

The State of Texas



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ELECTION ADVISORY **NO. 2022-10**

TO: Election Officials
FROM: Keith Ingram, Director, Elections Division
DATE: February 4, 2022
RE: Ballot Security Requirements

This advisory details the requirements involved in maintaining the security of voted ballots throughout an election. This advisory addresses several changes in law made by Senate Bill 1 (87th Leg., 2nd C.S., 2021), which took effect on December 2, 2021, as well as other requirements under existing law.

All statutory references in this advisory are to the Texas Election Code (“the Code”), unless otherwise indicated.

Ballot Box Requirements

The Texas Election Code outlines several requirements for ballot boxes, including specific provisions relating to ballot boxes used during the early voting period.

General Requirements for Ballot Boxes

A ballot box must meet the requirements outlined in Section 51.034 of the Code, which requires a ballot box to be made of a sturdy material that is suitably designed for its intended use. Each ballot box must have a lock and key.

A ballot box may be used without the approval of the Secretary of State under the following conditions:

- The box is an enclosed, opaque container made of metal, wood, or other material;
- The box is equipped with a hinged top, hasp, and padlock; and
- If the box is being used to deposit ballots, then it must have a slot on the top that is just large enough to receive a ballot.

If an entity wishes to use a ballot box that does not meet the above requirements, then it must be approved by the Secretary of State before it may be used in an election. (Sec. 51.034).

Requirements for Election Day Ballot Boxes

Ballot boxes used for election day must meet the general requirements of a ballot box outlined above and must have a lock with a key that is retained by the custodian of keys under Section 66.060.

Requirements for Early Voting Ballot Boxes

Ballot boxes used for early voting must meet the general requirements of a ballot box outlined above and must have two locks with two different keys, one of which is retained by the early voting clerk and the other is retained by the custodian of keys under Section 66.060. (Sec. 85.032).

The two-lock requirement applies to any container that is used to store or transport early voting in person ballots. This would include a ballot box used to deposit ballots, a precinct scanner enclosure in which ballots are deposited, or a transfer case contained within a precinct scanner enclosure that is used to transport voted ballots back to the general custodian of election records. (Sec. 85.032).

Custodian of Ballot Box Keys Under Election Code Sections 66.060 and 85.032

Section 66.060 of the Code designates that the following individual will act as the custodian of keys for the following types of elections:

- For an election ordered by the governor or a county authority, the sheriff.
 - If the sheriff is on the ballot, then the county judge.
 - If the sheriff and county judge are both on the ballot, then the county auditor, or if the county does not have a county auditor, then a designated member of the commissioners court who is not on the ballot and who is appointed for that role by the commissioners court.
- For an election ordered by a city authority, the chief of police or city marshal.
- For an election ordered by an authority of a political subdivision other than a county or a city, the constable of the JP precinct in which the office of the political subdivision's governing body is located.
 - If the office of constable is vacant, then the sheriff of the county in which the political subdivision's governing body is located.

On election day, the presiding judge will retain the key, and will deliver the key in-person to the custodian of the keys at the time that the precinct election records are delivered to the general custodian of election records. (Sec. 66.060).

During early voting, the early voting clerk (or the deputy early voting clerk at that location) will retain the early voting clerk's keys, while the custodian of the keys (or their deputies) will retain the custodian's keys. Each custodian will retain their keys until they are delivered to the presiding judge of the central counting station. Entities that will be transferring early voting ballots to the general custodian throughout the early voting period to address capacity issues in

ballot boxes will need to make arrangements with the custodian of keys (or their deputies) to ensure that those keys will be available for that transfer process. (Sec. 85.032(c)).

The custodian of the keys will retain those keys for the duration of the 22-month preservation period for the precinct election records. The custodian may only relinquish that key to facilitate an authorized entry into the ballot box under the Election Code, such as a requested recount, the partial manual count, or a court order. A custodian who knowingly relinquishes custody of the keys without legal authorization has committed a Class B misdemeanor. (Sec. 66.060).

Video Surveillance Requirements (Counties Over 100,000)

Section 127.1232(b) of the Code requires the general custodian of election records in a county with a population over 100,000 to establish a video recording system that captures all areas containing voted ballots from the time that the ballots are delivered to the central counting station (CCS), early voting ballot board (EVBB), or signature verification committee (SVC) until the local canvass of election results. The video recording must also be made available as a livestream during that timeframe.

Timeframe for Recording

The livestream video recording must begin with the first meeting of the CCS, EVBB, or SVC (whichever is earlier), and must continue until the local canvass of election results.

Voted Ballots Must be Recorded

“Voted ballots” includes both paper ballots and electronic media containing cast vote records. Both the paper ballots and the media must be recorded from the time that any such materials are delivered to the CCS, EVBB, or SVC until the local canvass of election results.

Areas Included in the Recording

The recording must capture all areas containing voted ballots or electronic media containing cast vote records, including any areas where those ballots are qualified, processed, counted, or stored. At minimum, this will include the CCS and the meeting place of the EVBB and/or SVC, as well as any other locations where voted ballots and media are stored during the required timeframe.

If the voted ballots will be moving from one location to another location during the required timeframe, the recording should also record those voted ballots while they are in transit through hallways or other areas in the office. The general custodian may use either a moving camera to follow the ballots while they are in transit or may set up stationary cameras throughout the hallways to capture the areas where those ballots will be travelling. If there are limitations in recording capabilities while in transit, the general custodian should allow poll watchers, if feasible, to accompany or witness the transfer process.

If the voted ballots will be located in a building that will also be used as a polling place, the cameras must be positioned in such a way that they do not capture any activity in the portion of that building that is used as a polling place.

Livestreaming and Camera Requirements

The video recording must be made available as a livestream from the time that the ballots are first delivered to the CCS, EVBB, or SVC (whichever is earlier) until the local canvass of election results.

Audio is not required as part of the livestream video recording, but it is permitted.

Section 127.1232 does not identify any specific minimum requirements for the number of cameras or the image quality of the video feed. The number and quality of the cameras used should be such that the areas containing voted ballots are reasonably visible to the average viewer.

Section 127.1232 does not require the camera to zoom in on any specific activity occurring at the location where the ballots are located, but simply requires the video feed to capture all areas where those voted ballots (or media) are located.

There are no specific requirements regarding the platform on which the livestream is hosted, but it should be publicly accessible free of charge and a link to the livestream should be made available from the county's website. When setting up the livestream, the county should work with its IT department to implement methods that would protect the livestream from possible outside attacks. The county should not use any part of your existing network to host, transmit, or store the live stream video.

Licensed Peace Officers at Central Counting Station

Section 127.1232(a) of the Code requires the general custodian of election records to post a licensed peace officer at the central counting station to ensure the security of ballot boxes containing voted ballots during the timeframe that the central counting station will be performing tabulation activities. This requirement applies to all entities with a central counting station, regardless of population size.

The licensed peace officer must be posted whenever the central counting station is convened. It is not required to post a licensed peace officer during the time when the central counting station is not actively convening. Nor is it a requirement to post a licensed peace officer at the EVBB, the SVC, or at any location other than the CCS.

The appointed individual must be licensed as a peace officer by the Texas Commission on Law Enforcement.

If you have any questions regarding this advisory, please contact the Elections Division toll-free at 1-800-252-VOTE(8683).

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