proposed rule related to the possession and use of cell phones and other devices in courts. While some commenters have shared safety concerns, I believe that on balance, the ability to possess a device in courthouses will be more beneficial to survivors of domestic and sexual violence than detrimental.

This is not to suggest that perpetrators of domestic and sexual violence will not use cell phones in courthouses to further their abuse. They surely will. But tech-savvy perpetrators have proven their ability to use cell phones and other devices against their targets regardless of what is allowed in the courthouse. The critical difference between the current status quo and the proposed rule is that, under the proposed rule, the survivor will also have a device in hand that can serve as a shield to such attacks. Instead of using tech-facilitated abuse as a reason not to allow cell phones, I would encourage matters of tech-facilitated abuse to be a serious consideration of the security committees that have been set forth in order 2018-21. This approach is simply more realistic than depriving survivors of their cell phones as a tool for seeking protection, connecting with emotional and legal help, supplying evidence, and avoiding dangerous isolation.

According to the U.S. Department of Justice, domestic violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.ⁱ This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, or threaten someone.ⁱⁱ Domestic violence affects individuals of every economic status, race, gender, religion, age, sexual orientation, and education level.ⁱⁱⁱ As the law struggles to keep up with technology, perpetrators of domestic violence are increasingly taking advantage of gaps in the law and public awareness. Indeed, a recent survey found that 97 percent of programs supporting domestic violence survivors reported that abusers use technology to facilitate their abuse.^{iv}

A basic understanding of domestic-violence perpetrator dynamics is key to appreciating why the abuse of technology can be so damaging to clients. Perpetrators of intimate partner abuse know a lot about their victims and can intimidate or control them through messages or actions that may appear innocuous to a third party. Intimate partners are also uniquely positioned to “turn someone’s technological world against them” because they may know passwords or have access to phones, laptops, and other devices.^v Finally, domestic abusers can be remarkably dedicated to the task of retaining control. For example, in one case involving online misconduct, the sentencing judge remarked that he had “never seen a person so dedicated to utterly destroying the victim in all aspects of her life.”^{vi} Perpetrators are accustomed to manipulating systems to continue their abuse, and rules about cell phones in courts do not prevent them from continuing to frighten and intimidate their targets both in and outside the courthouse. A few specific examples illustrate why the adoption of the proposed rule is a better response to this reality than the patchwork rules that currently exist.

The ubiquitous nature of tech-facilitated abuse means that extensive evidence is stored in our devices. I have observed a survivor was forced to leave her cell phone in a locker during a hearing with regard to a stalking case. When she returned after court, the survivor had received several “spoofed” messages during the hearing (i.e., messages that had been scheduled to be sent through a third-party phone number). Had the survivor been able to retain her cell phone, the court could have seen these messages arriving in real time.

As another commenter astutely pointed out, the policies limiting cell phones in courthouses give rise to profound vulnerabilities for survivors. In the patchwork of different rules and regulations that exist around the state, many survivors of domestic or sexual violence who have just finished a hearing regarding a personal protection order must walk across the parking lot and back to their vehicles without a cell phone to call police if their perpetrator chose to retaliate. The same is true when survivors testify at a preliminary hearing, or participate in a contested custody hearing. In fact, the period just before and just after court is often the subject of extensive safety planning by our member organizations’ advocates as they seek to come up with creative ways to ensure the survivor’s safety during this vulnerable moment. Sometimes this problem is exacerbated when survivors, who are often unfamiliar with local rules, accidentally bring their cell phone to court and must rush back out to a car (if they have one) or seek another place to store the cell phone during their court appearance. When that happens, it makes an already stressful event even more intimidating.

I would also like to echo the many reasons related to access to justice that were raised in support of this proposed rule by Michigan Legal Help (“MLH”). Unfortunately, far too many survivors of domestic and sexual violence do not have attorneys and could be helped by having access to filings, evidence, and some of the helpful guidance on the MLH website in those moments before a hearing. Printing and scanning is not feasible for many poor or transitioning survivors. As MLH points out, the current status quo creates significant disparity between represented and unrepresented litigants.

For all of these reasons, I support the proposed change. I would further invite the courts to take an active role through security committees in enforcing the provisions in the proposed rule that

prohibit unconsented photography, videography, etc. In my experience, those protections are more likely to truly protect survivors than depriving them of their cell phones in court.

Sincerely,

Elinor R. Jordan, JD (MI P75651); Senior Program Manager, MCEDSV

ⁱ US Dep't of Justice, *What is Domestic Violence?*, <https://www.justice.gov/ovw/domestic-violence>; see also MCL 400.1501 (defining the term “domestic violence” to include “causing or attempting to cause physical or mental harm to a family or household member” and defining “family or household member” broadly to include anyone with whom a perpetrator has had a dating or sexual relationship); see also MJI Domestic Violence Benchbook (2018) at 1-2 (citing the State of Michigan Batterer Intervention Standards); *What is Domestic Violence?* NAT'L NETWORK TO END DOM VIOLENCE, <https://nnev.org/about-dv/what-is-dv/> (accessed march 19, 2018).

ⁱⁱ US Dep't of Justice, *What is Domestic Violence?*, <https://www.justice.gov/ovw/domestic-violence>.

ⁱⁱⁱ *Id.*

^{iv} *Recognizing & Combating Technology-Facilitated Abuse*, NAT'L NETWORK TO END DOM VIOLENCE, Oct 13, 2016, https://nnev.org/latest_update/combating-technology-facilitated-abuse/.

^v Lily Hay Newman, *Tech can do More to Help Survivors of Abuse. Here's Where to Start*, WIRED MAGAZINE. Feb. 1, 2017, <https://www.wired.com/2017/02/tech-can-help-survivors-abuse-heres-start/>.

^{vi} Joey L. Blanch, Wesley L. Hsu, *An Introduction to Violent Crime on the Internet*, US ATTORNEYS' BULLETIN, May 2016, p 5, available at <https://www.justice.gov/usao/file/851856/download>.