

1 HOUSE BILL NO. 872
2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
3 (Proposed by the Senate Committee for Courts of Justice
4 on _____)
5 (Patron Prior to Substitute—Delegate Cousins)

6 *A BILL to amend the Code of Virginia by adding sections numbered 16.1-69.35:4 and 17.1-128.2, relating to*
7 *possession of a portable electronic device in district or circuit court.*

8 **Be it enacted by the General Assembly of Virginia:**

9 **1. That § 53.1-5 of the Code of Virginia is amended and reenacted and that the Code of Virginia is**
10 **amended by adding sections numbered 16.1-69.35:4 and 17.1-128.2 as follows:**

11 **§ 16.1-69.35:4. Possession and use of portable electronic device in district courts.**

12 *A. As used in this section:*

13 *"Portable electronic device" means (i) a personal laptop; (ii) a tablet; (iii) a mobile telephone, including*
14 *a cell phone and any telephone with a camera, audio and video recording capabilities, and transmission*
15 *capabilities; (iv) an electronic calendar; (v) an electronic book reader; (vi) a smart watch; or (vii) any other*
16 *electronic personal communication device. "Portable electronic device" does not include a camera, a video*
17 *camera, video or audio recording equipment, or a recording device that is not otherwise a component of a*
18 *portable electronic device.*

19 *"Visitor to the court" means a member of the public who is not an active or retired judge, a magistrate, an*
20 *attorney-at-law who possesses and presents a valid state bar identification card, a law-enforcement officer as*
21 *defined in § 9.1-101 or court security officer, a probation officer who possesses and presents proper*
22 *credentials and who is at the courthouse in the conduct of his official duties, a state or local agency employee*
23 *who possesses and presents proper credentials and who is at the courthouse in the conduct of his official*
24 *duties, a court reporter during the course of his official duties within the courthouse, and any other*
25 *individual who has been authorized to possess a portable electronic device in the court upon a determination*
26 *by the sheriff of the city or county in which the court sits that such individual's possession of a portable*
27 *electronic device does not pose a security risk or threat and that access to such portable electronic device is*
28 *necessary for conducting such individual's work or business in the court.*

29 *B. Except as otherwise provided by this subsection, the chief judge of every district court shall set a policy*
30 *for possession of portable electronic devices by visitors to the court. If such policy prohibits or restricts the*
31 *use of portable electronic devices in the courtroom of the district court, the chief judge shall also include in*
32 *such policy provisions to ensure that any portable electronic device brought by a visitor to the court for the*

33 *purposes of presenting evidence be made available for use by such visitor to the court during a proceeding.*
34 *Before finalizing the policy, the chief judge of the district court shall consult the chief judge of the circuit*
35 *court having jurisdiction in the district and the sheriff of the city or county in which the courthouse is located.*
36 *The sheriff shall be responsible for advising and training all appropriate personnel on such policy. In the*
37 *event that a district court is located inside the same courthouse building as the circuit court, the chief judge*
38 *of such circuit court shall set the policy for the entire courthouse, including the district court courtrooms, in*
39 *accordance with the provisions of § 17.1-128.2. If a general district court and a juvenile and domestic*
40 *relations district court are located within the same courthouse building, but not in the same building as the*
41 *circuit court of the same jurisdiction, the chief judges of such general district court and juvenile and domestic*
42 *relations district court shall set the policy by agreement.*

43 *C. The chief judge of the district court shall allow visitors to the court to possess portable electronic*
44 *devices in both the courthouse and the courtroom and may condition such possession upon certain*
45 *limitations, including (i) requiring a security screening of the portable electronic device upon entrance to the*
46 *courthouse; (ii) restricting the use of the portable electronic device only in a specific area or areas of the*
47 *courthouse, including the lobby, hallways, or other designated areas within the courthouse; (iii) restricting*
48 *the use of mobile telephones, including designating certain areas of the courthouse where phone*
49 *conversations may be had; (iv) requiring that all portable electronic devices remain on silent mode at all*
50 *times; (v) prohibiting the use of a portable electronic device while the visitor to the court is in a courtroom*
51 *except with the express permission of the presiding judge; or (vi) any other conditions as needed to maintain*
52 *safety, security, proper behavior, order, and the administration of justice. Nothing in this subsection shall be*
53 *construed to permit any courthouse personnel to search or access any data on the portable electronic device*
54 *of a visitor to the court, including during a security screening as described in clause (i).*

55 *D. The policy of each district court set in accordance with this section shall be posted in an accessible,*
56 *prominent, and conspicuous manner at the entrance of the district court and on (i) the individual district*
57 *court page on the Virginia Judicial System website or equivalent website where statewide courthouse*
58 *information is aggregated; (ii) a court's individual website; or (iii) if the court does not have an individual*
59 *website, an equivalent local government website where such district court's information is communicated to*
60 *the public. Such posting shall include any prohibition, restriction, condition, and limitation on the use of any*
61 *portable electronic device by visitors to the court and, if applicable, the process for ensuring that evidence*
62 *from a portable electronic device may be presented in a courtroom.*

63 *E. Any portable electronic device used in violation of a district court's policy or related court order may*

64 *be confiscated and the court or sheriff's department responsible for providing court security shall not be*
65 *liable for any damage to or loss of such confiscated portable electronic device.*

66 *F. Any use of a portable electronic device in the courthouse or courtrooms to take photographs, make*
67 *audio or video recordings, or transmit live audio or video streaming shall be prohibited except with prior*
68 *written authorization by a judge of the district court.*

69 **§ 17.1-128.2. Possession and use of portable electronic device in circuit courts.**

70 *A. As used in this section, "portable electronic device" and "visitor to the court" mean the same as those*
71 *terms are defined in § 16.1-69.35:4.*

72 *B. The chief judge of every circuit court shall set a policy for possession of portable electronic devices by*
73 *visitors to the court. If such policy prohibits or restricts the use of portable electronic devices in the*
74 *courtroom of the circuit court, the chief judge shall also include in such policy provisions to ensure that any*
75 *portable electronic device brought by a visitor to the court for the purposes of presenting evidence be made*
76 *available for use by such visitor to the court during a proceeding. Before finalizing the policy, the chief judge*
77 *shall consult with the chief judge or chief judges of the district court or district courts having jurisdiction in*
78 *the district and with the sheriff of the city or county in which the courthouse is located. The sheriff shall be*
79 *responsible for advising and training all appropriate personnel on such policy.*

80 *C. The chief judge of the circuit court shall allow visitors to the court to possess portable electronic*
81 *devices in both the courthouse and the courtroom and may condition such possession upon, including (i)*
82 *requiring a security screening of the portable electronic device upon entrance to the courthouse; (ii)*
83 *restricting the use of the portable electronic device only in a specific area or areas of the courthouse,*
84 *including the lobby, hallways, or other designated areas within the courthouse; (iii) restricting the use of*
85 *mobile telephones, including designating certain areas of the courthouse where phone conversations may be*
86 *had; (iv) requiring that all portable electronic devices remain on silent mode at all times; (v) prohibiting the*
87 *use of a portable electronic device while the visitor to the court is in a courtroom except with the express*
88 *permission of the presiding judge; or (vi) any other conditions as needed to maintain safety, security, proper*
89 *behavior, order, and the administration of justice. Nothing in this subsection shall be construed to permit any*
90 *courthouse personnel to search or access any data on the portable electronic device of a visitor to the court,*
91 *including during a security screening as described in clause (i).*

92 *D. The policy of each circuit court set in accordance with this section shall be posted in an accessible,*
93 *prominent, and conspicuous manner at the entrance of the circuit court and on (i) the individual circuit court*
94 *page on the Virginia Judicial System website or equivalent website where statewide courthouse information*

95 *is aggregated; (ii) a court's individual website; or (iii) if the court does not have an individual website, an*
96 *equivalent local government website where such circuit court's information is communicated to the public.*
97 *Such posting shall include any prohibition, restriction, condition, and limitation on the use of any portable*
98 *electronic device by visitors to the court, and, if applicable, the process for ensuring that evidence from a*
99 *portable electronic device may be presented in a courtroom.*

100 *E. Any portable electronic device used in violation of a circuit court's policy or related court order may*
101 *be confiscated and the court or sheriff's department responsible for providing court security shall not be*
102 *liable for any damage to or loss of such confiscated portable electronic device.*

103 *F. Any use of a portable electronic device in the courthouse or courtrooms to take photographs, make*
104 *audio or video recordings, or transmit live audio or video streaming shall be prohibited except with prior*
105 *written authorization by a judge of the circuit court.*