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Senate Bill 865 (as introduced 4-24-20)
Sponsor: Senator Peter J. Lucido
Committee: Judiciary and Public Safety

Date Completed: 9-1-20

CONTENT

The bill would amend the Revised Judicature Act to do the following:

- Allow an individual to possess and use a portable electronic device in a courthouse.**
- Specify that the bill would be subject to the authority of the court, clerks of the court, and court administrators to limit or terminate any activity that disrupted court operations, compromised courthouse security, or was contrary to the administration of justice.**
- Specify the circumstances under which an individual, juror, witness, party, or attorney would be allowed to use a portable electronic device.**
- Specify that a violation of the bill would be punishable by sanctions as determined by the court.**

The bill would take effect 90 days after its enactment.

Except as otherwise provided, an individual could possess and use a portable electronic device in a courthouse. "Portable electronic device" would mean a mobile device capable of electronically storing, accessing, or transmitting information, including a transportable computer of any size, including a tablet, notebook, and laptop, a smart phone, cell phone, or other wireless phone, a camera, audio or video recording devices, a personal digital assistant, other devices that provide internet access, and any similar item. "Courthouse" would include all courtrooms, 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, and areas outside a court building where a judge conducts an event concerning a court case.

The bill would be subject to the authority of the court, clerks of the court, and court administrators to limit or terminate any activity that disrupted court operations, compromised courthouse security, or was contrary to the administration of justice. The court would have to use reasonable means, including posting the notice on the website, to advise courthouse visitors of the requirements pertaining to portable electronic devices.

An individual could not use a portable electronic device to photograph, record, broadcast, or live stream any juror or anyone called to the court for jury service. An individual could use a portable electronic device to photograph, record, broadcast, or live stream in a courthouse only in a courtroom if allowed by the presiding judge or in areas of the courthouse other than a courtroom with an individual's express prior consent to the photographing, recording, broadcasting, or live streaming of the individual. Subject to these provisions, the court could

adopt additional, reasonable limits on an individual's ability to photograph, record, broadcast, or live stream in a courthouse by local administrative order.

A juror or prospective juror could possess and use a portable electronic device, subject to the following limitations:

- A portable electronic device would have to be turned off while present in a court room.
- If the court provided jurors with a phone number where they can be reached in an emergency during deliberations, the court could require jurors to turn over their devices to the court during deliberations.

A witness could possess and use a portable electronic device, subject to the following limitations:

- The device would have to be silenced while in a courtroom.
- The device could be used by a witness while he or she was testifying only with the permission of the presiding judge.

An individual could not use a portable electronic device to communicate in any way with a courtroom participant including a party, a witness, or a juror at any time during any court proceeding.

An attorney, party, or member of the public could use portable electronic devices for the following purposes:

- In a courtroom to retrieve or to store information, including note taking, to access the internet, and to send and receive text messages or information, if all audible sounds were silenced.
- In a courtroom to make or receive telephone calls or for any other audible function while court was in session, with the permission of the presiding judge.
- In a clerk's office to reproduce a public court document, if the device left no mark or impression on the document and did not unreasonably interfere with the operation of the clerk's office.

The bill would not modify or supersede the guidelines for media coverage of court proceedings set forth by Supreme Court Administrative Order No. 1989-1.

A violation of the bill would be punishable by sanctions as determined by the court, including contempt of court, confiscation of the device from an individual for up to the remainder of the court day, or an order that the device be turned off, put in a location as determined by the court, or both.

MCL 600.1746

BACKGROUND

Michigan Court Rule (MCR) 8.115, in pertinent part, prescribes the permitted and prohibited use of portable electronic devices in a courthouse. Previously, MCR 8.115 allowed each chief judge to establish a policy regarding the use of cell phones and other electronic communications devices within the courthouse. In May 2019, the Michigan Supreme Court

issued an order amending MCR 8.115 to allow lawyers, witnesses, jurors, and members of the public to have cell phones and other portable electronic devices in a courtroom.¹

The Michigan Supreme Court submitted a copy of the order to the State Bar of Michigan and to the State Court Administrator pursuant to MCR 1.201. The process of amending the rule included a public hearing during which over 50 public comments were considered, including comments from attorneys, court clerks, the Michigan Judges Association, the State Bar of Michigan, and the public.

In January 2020, the Michigan Supreme Court adopted the new rule, which took effect on May 1, 2020.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would not have a direct fiscal impact on the State or local court systems. As noted above, the bill would codify a recent Supreme Court order that amends MCR 8.115 to allow for increased use of electronic devices within courtrooms. The reasoning given by the Supreme Court for the rule change was that it could make access to the courts easier for witnesses, jurors, and litigants without lawyers.

While the bill generally would allow for the use of electronic devices within courts and courthouses, the use of these devices would be subject to the discretion of the presiding judge. Indirectly, the use of electronic devices by attorneys or witnesses in the courtroom could make some judicial proceedings more efficient, creating a potential savings in time or resources for those courts that allowed increased use of electronic devices.

Fiscal Analyst: Michael Siracuse

¹ ADM File No. 2018-30, Order--Amendment of Rule 8.115 of the Michigan Court Rules, Michigan Supreme Court, January 8, 2020.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.