

The County's Role in Primary Elections



2023 Election Law Seminar for
County Election Officials

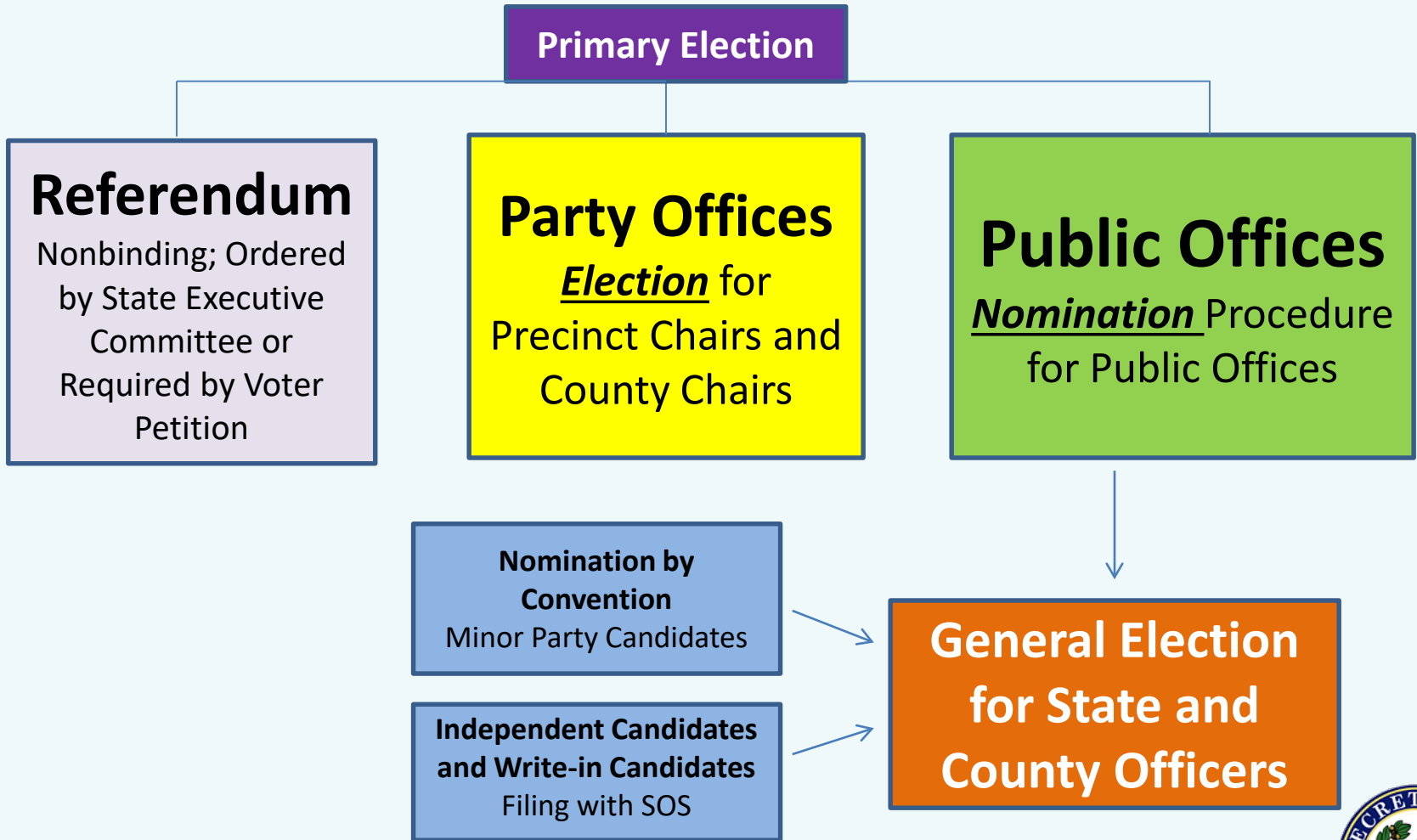


What is a Primary Election?

- Party Offices: Election for precinct chairs and county chairs.
- Public Offices: Nomination procedure for public offices.



Purpose of Primary Election



Who is the Early Voting Clerk?

The County Clerk/Elections Administrator is the early voting clerk for the following elections:

- General Election for State and County Officers
- **A Primary Election**
- Special Election Ordered by the Governor
- Any Countywide Election held at county expense

[Sec. 83.002 of the Texas Election Code]



Things the County is Required to do by Statute

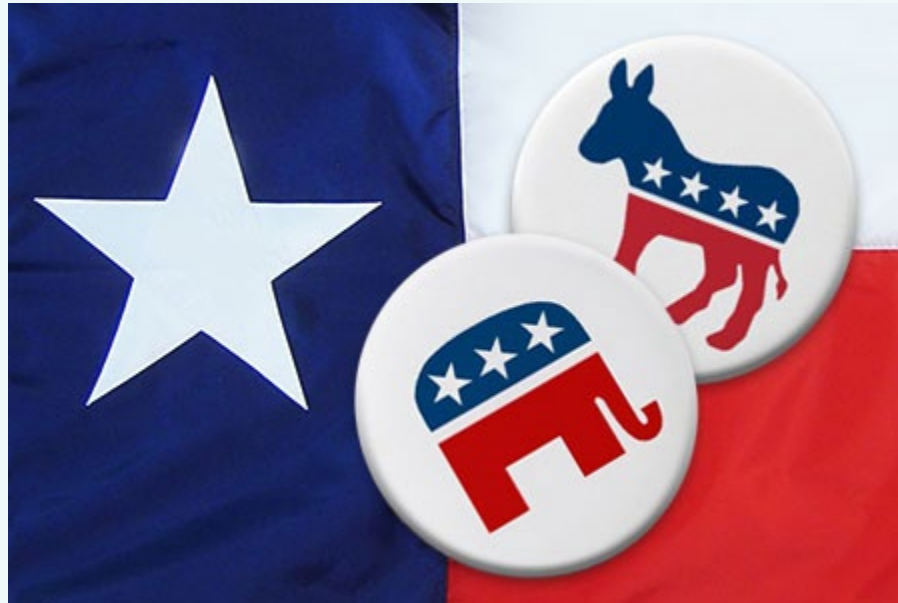
- Early voting
- Posting certain notices
- Entering unofficial tabulation of results
- Voter registration duties
- Receiving certain filings from independent candidates



Things the County May NOT Do

- The county is NOT the filing authority
 - May not accept candidate applications, review candidate applications, or reject candidate applications
- Conduct the Ballot Drawing
- Canvass(ish)





WORKING WITH THE PARTIES



Joint Primaries: Yes or No?

- The county election officer is required to hold a meeting with the county chair of each political party to discuss whether a joint primary election will be held.
 - If yes, then discuss:
 - Potential consolidation of election precincts (**NEW LAW**: precincts cannot be combined in a primary);
 - The number of election judges and clerks, members of EVBB, and central counting station personnel; and
 - Which voting system and ballot formats will be used
 - If no, then discuss whether a contract for election services should be entered into, including:
 - The terms of the contract;
 - Potential consolidation of election precincts (**NEW LAW**: precincts cannot be combined in a primary);;
 - The number of election judges and clerks, members of EVBB, and central counting station personnel; and
 - Which voting system and ballot formats will be used
- The county election officer shall deliver written notice of the time and place of meeting no later than 72 hours before the meeting
 - Notice may be delivered by US mail, e-mail, or other method of written communication



What if there is no party chair?

- Candidate Applications
 - If a county executive committee for a political party does not exist, the party shall establish a temporary county executive committee
 - The state executive committee or state chair shall appoint the temporary county chair [Sec. 171.027]
- Contract for Election Services
 - If the office of county chair is vacant and the party is unable to establish a temporary executive committee, then on request by the state chair the CEO shall contract with the state chair to hold a primary election [Sec. 172.128]



Joint Primary v. Contracting

- Not all primaries where parties share polling places is a joint primary
- A joint primary requires *approval*
 - Majority of commissioners, CEO and party chairs
- A joint primary uses a *single set of workers*
 - If you have two sets of everything, you aren't holding a joint primary!



Contract for Election Services

- A ***contract for election services*** is a contract between the county executive committee of a political party holding a primary in the county and the county election officer for specific election services that the county election officer would perform in a countywide election (equipment, ballot programming, etc.).



Joint Primary Agreement

- A ***joint primary election agreement*** is when two political parties, who are holding primary elections, jointly hold the election in common precincts. The joint election agreement must be by written joint resolution and approved by majority vote of full commissioners court and unanimously approved by the county elections officer and county chairs of participating parties.



Contracting vs. Joint Election

| | Contract for Services | Joint Primary Election Agreement |
|----------------------------|--|---|
| Parties | County, Party | County and Both Parties |
| Approval | <ul style="list-style-type: none"> County election officer and county executive committee. | <ul style="list-style-type: none"> Majority of full commissioners court and unanimous approval of county elections officer and participating county chairs |
| Duty of County to Contract | <ul style="list-style-type: none"> Yes, for everyone | <ul style="list-style-type: none"> No duty to have a joint primary election |



Leasing Equipment

- The **county executive committee of a political party** may lease equipment from the **county** in which it is located.
 - If a political party wishes to lease election equipment owned by the county, the county **must** lease the equipment under the terms agreed to by both parties to the leasing agreement.
- The county may charge the political party a **fee for leasing** the equipment.
 - The maximum amount that may be charged to a county executive committee leasing equipment is \$5 for each unit of electronic voting system equipment installed at a polling place and \$5 for each unit of other equipment.

[Sec. 123.033]



Primary Finance

- Pursuant to the Election Code, only expenses necessary for, and directly related to, the conduct of primary elections are payable from primary funds. Some examples of non-payable expenses include:
 - Early voting expenses – except for ballots (i.e., the costs to print ballots) and early voting ballot board expenses;
 - Duties a county election officer is statutorily required to perform as well as salaries of county personnel during regular business hours;
 - Voting by mail kits and postage related to mail ballots

For more information, please see our [Primary Finance Expenditure and Reporting Guidelines](#) or contact EFM 800-252-2216 (option 3 for Election Funds Management)



VOTER REGISTRATION



Voter Registration Applications

- The voter registrar must process new voter registration applications and updates
 - Monday, February 5, 2024 (deadline for March 5 Primary)
 - Monday, April 29, 2024 (deadline for May 28 Primary Runoff)



NOTICES



Notice Requirements

- The county is responsible for posting several forms of notice on the county's website, regardless of whether the parties have contracted with the county for election services
- Those notices include:
 - Notice of Election (4.003)
 - Notice of Consolidated Precincts (4.003, 172.1112)
 - Early Voting Notices under 85.007 (e.g., weekend days/hours)
 - Early Voting Rosters updated daily and posted on county website (87.121)
 - Notice of Death, Withdrawal, or Ineligibility (172.055)
 - Notice of Nearest Polling Place (countywide counties only) (43.007)
 - Notices for testing voting system equipment (127.096, 129.023)
- The county may also be responsible for other notices as a result of any contract with the parties
 - e.g., any notices that must be posted by the Early Voting Clerk



Notice of Election

Election Notice **must** state:

- The type and date of the election;
- The location of the main early voting polling place, including the street address, room number, and building name. **The notice must designate which location is the main early voting polling place**
- The location of each polling place, including the street address, room number, and building name;
- The hours the polls will be open;
- The regular dates and hours for early voting by personal appearance;
- The dates and hours of any Saturday or Sunday early voting;
- The early voting clerk's official mailing address or street address at which the clerk may receive delivery by common or contract carrier, if different, phone number, e-mail address, and the Internet website, if the early voting clerk has an Internet website;
- We **recommend** that the information regarding branch early voting locations be included as part of your notice; and
- Any other information required by other law.

Additionally, the notice **must** be posted on your website!

[Sec. 4.004]



Early Voting and Election Day Rosters

- EV clerks shall maintain roster for each election listing who votes early in person, and who is mailed a ballot by mail.
- Roster must be updated daily. Roster must include:
 - Name and VUID
 - Voter’s county election precinct of registration
 - Date of voting by personal appearance or date ballot was mailed to the voter
- Recommendation: We recommend that you create two rosters for your mail ballots—one for ballots that have been mailed but not returned, and a separate list of ballots by mail that have been received.

[Sec 87.121]



Early Voting and Election Day Rosters

- Information on the roster for:
 - A person who votes an early voting ballot by personal appearance must be made available for public inspection not later than 11:00 a.m. on the day after the date the information is entered on the roster
 - A person who votes an early voting ballot by mail must be made available for public inspection not later than 11:00 a.m. on the day following the day the EV clerk receives a ballot voted by mail
 - For a **primary election** or the GESCO, election day information must be submitted to the SOS for posting no later than 11:00 a.m. on the day after the election
 - If the CC/EA is the early voting clerk, the information above must be posted on the county's website or, if none, on the bulletin board

[Sec. 87.121]



Early Voting and Election Day Rosters

- If an early voting clerk fails to post their early voting rosters in accordance with Section 87.121, a person registered to vote in the county where the early voting clerk is conducting early voting may file a complaint with the Secretary of State regarding the early voting clerk's noncompliance.

[Sec. 87.121]



WARNING: (1) Knowingly possessing another person's ballot or Carrier Envelope may be a crime unless you provide your signature, printed name and address (2) A person commits an offense if the person compensates another person or receives compensation for depositing a Carrier Envelope in the mail as part of a scheme in which the person is compensated based on the number of Carrier Envelopes deposited. For additional information on offenses related to Carrier Envelopes, please see the "Information About Returning Your Carrier Envelope," included with the materials sent to you with your ballot.

ADVERTENCIA: (1) El acto de poseer conscientemente la boleta o el sobre de envío de otra persona puede ser un delito a menos de que usted proporcione su firma, nombre en letra de molde, y su dirección. (2) Una persona comete un delito si recompensa o recibe compensación a cambio de depositar el sobre de envío en el correo como parte de un plan en el cual la persona es recompensada en base al número de sobres de envío depositados. Para obtener información adicional sobre los delitos relacionados con los sobres de envío, por favor vea la "Información Sobre La Devolución Del Sobre de Envío," incluido con los materiales enviados a usted con su boleta.

6-15
Prescribed by Secretary of State Section
86.013, Texas Election Code
07/2022

Place
Stamp
Here



CARRIER ENVELOPE FOR EARLY VOTING BALLOT
(SOBRE DE ENVÍO PARA LA BOLETA DE VOTACIÓN ADELANTADA)

(Early Voting Clerk
should preprint return address or affix address label)

EARLY VOTING BY MAIL



FPCAs and ABBMs

- Beginning January 1, 2024, the early voting clerk may begin receiving Applications for a Ballot by Mail (ABBM) and Federal Postcard Applications (FPCA) for elections held in 2024
- **FPCA**
 - Available to active duty military, spouses, and dependents voting outside their home Texas county
 - U.S. citizens overseas away from their home Texas county
- **ABBM**
 - 65 years of age or older on Election Day;
 - Sick or disabled;
 - Expecting to give birth within three weeks before or after Election Day;
 - Absent from the county of registration during the Early Voting period and on Election Day;
 - Civilly committed under Chapter 841 of the Texas Health and Safety Code; or
 - Confined in jail, but otherwise eligible.



Notifying Voters of Defects

FPCAs and ABBMs

NEW LAW: No later than the second day after the EV clerk discovers a defect, the EV clerk shall determine if it would be possible for the applicant to correct the defect and return an application form by mail by the 11th day before election day, as applicable; and

- If the clerk determines it **would be possible** to correct the defect and return an application form before the deadline, the EV clerk must either return the defective application to the applicant or deliver an official application form to the applicant
 - The EV clerk must include a written notice containing:
 - (1) a brief explanation of each defect in the noncomplying application;
 - (2) a statement informing the voter that the voter is not entitled to vote an early voting ballot unless the application complies with all legal requirements; and
 - (3) instructions for submitting the corrected application or second application
- If the EV clerk determines that it **would not be possible** for the applicant to correct the defect and return an application form by mail by the 11th day before election day, the clerk may notify the applicant by telephone or email and provide the applicant with the same information above (1-3).
 - The EV clerk must also inform the applicant that the applicant may come to the EV clerk's office by the 11th day before election day and correct the defect in person.
- A voter must also be provided notice about the ability to correct certain defects on the application using the online Ballot by Mail Tracker and if possible, permit the applicant to correct such defects using the tracker



Mailing out Ballots

- FPCA
 - The early voting clerk **MUST** mail ballots to military and overseas voters (who have already submitted an application) by the 45th day before election day
 - If the early voting clerk cannot meet this 45th-day deadline, the clerk **must** notify the Secretary of State within 24 hours
- Ballots by Mail
 - Any application received **before** the 37th day before election day must be mailed to the voter by the 30th day before election day
 - Any applications received **after** the 37th day before election day must be mailed to the voter by the 7th day after the early voting clerk has accepted the application



Notifying Voters of Defects

- **NEW LAW:** If an EV clerk receives a timely carrier envelope that does not comply with the applicable requirements of the Code, the clerk may deliver the carrier envelope in person or by mail to the voter so that the voter may correct the defect.
- Additionally, the EV clerk may notify the voter of the defect by phone and advise the voter that they may come to the EV clerk's office to correct the defect or cancel their ABBM and vote in person.
- The clerk may utilize this provision for defects such as:
 - A missing signature by the voter,
 - A partially completed witness or assistant box (if applicable),
 - Missing or incorrect personal identification information, or
 - A ballot that is not returned in a carrier envelope.
- If the EV clerk notifies a voter of a defect in their carrier envelope by mail, the clerk should include a letter explaining the actions that the voter needs to take to correct and return the carrier envelope.



Ordering a Signature Verification Committee

- The early voting clerk is the authority responsible for determining whether a signature verification committee (SVC) is to be appointed.
 - The early voting clerk does this via a written order
- If created, the county chair is responsible for appointing the members of the SVC



EARLY VOTING IN PERSON



Early Voting Period

General Rule:

- Begins 17 days before election day
- Ends 4 days before election day
- Notable exception:
 - Primary runoff – 10th day before election day to 4th

Early voting for the 2024 Primary Elections:

- March 5, 2024 Primary: begins Tuesday, February 20, 2024* and ends Friday, March 1, 2024
- May 28, 2024 Primary Runoff: begins Monday, May 20, 2024 and ends Friday, May 24, 2024

[Sec. 85.001]



Early Voting Days and Hours

- Early voting by personal appearance must be conducted at the main early voting polling place for at least nine (9) hours each weekday of the early voting period that is not a legal state holiday
 - No voting will occur on Monday, February 19, 2024 because of Presidents' Day*
 - Voting may not be conducted earlier than 6:00 AM or later than 10:00 PM



Extended *Weekday* Early Voting

- **NEW LAW:** All counties (regardless of population) must conduct early voting by personal appearance at the main early voting polling place for **at least 12 consecutive hours on each weekday of the last week of the early voting period.**
 - Voting may not be conducted earlier than 6:00 AM or later than 10:00 PM.



Extended *Weekend* Early Voting

- **NEW LAW:** All counties (regardless of population) must conduct early voting by personal appearance at the main early voting polling place for:
 - **at least 12 consecutive hours** the last **Saturday** of the early voting period
 - Voting may not be conducted earlier than 6:00 AM or later than 10:00 PM.
 - **at least 6 consecutive hours** the last **Sunday** of the early voting period
 - Voting may not be conducted earlier than 9:00 AM or later than 10:00 PM.



Mandatory Temporary Branch Locations

- Counties conducting a **primary election**, general election for state and county officers, or a special election to fill a legislative vacancy **MUST** establish temporary branch polling places as follows:
 - in a county with a population of 400,000 or more, the commissioners court must establish one or more temporary polling places, other than the main early voting polling place, in each state representative district containing territory covered by the election.
 - in a county with a population of 120,000 or more but less than 400,000, the commissioners court must establish one or more temporary polling places, other than the main early voting polling place, in each commissioners precinct containing territory covered by the election.
 - in a county with a population of 100,000 or more but less than 120,000, **the early voting clerk** must establish one or more early voting polling places in each commissioners precinct for which the early voting clerk receives a timely filed written request submitted by at least 15 registered voters of that precinct. The written request must be received in time to enable compliance with Section 85.067 of the Code.



Temporary Branch Locations

- For ALL counties (regardless of population size), early voting by personal appearance at each temporary branch polling location must be conducted on the same days early voting is required at the main early voting location and for at least eight (8) hours each day



Weekend Voting at Branch Locations

- The early voting clerk **is required** to order early voting at each mandatory temporary branch location established under Section 85.062(d):
 - **at least 12 consecutive hours** the last **Saturday** of the early voting period
 - Voting may not be conducted earlier than 6:00 AM or later than 10:00 PM.
 - **at least 6 consecutive hours** the last **Sunday** of the early voting period
 - Voting may not be conducted earlier than 9:00 AM or later than 10:00 PM.
- The early voting clerk **may** order early voting on a Saturday or Sunday at any one or more of the temporary branch locations.



Limited Ballots

- Limited ballots are used when a voter has a registration in a county other than their new county of residence
- Limited ballots are only an option during early voting
 - They cannot be used on election day
- Limited ballots are used only at the main EV location

[Chapters 111 and 112]



Limited Ballots

- To vote a limited ballot, a voter must:
 - Be eligible to vote in the county of registration if they still lived there
 - Be registered to vote in the county of former residence at the time the person:
 - offers to vote in the new county of residence, or
 - submitted a voter registration application in the county of new residence and
 - Their registration will not be effective in their new county of residence by election day
 - A mail voter can also vote a limited ballot
 - However, they **must** meet other requirements to vote by mail under Chapter 82

[Sec. 112.002]



Provisional Ballots

- Provisional ballots must be delivered to the general custodian during or at the end of early voting and election day
- The general custodian then transfers the provisional ballot affidavit envelopes to the voter registrar for review
 - General custodian **MUST** post Notice of Delivery of Provisional Ballot Affidavit Envelopes at **24 hours** before first deliver to the voter registrar
- After the VR completes their review, the provisional ballot affidavit envelopes are transferred to EVBB
- Once EVBB completes its review, the provisional ballot affidavit envelopes are returned to the general custodian
 - General custodian enters in voting history
 - Retains the provisional ballot affidavit envelopes for the retention period



ELECTION DAY



Office Hours

- Must keep Early Voting Clerk's office open from 7 a.m. – 7 p.m. on election day.
- **Must deliver supplies to polling places.**
 - Must securely transport voting systems to polling place and securely store equipment in polling place before voting begins.
 - Must deliver other supplies-forms, booths, etc.

[Secs. 83.011, 51.004]



Election Night Returns (ENR)

- The county is responsible for entering early voting and election day vote totals into the Texas Election Administration Management (TEAM) system on election night



ELECTION SECURITY



Logic and Accuracy Testing

- If the county is using electronic voting equipment, the general custodian is required to conduct both a Logic and Accuracy Test (L&A) and a Test of the Tabulation Equipment
- First Test (Tabulation and L&A)
 - Must be conducted no later than 48 hours before voting begins on the equipment (early voting)
 - Notice of the tests must be published at least 48 hours before the test begins and posted on the county's website. Additionally, the custodian must notify the county chair of the test and the chair must confirm receipt of the notice.
- Second Test
 - Shall be conducted immediately before the counting of ballots or accumulation of vote totals begins
- Third Test
 - Shall be conducted after the counting of ballots or accumulation of vote totals has been completed



Ballot Box Keys

- Requirements for Early Voting
 - Ballot boxes 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.
- Requirements for Election Day
 - Ballot boxes must have a lock with a key that is retained by the custodian of keys under Section 66.060.
 - 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.
- Per Section 66.060: The sheriff is the custodian of keys, except:
 - 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.



Livestreaming and Camera Requirements

- The general custodian in a county with a population over 100,000 shall establish a video recording system that must be made available as a livestream that captures all areas containing voted ballots from the time that the ballots are first delivered to:
 - Early Voting Ballot Board
 - Signature Verification Committee
 - Central Counting Station
- 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.

[Sec. 127.1232]



POST ELECTION



Canvass

- Local canvass is conducted by county chair (or county chair's designee) and at least one member of the county exec committee, if available
 - CEO will submit canvass report to SOS
 - County chair will certify the canvass report electronically
 - County chair will certify nominees for county/precinct offices electronically via SOS website
- State canvass is conducted by state chair
 - State canvass is based on county canvass reports
 - State chair will certify nominees for district and statewide offices electronically via SOS website



Partial Manual Count

- If the county tabulated their ballots using an optical/digital scanner, then the general custodian must conduct a partial manual count after the election



Voting History and Record Retention

- Voting History
 - The general custodian must submit voting history to the SOS no later than the 30th day after election day [Sec. 18.069]
- Record Retention
 - All election records must be preserved for 22 months after election day
 - Election results must be permanently maintained in the election register [Sec. 67.006]



Any Questions?

Elections@sos.texas.gov

