



# Law Enforcement Guide



**Texas Secretary of State  
Elections Division**

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## INTRODUCTION

The Elections Division of the Office of the Secretary of State has prepared this handbook to be utilized by local law enforcement while navigating a variety of issues related to election law. This handbook is designed to cover all stages of an election starting with the period before voting begins, then the voting period, and finally the relevant laws to be aware of once voting has concluded. Additionally, this handbook provides guidance on multiple issues your office may be called to deal with throughout the election process. This handbook identifies key election personnel and terminology that will be helpful to know as your office begins to prepare for an election.

The Elections Division of the Office of the Secretary of State is open during the hours that the polls are open for voting on all uniform election dates. Answers to questions on election law and procedures may be obtained by calling the Elections Division toll-free at 800-252-VOTE or 512-463-5650.

Visit us at [sos.texas.gov](https://sos.texas.gov), as well as [votetexas.gov](https://votetexas.gov), for additional election information.

The Office of the Secretary of State does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services.



# ELECTION PERSONNEL AND ELECTION DEFINITIONS

## Election Personnel

### *County Election Official*

By default, the county election official (CEO) in a county is the county clerk. However, in some counties, the tax assessor-collector is the CEO. Additionally, Chapter 31 of the Texas Election Code authorizes a county with a population of 3.5 million or less to create the position of an election administrator. An election administrator is an official appointed by the county election commission who performs the election duties of the county clerk and the voter registrar. The county election commission is composed of the county judge, county clerk, county tax assessor-collector, and the county chair of each political party.

### *Early Voting Clerk*

When early voting begins for an election, the early voting clerk is the officer that shall conduct early voting for each election. The clerk is an officer of the election in which the clerk serves. Generally speaking, the clerk has the same duties and authority with respect to early voting as a presiding election judge has with respect to regular voting. The early voting clerk for a county election is the county clerk (or elections administrator); for city elections, it is the city secretary; and for other political subdivisions, it is a person appointed by the governing body of the political subdivision who meets certain eligibility requirements.

### *Presiding Judge*

Sometimes referred to as an election judge by voters or the county election official. The presiding judge is in charge of and responsible for the management and conduct of the election at the polling place of the election precinct that the judge serves. A presiding judge has the same power and authority of a district judge, including the power to issue an arrest warrant. [Tex. Elec. Code Sec. 32.075(c)].

In performing their duties, the presiding judge may appoint one or more persons to act as special peace officers for the polling place. A special peace officer may not enforce the prohibition against electioneering or loitering near the polling place unless the officer's appointment is approved by the presiding officer of the local canvassing authority. [Tex. Elec. Code Sec. 32.075(b)].

### *Alternate Presiding Judge*

The alternate presiding judge is appointed by the authority ordering the election to serve in an election polling place on election day and serves as a clerk unless needed to take over the role of presiding election judge in the event of that person's inability to serve.

### *Election Clerk*

Individuals appointed by the presiding judge to assist in running the election. The presiding judge must designate the working hours of and assign the duties to be performed by the election clerks serving under the judge.

### *Poll Watcher*

A person appointed by a candidate or political action committee to observe the conduct of an election on behalf of a candidate, a political party, or the proponents or opponents of a measure.



### *State Inspector*

An individual appointed and trained by the Secretary of State to observe election activities. A state inspector is entitled to be present at and observe any function or activity at a polling place, central counting station, place of canvass, or other place at which official election or voter registration functions or activities take place. An inspector may take reasonable steps to obtain evidence of the manner in which a function or activity is being performed. The Secretary of State may send a state inspector under its own authority but also will send an inspector to specific sites when petitioned to do so by 15 registered voters of a political subdivision holding an election.

### **Key Definitions**

#### *Ballot Box No.s 1, 2, 3, & 4*

A ballot box is a container for ballots that can be locked (double-locked in case of a ballot box used for early voting by personal appearance) and sealed. Ballot boxes no. 1 and no. 2 are used for the deposit of voters' marked ballots; ballot box no. 3 is used for delivering the voted ballots to their custodian after they are counted and for storing the voted ballots during the preservation period; and ballot box no. 4 is used for delivering defectively printed, spoiled, and unused ballots to their custodian after the election. Ballot boxes no. 1 and no. 2 must each have a slot in the top just large enough to receive a ballot. Ballot boxes no. 3 and no. 4 are not required to have a slot, but if a slot is provided, it may not be larger than that prescribed for boxes no. 1 and no. 2.

#### *Branch Early Voting Location*

Either permanent or temporary – a location other than the main early voting site where voters can vote early by personal appearance.

#### *Canvass*

The official examination of the votes cast in an election. The purpose of the canvass is to account for every ballot cast and ensure that every valid vote cast is included in the election totals. This involves accounting for every ballot cast in person during early voting and election day, ballots by mail, and provisional ballots.

#### *Central Counting Station*

A centralized location at which ballots cast during the election are tabulated and election reports generated based on those tabulations. The authority adopting an electronic voting system for use in an election may establish one or more central counting stations for counting the ballots if the voting system is designed to have ballots counted at a central location.

#### *Countywide Polling Place Program*

A polling place system in which the county election precinct polling places are eliminated and instead any registered voter eligible to vote in the county-run election may vote at any polling place open on election day; similar to the way an early voting polling place is used. Polling places used in countywide counties are also referred to as "vote centers."

#### *Custodian of Election Records*

The individual responsible for maintaining for the required retention period the records from an election. In an election ordered by the governor, a county authority, or the primary election, this is the county clerk/elections administrator. For a city, it is the city secretary; for all other elections, it is the secretary of the political subdivision's governing body (or if no secretary, then to governing body's presiding officer).





### *Election Contest*

An action in civil court to contest the result of an election.

### *Key to Ballot Box No. 3*

The key(s) to the ballot box(es) used during early voting by personal appearance. The presiding judge shall deliver the key to ballot box no. 3 to the sheriff, for an election ordered by the governor or a county authority or for a primary election (with certain exceptions); to the chief of police or city marshal, for an election ordered by a city authority; or the constable of the justice precinct in which the office of the political subdivision's governing body is located, or if the office of constable is vacant, the sheriff of the county in which the governing body's office is located, for an election ordered by an authority of a political subdivision other than a county or city.

### *Paper Ballot*

As used by the Texas Secretary of State Elections Division, this term refers to a ballot that is made of paper and meant to be hand counted; not an optical scan ballot that would normally be counted using a precinct ballot counter or a centralized tabulating machine.

### *Polling Place*

The room or building in which voting is being conducted. The governing body of each political subdivision authorized to hold elections shall designate the location of the polling place for each of its election precincts; all polling places used in Texas must be accessible to voters with disabilities.

### *Voting Booth*

A small enclosure in which a person votes.

### *Voting Machine*

An apparatus on which voters cast their votes, that records each vote, and that furnishes a total of the number of votes cast for the candidates and for and against the measures.

### *Voting Station*

The voting booth or other place where voters mark their ballots or otherwise indicate their votes at a polling place.

### *Voting System*

A method of casting and processing votes that is designed to function wholly or partly by use of mechanical, electromechanical, or electronic apparatus and includes the procedures for casting and processing votes and the programs, operating manuals, tabulating cards, printouts, and other software necessary for the system's operation.



## LAW ENFORCEMENT'S INVOLVEMENT IN ELECTIONS

Our office is often asked by law enforcement when is the right time to intervene with a crime related to elections. Your voters' health and safety is and should be your top priority during an election. If there is an immediate threat to your voters, your office must do what it can to mitigate the emergency. However, in certain situations, a crime is committed but it does not necessitate an immediate response.

A call our office often receives is whether a violation of the Election Code has occurred, and if so what recourse does a person have. If there is a violation of the Election Code by an individual, that does not necessarily mean that there is a criminal penalty associated with that violation.

For example, if a presiding judge does not sign a specific chain of custody form, that can be considered a violation of the Election Code. However, generally speaking, this would not be considered criminal conduct. Instead, it would be considered an election irregularity. When an election irregularity occurs, the Texas Election Code provides for other remedies such as a recount or an election contest.

There are Texas Election Code provisions that prescribe criminal penalties that may lead to an arrest of the person violating the statute. For example, Texas Election Code Section 276.001 sets out that a person commits an offense if, in retaliation against a voter who has voted for or against a candidate or measure or a voter who has refused to reveal how the voter voted, the person knowingly harms or threatens to harm the voter by an unlawful act. A violation of this provision is a third-degree felony.

Our office recommends that when you receive a call about a possible violation of the Election Code, you should determine whether the violation would be considered an election irregularity rather than a criminal act. Once that determination is made, your office can respond accordingly. Our office has provided a list of relevant Election Code provisions that prescribe a criminal penalty at the end of this handbook.

### Preparing for an Election

Our office encourages law enforcement to work closely with their local election officials to develop a strategy that promotes a safe environment for voters. During an election, there are three critical phases that our office recommends discussing with your local election officials.

#### Pre-Election Period

The pre-election period occurs before the start of early voting. During this period, our office recommends reaching out to your county election officer to establish a line of communication and to review certain aspects of the election such as when will voting be conducted and which buildings will be used as polling locations. Understanding where the polling locations are and what times they will be open can cut down on response time in the event of an emergency.

Additionally, your office should work with your county election official to address any concerns that they may have as it pertains to all possible situations that your county may face during the election. This can include contingency plans for an active shooter, natural disasters, or power outages that can impact elections. Addressing these concerns early will help your county create a well-thought out contingency plan that can include alternate polling locations or delivering emergency supplies as needed. Some counties may have security concerns related to a polling location. Providing security suggestions for polling locations can be a proactive way of assisting your county to ensure the safety of voters during an election.



During this process, your office can determine what patrol routes may be altered to provide better coverage during the voting period. Work with your elections office to determine which polling locations historically have a higher voter turnout so that resources can be allocated appropriately. Your office may want to create and implement agency policies and procedures pertaining to elections support and to establish what is expected during the voting period.

Lastly, during this period, contact information should be shared between your office and the county elections office. Our office recommends designating an elections liaison during this period who will work with the elections office and who can be a point of contact if any situations arise.

### **Doxing and Swatting**

A problem that is becoming more prevalent for elections and election officials are the crimes of doxing and swatting. Doxing is when a person searches for and publishes private or identifying information (about a particular individual) on the internet, typically with malicious intent. Swatting is the action or practice of making a prank call to emergency services in an attempt to bring about the dispatch of a large number of armed police officers to a particular address. Both of these acts have begun targeting local and state election officials across the country. While these situations can occur during any of the periods discussed in this handbook, it is important to establish a plan on how to deal with these situations far before the election.

Some election officials provide local law enforcement with their address ahead of time so that if an individual attempts to swat them, local law enforcement can call ahead of time to check if everything and everyone is safe before resorting to sending in multiple law enforcement officials.

### **Voting Period**

Generally, the period for early voting by personal appearance begins on the 17th day before election day and continues through the fourth day before election day, except as otherwise provided by the Election Code. [Tex. Elec. Code Sec. 85.001]. Voting on election day is from 7:00 a.m. through 7:00 p.m., absent a court order for extended hours. Please be aware that a voter who was in line or waiting to enter the polling place at 7:00 p.m. is entitled to vote even if the ballot is cast after the posted closing time. [Tex. Elec. Code Sec. 41.032].

If your office is called out to a polling location, we recommend that the complaining party's information be retained in the event that the incident leads to an investigation. Additionally, your office may refer them to the [Texas Secretary of State Election Complaint Form](#) that has instructions on how to submit a complaint to our office. During the voting period, your office may want to create a call log for all services and calls related to the election to be retained in the event that they are needed later. Your office may call our office to inform us of any arrests or emergencies that have arisen at a polling location and for further guidance if necessary.

Election judges, clerks, state or federal election inspectors, peace officers, and poll watchers must wear name tags or official badges, as applicable, while on duty to indicate the person's name and title or position. [Tex. Elec. Code Secs. 33.051(f), 61.010(b)]. The tags must comply with the form prescribed by the Secretary of State.

Except for the individuals listed above, a person may not wear a badge, insignia, emblem, or other similar communicative device relating to a candidate, measure, or political party appearing on the ballot, or to



the conduct of the election, in the polling place or within 100 feet of any outside door through which a voter may enter the building in which the polling place is located. Therefore, election judges and clerks, federal and state inspectors, peace officers, and poll watchers are the only persons allowed to wear a badge. Wearing an unauthorized name tag or badge within the polling area is a Class C misdemeanor. [Tex. Elec. Code Sec. 61.010(c)].

Calls you receive during the voting period can range from voters upset about an occurrence that took place to a more violent altercation. If possible, we recommend turning off police bodycams within 100 feet of a voting station regardless of whether the officer is on or off duty, pursuant to Section 61.014 of the Election Code. Turning off these devices within the 100-foot zone surrounding the polling place helps to maintain voter privacy while voters are voting at the polling place and are standing in line to be accepted for voting.

Recently, elections integrity has been a high-profile subject. Be prepared for the potential of possible baiting you with political questions or voters asking about your political views. Voters may ask for your opinion on candidates and political measures. Politely refrain from engaging in political discussion.

Lastly, a voter may not be arrested during the voter's attendance at an election and while going to and returning from a polling place except for treason, a felony, or a breach of peace. [Tex. Elec. Code Sec. 276.005]. A person who is arrested at a polling place while voting or waiting to vote shall be permitted to vote, if entitled to do so, before being removed from the polling place. [Tex. Elec. Code Sec. 32.075(d)].

### **Post-Voting Period**

After election day, your office may be asked to escort essential election personnel to specific locations. Our office recommends keeping in close contact with your county election officials to determine where your deputies are needed.

Please be aware that the early voting clerk delivers the voted ballots, the key to the double-locked ballot box, etc., to the early voting ballot board at the time or times specified by the presiding judge of the early voting ballot board, during the hours the polls are open or as soon after the polls close as practicable. [Tex. Elec. Code Secs. 87.021, 87.022]. The custodian of the key to the second lock of the double-locked early voting ballot box delivers his or her key to the presiding judge of the early voting ballot board on request of the presiding judge. [Tex. Elec. Code Secs. 85.032(d), 87.025]. **For county elections, elections ordered by the governor, and primary elections, the custodian is the sheriff, or in a year when the office of sheriff is on the ballot, the county judge.** If you have any questions on this procedure, please contact our office or your county election officer.

At the close of each election, our office recommends scheduling a meeting with the county election officer to go over the events of the election. This can help both you and your county determine what needs improvement before the next election.



## RELEVANT ELECTION LAWS AND PROCEDURES FOR THE VOTING PERIOD

### Firearms in a Polling Location

Section 46.03(a) of the Texas Penal Code generally prohibits a person from bringing a firearm onto the premises of a polling place. However, this prohibition does not apply to a peace officer, regardless of whether the police officer is on or off duty. For this and other potentially applicable exceptions, see Tex. Pen. Code Sec. 46.15. The legislation allowing open carry of handguns does NOT change the law as it pertains to guns in the polling place; thus no one except licensed peace officers may carry handguns into the polling place.

The Office of the Attorney General concluded in [Opinion No. KP-0212](#) that because a presiding election judge has the same power of a district judge to enforce order and keep the peace, it is likely that Section 46.03 of the Penal Code does not apply to presiding election judges that are licensed to carry a handgun under Chapter 411 of the Government Code when they are performing their law enforcement duties under Section 32.075 of the Texas Election Code. This means that a presiding judge that possesses a handgun license is permitted to carry a handgun while serving as an election judge on election day in limited circumstances.

The Office of the Attorney General has made several distinctions with respect to the types of polling places at which a presiding judge may carry a handgun.

### *Public Buildings*

A state agency or political subdivision may not prohibit the carrying of handguns on the property it owns or leases unless Penal Code Section 46.03 expressly allows the prohibition. The express prohibition affected by this decision is discussed below under “Higher Education Institutions.” Generally, presiding judges are permitted to carry a handgun at polling places that are located in public buildings.

### *Public Schools*

As public schools are located on property that is owned or leased by a governmental entity, presiding judges are not prohibited from carrying a handgun in a polling place located in a public school. However, Section 37.125 of the Education Code makes it an offense to intentionally exhibit a firearm “in a manner intended to cause alarm or personal injury” on school property.

- Our office recommends that if a presiding judge chooses to carry a firearm to the polling place in a public school, they should only carry a concealed weapon to avoid a conflict with Section 37.125 of the Education Code. Otherwise, the presiding judge may risk committing an offense which could potentially impede the judge from completing their duties as an election judge.

Local school districts can adopt a policy that authorizes certain school district personnel to possess a firearm on the school’s premises. [Tex. Penal Code Sec. 46.03(a)(1)(A)]. Those individuals are **not** permitted to bring their handguns with them into a polling place that is located on the school property. The area that contains the polling place is governed by different rules than the school. There is nothing that would provide armed school district employees with authority to carry their weapons in the polling place itself or in the electioneering area.



### *Private Property*

If a polling place is located on private property and the owner or someone acting on authority of the owner provides proper notice, then the carrying of weapons is prohibited on their premises. This notice can take different forms. First, if the property has a posted “30.06 or 30.07” sign on their premises, this would constitute sufficient notice that carrying a handgun is prohibited. Additionally, the owner of the building may provide such notice to the election official orally.

- Our office recommends that election officials (the authority conducting the election) that are using private property as polling places confirm in writing prior to election day if the private property owner will permit election judges to carry a handgun on the premises. The written agreement or contract between the election official and the building owner should specify whether the presiding judge is permitted to carry a handgun on the premises.
- If the building owner does NOT permit the carrying of a handgun, we also recommend that the document contains language that indicates that pursuant to Section 30.06(b) and 30.07(b) of the Texas Penal Code, the owner of the private property authorizes the election official to act for the owner to provide notice to the presiding judge of the prohibition of carrying weapons on the property. If applicable, the election official should then provide written notice to the election judges of the prohibition. For these reasons, if an issue arises, we recommend contacting your local county election official to determine if there is an agreement in place.

### *Higher Education Institutions*

Section 46.03 of the Texas Penal Code specifically prohibits a licensed gun-holder from openly carrying a handgun on the premises of both public and private institutions of higher education. Additionally, Section 46.03 also prohibits an election judge from carrying a concealed handgun in a location on campus where the institution has prohibited the carrying of a handgun by rule. If you are using a building on the premises of a higher education institution, we would advise you to consult with the owner of the building to determine if they have enacted a rule prohibiting the concealed carrying of a handgun. If they have such a rule, then election judges are not permitted to open carry or conceal carry a handgun on the premises.

### **Electioneering**

Each early voting and election day polling place must be organized with 100-foot distance markers posted at surrounding outside entrances to the building. During the voting period and inside this protected area, it is **prohibited** to electioneer, including expressing preference for or against any candidate, measure, or political party, regardless of whether they are or are not on the ballot, or relating to the conduct of an election. A violation is a Class C misdemeanor. [Tex. Elec. Code Secs. 61.003, 85.036].

Please note that the early voting clerk and the presiding judge of each polling place, as appropriate, have the authority of a district judge while serving in that capacity. This authority enables the early voting clerk or the presiding judge, as appropriate, to use his or her discretion to ensure the safety and efficiency of the early voting and election day polling place and the surrounding 100-foot area. [Tex. Elec. Code Secs. 32.075, 81.002].

However, while an election judge or early voting clerk has the authority to ensure that electioneering is not occurring within the distance set by the 100-foot marker, Section 32.075(e) of the Code specifically states that a presiding judge may not enforce electioneering provisions outside of the 100-foot distance markers. The same prohibition applies to an early voting clerk, per Section 81.002 of the Code.



During an election, your office may get calls from concerned voters or your county election officials informing you that voters are being intimidated or harassed outside the 100-foot area. As stated above, the election judge and the early voting clerk may not enforce any electioneering provisions outside the 100-foot area. However, if your office determines there is a legitimate concern for a voter's safety or right to vote, an action must be taken to preserve the peace at that particular location.

Lastly, our office has received calls asking if police officers who go to vote while in uniform can be considered electioneering. An officer wearing their uniform while voting is not electioneering and therefore they should not be instructed that they must change before voting.

### **Curbside Voting**

During the voting period, your office may receive calls about voters being harassed when they are attempting to vote curbside. A voter is able to vote curbside if a voter is physically unable to enter the polling place without personal assistance or likelihood of injuring the voter's health. Nothing in the Election Code permits someone to question a voter's health if they are voting curbside.

When individuals vote curbside, their car becomes their voting station. Curbside voters must be afforded the opportunity to vote their ballot privately (in the same way as a voter in the voting booth) and thus are entitled to vote without the interference of campaigns or bystanders. Per Section 32.075 of the Election Code, the presiding judge has the authority to preserve order and prevent breaches of peace if there are individuals harassing voters while they vote curbside.

### **Devices Not Permitted in a Polling Location**

Persons are not allowed to use wireless communications devices within 100 feet of the voting stations. Additionally, persons are not allowed to use mechanical or electronic devices to record sound or images within 100 feet of the voting stations. This prohibition of certain devices also extends to poll watchers. [Tex. Elec. Code Secs. 61.014, 81.002]. As a reminder, the presiding judge of a polling location is charged with keeping the peace. If a voter refuses to put an item away, your office may be called to assist the presiding judge.

### **Sound Amplification Devices**

It is also prohibited to use a sound amplification device to electioneer within 1,000 feet of the early voting or election day polling place; per Section 61.004 of the Code, a violation of this provision is a Class C misdemeanor. The same prohibition applies to an early voting clerk, per Section 81.002, Election Code. Although the enforcement authority is limited to the 100-foot area, the election judge or early voting clerk may address a violation of this law if the sound is heard within the 100-foot area. As a practical matter, the focus of the election judge and early voting clerk will be on the polling area and surrounding 100-foot area. For these reasons, our office recommends that the judge may contact law enforcement to enforce the sound amplification device rule.

### **Exit Polling**

An exit poll is informal poll taken as people leave the polling place. Exit polls are used to predict the outcome of the election or gather other information before the polls are closed.

The policy of the Texas Secretary of State **is to permit** non-disruptive exit polling without electioneering within the 100-foot boundaries surrounding each early voting and election day polling place.



Note that the early voting clerk or presiding judge at each polling place, as appropriate, must determine that such exit polling does not constitute either (1) “loitering” in violation of Section 61.003(a) of Tex. Elec. Code or (2) a disruption of order or a contribution to a breach of the peace at the early voting or election day polling place in violation of Section 32.075(a) of Tex. Elec. Code, as applicable to early voting under Section 81.002 of Tex. Elec. Code. [Tex. Elec. Code Secs. 61.003(a), 32.075, 81.002].

The judge has discretion to tell persons conducting exit polls to go beyond the distance markers if their activities are disruptive to voters.

### **Revealing Information**

No one connected with the conduct of the election may reveal any of the following information while the polls are open:

- The names of voters who have or have not voted in the election. [Tex. Elec. Code Sec. 61.007(a)(4)].
- The number of votes cast that have been received for individual candidates and/or for or against propositions. [Tex. Elec. Code Sec. 61.007(a)(1)].
- A candidate’s position relative to other candidates in the tabulation of the votes or whether a measure is passing or failing. [Tex. Elec. Code Sec. 61.007(a)(2), (3)].

Unlawfully revealing the above information is a Class A misdemeanor. [Tex. Elec. Code Sec. 61.007(b)].

### **Influencing a Voter**

No one connected with the conduct of the election may indicate by sign, symbol, word, or writing to any voter how he or she should or should not vote. [Tex. Elec. Code Sec. 61.008].

This includes:

- interpreters;
- assistants [Tex. Elec. Code Sec. 64.034];
- poll watchers [Tex. Elec. Code Sec. 33.058(a)]; and
- inspectors.

An offense under this section is a Class B misdemeanor. [Tex. Elec. Code Sec. 61.008(b)]. Questions or clarification should be directed to the election judge.

### **Arrests**

A person who is arrested at a polling place while voting or waiting to vote shall be permitted to vote, if entitled to do so, before being removed from the polling place. [Tex. Elec. Code Sec. 32.075(d)]. Additionally, Texas Election Code Section 276.005 provides that a voter may not be arrested during the voter's attendance at an election and while going to and returning from a polling place except for treason, a felony, or a breach of peace.

### **Petition Signature Gathering**

Candidates or any persons who wish to gather petition signatures must do so beyond the 100-foot distance markers. Petition signatures for any type of election may not be collected inside the early voting or election day polling place or within the 100-foot distance markers. Petition gathering is considered electioneering for or against a measure, which is prohibited within the 100-foot distance marker. [Tex. Elec. Code Secs. 61.003, 85.036].





## Persons Allowed in Locations Related to Elections

The Election Code lists individuals who are permitted to be lawfully present in certain locations related to elections [Tex. Elec. Code Secs. 61.001, 87.026, 127.008].

### *Polling Place/Early Voting Locations*

The following individuals may be lawfully present in a polling place from the time the presiding judge arrives until the precinct returns have been certified and the election records have been assembled for distribution following the election:

1. an election judge or clerk;
2. a watcher;
3. the secretary of state;
4. a staff member of the Elections Division of the Office of the Secretary of State performing an official duty in accordance with the Election Code;
5. an election official, a sheriff, or a staff member of an election official or sheriff delivering election supplies;
6. a state inspector;
7. a person admitted to vote;
8. a child under 18 years of age who is accompanying a parent who has been admitted to vote;
9. a person providing assistance to a voter under Sections 61.032 or 64.032;
10. a person accompanying a voter who has a disability;
11. a special peace officer appointed by the presiding judge under Section 32.075;
12. the county chair of a political party conducting a primary election, as authorized by Section 172.1113;
13. a voting system technician, as authorized by Section 125.010;
14. the county election officer, as defined by Section 31.091, as necessary to perform tasks related to the administration of the election; or
15. a person whose presence has been authorized by the presiding judge in accordance with the Election Code.

No one may be permitted to be inside the polling place unless specifically authorized by law. [Tex. Elec. Code Sec. 61.001]. Election officers (other than the precinct election judge and clerks), party officials, or members of the media are **not** permitted to be in the polling place unless they are voting or fall into one of the other groups of persons listed above, who are permitted to be in the polling place.

Loitering within 100 feet of an outside door through which a voter may enter during the voting period is prohibited. [Tex. Elec. Code Sec. 61.003]. An offense under Tex. Elec. Code Section 61.003 is a Class C misdemeanor. [Tex. Elec. Code Sec. 61.003(c)]. The presiding judge, in their discretion, may have someone removed from the premises if it is determined that the individual is loitering in violation of Section 61.003 of the Code.

It is a Class C misdemeanor for a candidate to be present in a polling place during early voting or on election day, unless the candidate is voting, assisting a voter, or conducting official business within the building in which the polling place is located. Additionally, the candidate will not violate this provision if he or she is not engaged in campaign activity, and is not within plain view or hearing of persons waiting to vote or persons voting. [Tex. Elec. Code Sec. 61.001].



The Election Code provides that a county chair may be in a polling place during the primary election. Note that the provision does not provide that a county chair may be in the polling place during other elections. A county chair may enter the polling place to vote. [Tex. Elec. Code Sec. 172.1113].

## **RELEVANT ELECTION LAWS AND PROCEDURES FOR THE POST-VOTING PERIOD**

### **Posting of a Licensed Peace Officer Required at Central Counting Station (if applicable)**

A central counting station (CCS) is the place on election night where ballots are counted, vote totals are accumulated, and the unofficial elections results are generated. Some counties may establish more than one central counting stations. The authority adopting an electronic voting system for use in an election may establish one or more central counting stations for counting the ballots if the voting system is designed to have ballots counted at a central location. [Tex. Elec. Code 127.001].

The general custodian of election records must post a licensed peace officer at the central counting station to ensure the security of ballot boxes containing voted ballots throughout the period of tabulation at the central counting station [Tex. Elec. Code Sec. 127.1232].

The licensed peace officer must be posted whenever the central counting station is convened, including when the central counting station convenes for counting before election day (in a county with a population of 100,000 or more) or when the central counting station convenes after election day to count provisional ballots, late-arriving mail ballots, and/or corrective action mail ballots. A licensed peace officer is not required to be posted when the central counting station has not convened. A licensed peace officer is also not required to be posted at the early voting ballot board (EVBB), the signature verification committee (SVC), or at any location other than the central counting station. [Tex. Elec. Code Sec. 127.1232].

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

### **Persons Allowed in the Central Counting Station**

Section 127.008 of the Texas Election Code provides a list of individuals who may be present in the central counting station. No unauthorized persons may be present in the central counting station. The following individuals are permitted to be present in the central counting station under Tex. Elec. Code Section 127.008:

- a counting station manager;
- a tabulation supervisor;
- an assistant to the tabulation supervisor;
- a presiding judge or clerk;
- a watcher;
- a state inspector;
- a voting system technician, as authorized by Tex. Elec. Code Sec. 125.010;
- the county election officer, as defined by Tex. Elec. Code Sec. 31.091, as necessary to perform tasks related to the administration of the election;
- or a person whose presence has been authorized by the counting station manager in accordance with the Election Code.



For example, in a primary election, the county chair is permitted to be present in order to supervise the conduct of the primary election and observe the tabulation of results. It is a Class B misdemeanor for a county election officer to prevent a county chair from performing these duties. [Tex. Elec. Code Sec. 31.093(d)].

If a local entity is contracting with a county for election services, the entity's general custodian of election records may be present under the terms of the election services contract.

The presiding judge and clerks must wear a form of identification, prescribed by the Secretary of State, while on duty that indicates the person's name and title or position as an election officer. (State and federal election inspectors, peace officers assigned to the polling place, and poll watchers accepted for service at the polling place are also required to wear name tags.) [Tex. Elec. Code Secs. 33.051(f), 61.010(b), 62.003(c)].

### **Custodian of Ballot Box Keys**

The custodian of the ballot box keys procedure is outlined under Texas Election Code Sec. 66.060 (Delivery and Preservation of Key to Ballot Box No. 3). The Code designates that the following individual will act as the custodian of keys for the following types of elections:

#### *The Sheriff*

In an election ordered by the governor or a county authority or for a primary election, except that in a year in which the office of sheriff is regularly on the ballot, the presiding judge shall deliver the key to the county judge, and if both those offices are on the same ballot because of the filling of an unexpired term, the key shall be delivered to the county auditor or to a designated member of the commissioners court who is not on the ballot and who is appointed by the court if the county does not have a county auditor.

#### *The Chief of Police or City Marshal*

In an election ordered by a city authority.

#### *The Constable of the Justice of the Peace Precinct in which the office of the political subdivision's governing body is located*

In an election ordered by an authority of a political subdivision other than a county or a city. If the office of constable is vacant, the sheriff of the county in which the governing body's office is located, for an election ordered by an authority of a political subdivision other than a county or city.



## **TEXAS LAWS AND REGULATIONS PERTAINING TO ELECTIONS**

### **Bribery**

[Tex. Penal Code Sec. 36.02] – Felony of the second degree.

### **Bystanders Excluded; Unlawful Presence of Candidate**

[Tex. Elec. Code Sec. 61.001] – Class C misdemeanor.

### **Coercion of Public Servant or Voter**

[Tex. Penal Code Sec. 36.03] – Class A misdemeanor unless the coercion is a threat to commit a felony, in which event it is a felony of the third degree.

### **Delivery and Preservation of Key to Ballot Box**

[Tex. Elec. Code Sec. 66.060] – Class B misdemeanor.

### **Election Fraud**

[Tex. Elec. Code Sec. 276.013] – Class A misdemeanor; criminal attempt constitutes a Class B misdemeanor; Enhanced IAT/Elected Official IAT constitutes a state jail felony.

### **Electioneering and Loitering near Polling Place**

[Tex. Elec. Code Sec. 61.003] – Class C misdemeanor.

### **Engaging in Organized Election Fraud Activity**

[Tex. Elec. Code Sec. 276.012] – One category of offense higher than most serious offense committed.

### **Failure to Deliver Election Returns and Voted Ballots**

[Tex. Elec. Code Sec. 66.054] – Class B misdemeanor.

### **Failure to Distribute or Deliver Supplies**

[Tex. Elec. Code Sec. 51.010] – Class C misdemeanor.

### **Illegal Voting**

[Tex. Elec. Code Sec. 64.012] – Felony of the second degree; criminal attempt constitutes a state jail felony.

### **Law Enforcement Duties and Powers**

[Tex. Elec. Code Sec. 32.075] – No category of criminal offense.

### **Misrepresentation of Petition**

[Tex. Elec. Code Sec. 501.029] – Class B misdemeanor.

### **Obstructing Distribution of Supplies**

[Tex. Elec. Code Sec. 51.011] – Class C misdemeanor.

### **Operating Equipment and Handling Ballots Restricted**

[Tex. Elec. Code Sec. 127.127] – No category of criminal offense.



### **Retaliation Against Voter**

[Tex. Elec. Code Sec. 276.001] – Felony of the third degree; criminal attempt constitutes a Class A misdemeanor.

### **Security of Ballots, Ballot Boxes, and Envelopes**

[Tex. Elec. Code Sec. 61.005] – Class A misdemeanor.

### **Tampering with Direct Recording Electronic Voting Machine**

[Tex. Penal Code Sec. 33.05] – Felony of the first degree; criminal attempt constitutes a felony of the third degree.

### **Unauthorized Posting of Signs Prohibited**

[Tex. Elec. Code Sec. 62.013] – Class C misdemeanor.

### **Unlawful Assistance**

Tex. Elec. Code Sec. 64.036] – Class A misdemeanor.

### **Unlawful Buying and Selling of Balloting Materials**

[Tex. Elec. Code Sec. 276.010] – state jail felony; Class B misdemeanor in certain circumstances.

### **Unlawful Operation of Sound Amplification Device or Sound Truck**

[Tex. Elec. Code Sec. 61.004] – Class C misdemeanor.

### **Unlawful Removal from Ballot Box**

[Tex. Elec. Code Sec. 276.003] – Class A misdemeanor.

### **Unlawfully Accepting or Refusing to Accept Voter**

[Tex. Elec. Code Sec. 63.012] – Class A misdemeanor.

### **Unlawfully Depositing Ballot**

[Tex. Elec. Code Sec. 64.011] – Class B misdemeanor.

### **Unlawfully Divulging Vote**

Tex. Elec. Code Sec. 61.006] – Felony of the third degree.

### **Unlawfully Influencing Voter**

[Tex. Elec. Code Sec. 61.008] – Class B misdemeanor.

### **Unlawfully Permitting or Preventing Deposit of Ballot**

[Tex. Elec. Code Sec. 64.010] – Class A misdemeanor; criminal attempt constitutes a Class B misdemeanor.

### **Unlawfully Prohibiting Employee from Voting**

[Tex. Elec. Code Sec. 276.004] – Class C misdemeanor.



### **Unlawfully Revealing Information before Polls Close**

[Tex. Elec. Code Sec. 61.007] – Class A misdemeanor.

### **Use of Certain Devices**

[Tex. Elec. Code Sec. 61.014] – No category of criminal offense.

### **Vote Harvesting**

[Tex. Elec. Code Sec. 276.015] – Felony of the third degree.

### **Voter's Privilege from Arrest**

[Tex. Elec. Code Sec. 276.005]

### **Wearing Name Tag or Badge in Polling Place**

[Tex. Elec. Code Sec. 61.010] – Class C misdemeanor.



## **APPENDIX A: FREQUENTLY ASKED QUESTIONS**

### **Is it electioneering if law enforcement officers wear their uniforms to the polling location while they vote?**

No, there is nothing in the Election Code that would prohibit law enforcement officers from voting in their uniforms as long as the uniform does not advocate for or against any item on the ballot.

### **Is there authority for someone to enter into a state or county building and declare that they are a constitutional auditor?**

No, there is no authority for someone to claim they are a constitutional auditor. If a person wishes to review records from a state or county agency, they must submit a public information request. Refusal to leave the building may lead to a trespass charge.

### **Is there a provision in the Election Code that makes it a crime for a candidate for leave their signs out too long or set them up too early?**

There is no provision in the Election Code related to this hypothetical. However, your office may review a county or city ordinances that criminalize this behavior.

### **How does residency work as it relates to elections?**

Because the description of residence is a statement based on the voter's life experience and intent (both questions of fact known to the voter), we cannot tell you what to call home.

With that in mind, here is some guidance about Texas residence law. The voter makes the judgment call about the voting residence, based on the facts known to him or her, and decides which location is the one that can most accurately be described as the home to which the voter intends to return (for example, a family home you routinely go to during the holidays). [Tex. Elec. Code Sec. 1.015].

For voters who move around a lot, the voter is essentially describing what they consider "home base." Though the voter has broad latitude to make this factual statement, under our state law, you cannot describe a location you have never personally been to. However, if a voter has a family home which they have actually been to, and which they feel they can accurately describe as their home in Texas, a court likely would presume in the voter's favor.

### **When do we call the Secretary of State? When do we contact the Texas Ethics Commission?**

The Secretary of State's office should be contacted if there is a Texas Election Code question that is not related to campaign matters. The Texas Ethics Commission is the agency responsible for reviewing all campaign finance and political advertising issues and filings. They also address ethics violations. Therefore, questions regarding campaigning or fundraising would need to be directed to the Texas Ethics Commission by phone at 512-463-5800 and email at [reception@ethics.state.tx.us](mailto:reception@ethics.state.tx.us).

### **Does the Secretary of State prosecute election crimes?**

Our office does not prosecute or investigate election crimes. In order to initiate the complaint process, a written and signed complaint must be filed with the Secretary of State. The complaint must allege the violation with particularity, identify the person(s) or entity responsible for the alleged violation, and contain a reference to the section of the Code alleged to have been criminally violated, if known.



Pursuant to Section 31.006 of the Texas Election Code, the Office of the Secretary of State has the ability to refer elections complaints to the Office of the Attorney General. If, after receiving a complaint alleging criminal conduct in connection with an election, the Secretary of State determines that there is reasonable cause to suspect that the alleged criminal conduct occurred, the Secretary of State shall promptly refer the complaint to the Attorney General. The Secretary of State shall deliver to the Attorney General all pertinent documents in the Secretary of State's possession.

### **What is the best way to contact the Secretary of State?**

Our office can be reached by phone at 800-252-VOTE and email at [elections@sos.texas.gov](mailto:elections@sos.texas.gov). If our office misses your call, you can leave a voicemail and someone who can help you will call you back as soon as we can. Additionally, our office is staffed from 7 a.m. through 7 p.m. on election day.

### **Should I contact my county or the Secretary of State first in an emergency situation?**

Your office should be in close contact with your local county election office first because they may have a plan in place depending on the situation.

