

# Chain Of Custody Best Practices

Election Law Seminar

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# Chain of Custody

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- Secretary of State's Office for 3 years
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- Table Top the Vote – State of Texas Facilitator 2020
- C.E.R.A. Certification 2009
- Poll Worker in Travis County 22 years
- Bluebonnet Girl's State Delegate 1982
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# Chain of Custody

Chronological documentation or paper trail that records the sequence of packaging, **custody**, control, transportation, transfer, analysis, storage and disposition of physical or electronic evidence



In the Elections World...

- Chain of Cust**today**



# Chain of Custoday

- CUSTODAY – Where is it right now, Today!!!
  - Who is in possession?
  - Are Election Workers documenting seals?
  - Who is keeping an eye on the ballot box?
  - Are all forms being completed to document the transfer, storage and disposition of ballots, equipment and records?
  - Do you know where your chain of custoday documents are after the election?



# Chain of Custody Overview

Topics covered:

- Physical Election Security – In office, Polling Place
- Ballot Programming – In House vs. Vendor Programming
- Logic and Accuracy Testing
- Supply Pick Up and Delivery of Equipment
- Un-voted Ballots
- Seals and Tracking
- Voted Ballots
- Return of Voted Ballots, Records and Equipment
- Electronic Media
- Records Management - Retrieval of records for the Partial Manual Count, Recounts and Election Contests



# Physical Security in Office

- Background checks must be conducted on staff working with the voting system
  - Sec. 129.051(g)
  - Election Advisory No. 2019-23 – Electronic Voting System Procedures
  - **We consider acceptance testing in the same way as other programming, testing and voting functions**
- Consider conducting background checks on all staff and temporary workers
- Employees should wear identification badges at all times
- Locked areas with restricted access/badge controlled access
  - Vault for Ballot by Mail
  - Secure area for storing voted ballots and records during the retention period
  - If storage room is shared with other county departments, consider moving or cordoning off the election equipment.
- Visitor logs
  - **Visitors must also wear badges at all times**
- Escort visitors at all times



# Ballot Programming

## In-House Programming

- Limit the number of people who have access to the ballot programming computer and software
- Secure the ballot programming computer in a locked and secured room that requires a special security code to enter or create a log that tracks who entered and when
- Whenever the ballot is being programmed, make sure two individuals are present at all times to ensure security
- **Determine a secure area to store the programmed media before it is inserted into the voting devices.**
- The general custodian...shall create a procedure for tracking the custody of voting system equipment once the parameters are loaded
  - Election Code Sec. 129.051





# Ballot Programming

## Vendor Programming

- Your vendor's practices are part of the chain of custody
- Ask your vendor what security measures are in place to keep the ballot secure
- Will your programmed ballot information be submitted to you by secure means?
  - **Vendor portal**, encrypted email or in a sealed pouch via Fed Ex or other carrier
- Develop a Vendor Risk Management Policy (Election Security Toolkit)
  - When signing a contract with your vendor, write policies specific to your county in the contract so that you can control the security measures
- Provide a deadline by which the programmed ballot must be received from your vendor
  - **If your vendor has a *first come, first served* policy, try to prepare early and get all your entities to agree to a deadline.**



# Logic and Accuracy Testing

- Ballot must be proofed and tested no matter who programmed it
- Entity Proofing – Have entities come and proof their own language
  - Have entity representative acknowledge that the language is correct by signing an approval sheet
    - Contains printed name and signature
- Logic and Accuracy Testing
  - Proofing L&A
    - Make corrections to ballot before public test
    - Get entity's approval if correction to entity's ballot language
  - Public L&A
    - Hash code validation increases security – You must perform it at the Public L&A Test.
- Each team of testers should sign off on the L&A testing batch sheet
  - Sec. 129.023
- We recommend that you complete the above L&A tests prior to the deadline for mailing FPCA ballots
- Ensure that test materials sealed and documented by two people
- Central Counting Station L&A on election night



# Supply Pick Up

- When election workers pick up supplies, document every piece of equipment taken by the worker
  - Include asset tag numbers
  - Create a scan-out, scan-in system if you have the capability
- Preprint the name of the person designated to pick up supplies on the transfer of custody sheet
  - Ask your judges to call ahead if they intend to designate someone else to pick up supplies
  - It must be an election worker in the polling place
- Require the signature and a printed name of the person picking up
- Chance to do one more quality assurance check to make sure all equipment is present



# Delivery of Equipment to the Polling Place

- Design a Delivery Sheet that accompanies the voting equipment
  - All relevant information should be on the sheet so delivery workers know where to go
    - Name and number of polling location
    - How many pieces of equipment
    - Places for those delivering the equipment to sign
    - Place for the name of the person accepting the delivery
    - Information about where the equipment will be stored
    - A section for notes
  - The person who accepts the delivery must sign the Delivery Sheet
  - The place where the voting equipment is being stored before the election must be documented on the sheet
  - Write down any special instructions to be followed on the first day of Early Voting or on Election Day.



# Unvoted **Regular Paper** Ballots

- Authority responsible for distributing election supplies shall package and seal each set of ballots before their distribution and shall mark the package with the number of ballots enclosed and the range of serial numbers.
  - If the authority conducting is the Early Voting Clerk, ballots allocated for EV need not be packaged this way.
  - Sec. 51.006
- The authority responsible for distributing supplies shall prepare a record of the number of ballots and the range of serial numbers to be distributed to each presiding judge and the early voting clerk. The record of the serial numbers shall be preserved for the period of preserving election records (22 months).
  - Sec. 51.007



## Unvoted **Regular Paper** Ballots

- Many forms in our catalog **are intended to** track information about the official ballot
  - Programming or Printing – Registration of Printers and Vendors (51.013)
    - Only required for Primary and GESCO
  - At a voting site – Record of Ballot Distribution (51.007), Ballot Seal (51.006)
  - In reserve
  - Corrected – Notice of Ballot Correction (52.0061)
  - Destroyed – Notice of Destruction of Ballots, Record of Ballot Destruction (52.0064)
  - Redistributed from Original Location – Record of Ballot Distribution (51.007)
  - Needed to print more ballots – Notice of Ballot Reprint Order (52.0063)



## Unvoted **Regular Paper** Ballots

- Unvoted ballots must be examined by the Deputy Early Voting Clerk (EV) or Presiding Judge (EDay)
  - Sec. 62.007 - Examining Ballots
    - (a) An election officer shall unseal the ballot package, remove the ballots, and examine them to determine whether they are properly numbered and printed
    - (b) An unnumbered or otherwise defectively printed ballot shall be placed in ballot box no. 4
  - **An unnumbered ballot should not be made available to a voter**



# Seals

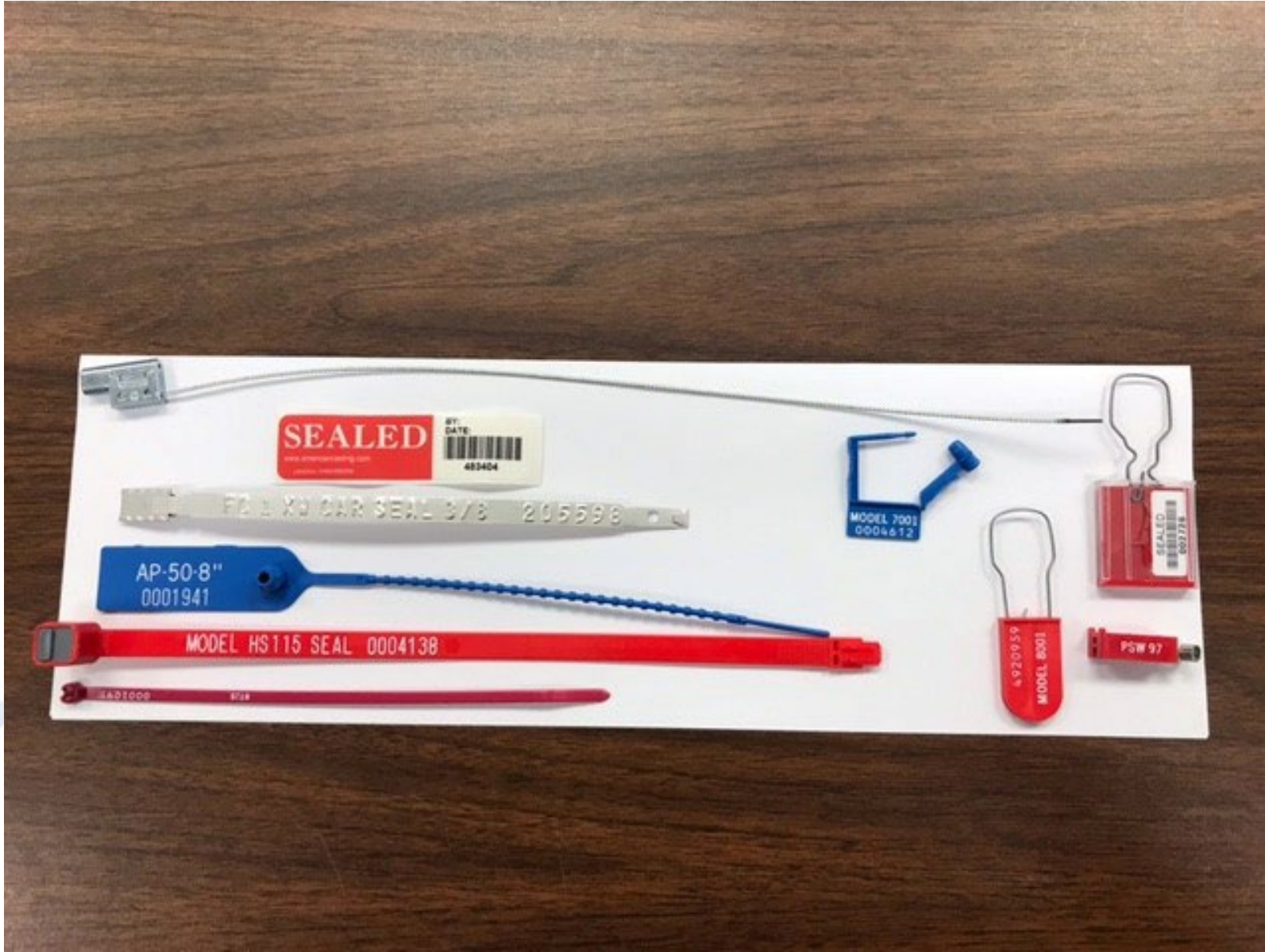
- Prevent tampering
- Show evidence of tampering
- Seal numbers should be assigned and tracked
- Require verification from 2 people
- Signatures of verifiers should be preserved
- Seals must be retained for record keeping
  - Place broken seals in the Seal Assignment Envelope





# Seals







## Seal Assignment Envelopes - EV

- Seals are applied at the elections office and recorded on the Seal Assignment Envelope.
  - Empty envelope is sent to the polling place for the first day of EV.
- Two election workers should verify that the numbers of the seals put on at the elections office match the envelope and that all equipment was securely sealed before opening the polling place.
- After verification, break the seals and place them in the Seal Assignment Envelope for retention with the other records collected throughout the day's voting.
- **Section 85.033 - At the close of early voting each day, the Early Voting Clerk shall secure each voting machine used for early voting in the manner prescribed by the Secretary of State so that its unauthorized operation is prevented. The clerk shall unsecure the machine before the beginning of early voting the following day.**



## Seal Assignment Envelopes - EV

- Provide an envelope that contains the unused seals for each day of Early Voting
  - Each **evening** the seals are put on by the Deputy and Clerks when closing and must be verified the next morning
  - Broken seals should be placed in the envelope for records retention
  - **The Deputy and a Clerk should sign the envelope after the seals are attached to attest to their accuracy and security**
- Leave the envelope in a place where the morning crew can easily find it and verify that the seals are still intact and that the numbers match those listed on the envelope from the night before



## Seal Assignment Envelopes - EV

- Provide spaces for the persons verifying the seals to sign and a place for their printed names
- Have seal numbers preprinted or handwritten on the envelope so there isn't any guessing on the numbers
  - Doesn't matter which day the envelope is used in EV as long as the same seals are still intact the following morning
- Creating the envelope is really easy
  - Some counties may have software to scan the seals so they automatically populate the envelope
  - If your office handwrites the numbers, that's okay too
- Train your workers on this procedure



Early Voting Seal Assignment Envelope		
Early Voting First Day Seals	November 2, 2021	Constitutional Amendment Election
EV (33) Dennis Lay Elementary School	Date of Voting:	Location Code:33

**Instructions:**

1. The Deputy and the Alternate Deputy or Clerk verify that all seals numbers on the equipment match the numbers listed on this envelope.
2. Upon verification, the Deputy and the Alternate Deputy or Clerk must sign the envelope below.
3. If any of the seals numbers do not match, call the Elections Office immediately at 512-555-1212.
4. Place the broken seals in this envelope after removal from the voting equipment.

ES&S Clamshell Seal Number	Deputy Signature	Alt Deputy or Clerk Signature
1200651		

Emergency Compartment Seal Number:	Deputy Signature	Alt. Deputy or Clerk Signature
1200629		

Main Compartment Seal Number:	Deputy Signature	Alt. Deputy or Clerk Signature
1200630		

\_\_\_\_\_  
Printed Name of Deputy

\_\_\_\_\_  
Printed Name of Alt. Deputy or Clerk

File this envelope in the paperwork transfer bag.

If you have any questions, please call the Elections Office at 512-555-1212.



# Seal Assignment Envelopes - EDay

- Seals are applied at the elections office and recorded on the Seal Assignment Envelope
  - Empty envelope is sent to the polling place
- The seals are verified by two election workers when opening the polls and the broken seals are placed in the empty Seal Assignment Envelope
  - File the envelope with all other election paperwork
- Provide a Seal Assignment Envelope that contains the seals that will be placed on the equipment at the conclusion of voting
- Instruct your workers to place the seals on the equipment and document the numbers on the envelope/verify the preprinted numbers
- Now the equipment is ready for transport
  - **Equipment must always be sealed when it is in transport**
- Train your workers on this procedure





# Physical Security in the Polling Place

- The Election Judge is responsible for making the polling place secure.
  - Sec. 62.001(b)
- Election workers are required to wear identification.
  - This clearly shows who is vested with the authority in the polling place.
- **Try to make an clearly marked entry and exit. This helps limits unauthorized entry into the polling place.**
- Presiding Judge commits an offense if the judge fails to prevent a person from handling a ballot box containing marked ballots or provisional ballots in an unauthorized manner. (Sec. 61.005(c))



# Physical Security in the Polling Place

- The Election Judge should limit voter access points to the polling place and make sure the voting area is in view of election officers, watchers and persons waiting to vote.

- Sec. 62.004 (1)(2)



- Work closely with the persons in charge of the site so the site knows what areas the judge plans to block off, if any.
- Election Judge should prohibit entry by those not there to vote.
  - Children under 18 may accompany their parents into a polling location and into the voting booth. (Sec. 64.002(b))
- The ballots, ballot boxes, and envelopes used for provisional ballots at a polling place shall be in plain view of at least one election officer from the time the polls open for voting until the precinct returns have been certified. (Sec. 61.005(b))



## Voted Ballots

- A serial number must appear on an official ballot that is provided to a voter
- The Early Voting Clerk must initial and the EDay Judge must sign the back of all official ballots (stamp still okay)
- Indelible instrument **must be provided for the voter** to mark the ballot, **if regular paper ballots**
- Placed in an opaque, locked and sealed container once voted
- Ballot box and Provisional Ballot container must be kept in view at all times
- Use **the** Register of Official Ballots
- Account for defectively printed, spoiled ballots and thrown out ballots
- The key to the ballot box #3 shall be delivered to an authority whose name is not on the ballot
  - Sec. 85.032 – EV
  - Sec. 66.060 - EDay



# Voted Ballots

- Ballot boxes **must be** sealed **at the conclusion of voting** to prevent unauthorized deposit and must be sealed at all times when in transport or awaiting counting
- Electronic controllers should be sealed and locked where the drives are stored
- Voted ballots or drives should be returned to the custodian by the Election Judge **and another worker from the voting site**
  - **A non-pollworker is not permitted to function as a person returning supplies**
- Paper provisional ballots must be deposited in a secure container, **NOT AN ENVELOPE**
  - **A zippered bag that can be sealed is acceptable**
- Ballots must be locked in their boxes for 60 days and then transferred to a secure container
- DREs - The ballot card containing votes must be labeled, locked and secured in the same manner as paper ballots for the 60 days and then transferred to a secure container on the 61st day



# Unlawfully Divulging a Vote

## Revealing Information Before the Polls Close

- A person commits an offense if the person was in the polling place for any purpose other than voting and knowingly communicates to another person information that the person obtained in the polling place about how a voter has voted
  - Sec. 61.006(a)
- A election officer, poll watcher or person serving at the polling place in an official capacity commits an offense if, before the polls close or the last voter has voted, whichever is later, the person reveals:
  - The number of votes that have been received for a candidate or for or against a measure;
  - A candidate's position relative to other candidates in the tabulation of votes;
  - Whether a measure is passing or failing; or
  - The names of persons who have or have not voted in the election.
    - Sec. 61.007(a)



# Return of Ballots and Records to the County

- **Two people must return** the voted ballots, records and equipment **from an electronic voting system**, to the elections office or receiving substation
  - **Chapter 66** says only one person is required, **but that is for traditional paper ballots**. As a best practice, use two people.
  - Presiding Judge can delegate to a Clerk, but the Judge is preferred
- Collect voted ballots, paperwork and equipment
  - Scan in equipment using asset tags or check in manually
  - Verify all required paperwork is present and in the appropriate envelopes
  - Ask the Judge questions **while he or she is still present**
  - Provide the Judge a copy of your county's paperwork showing that all ballots, records and equipment were returned and the time received (Sec. 127.068(a))
    - Receipt of voting materials
    - Contains signature of the County's Representative and the Presiding Judge



# Central Counting Station

- A Central Counting Station Plan must be written and available for public inspection 5 days before the election
  - Sec. 127.007
- Creating a tracking system to ensure that all polling locations have arrived with the voted ballots, records and equipment is essential to a secure election
- Account for all polling locations as Judges drop off ballots and supplies
  - Make a master spreadsheet of all polling locations
  - If using one or more receiving substations, make sure that each RSS has its own spreadsheet
  - Note arrival times
  - Note time when votes are fully counted
  - If a precinct's returns must be reviewed, note that as well
- **Create a storage system for each memory stick or DRE memory card**
- The counting can't stop until all polling locations' ballots are counted 😊



## New Law – Sec. 127.1232 – Security of Voted Ballots

- The General Custodian shall post a licensed peace officer to ensure the security of voted ballot boxes containing voted ballots throughout the period of tabulation at the Central Counting Station.
- Counties of 100,000 or more must have video surveillance that retains a record of all areas containing voted ballots
  - From the time the voted ballots are delivered to the Central Counting Station until the canvass of precinct election returns; and
  - From the time the voted ballots are delivered to the Signature Verification Committee or Early Voting Ballot Board until the canvass of precinct election returns.
- This requirement applies to regular paper ballots and ballots from electronic voting systems





## Security of Voted Ballots

- Early Voting Closeout – Voted ballots must be delivered to the General Custodian on the last day of Early Voting by the Early Voting Deputy and a Clerk or by law enforcement.
  - Voted ballots may not remain in the polling place overnight after the Early Voting period has ended.
  - This applies to regular paper ballots and electronic system ballots.
- Election Day - Voted ballots may not remain in the polling place overnight.
  - Regular Paper Ballots – The Presiding Judge shall deliver the election records, but can be performed by a Clerk designated by the Judge. (Sec. 66.051)
    - Please use two people if possible. Both have to be election workers.
  - Electronic system ballots - After the box is sealed, it shall be delivered to the Central Counting Station by two election officers. (Sec. 127.066(c))



## Security of Voted Ballots

- The 24 hour video surveillance system must be live streamed and show the ballot boxes where they are being stored from the time they are delivered to the Central Counting Station until the time of the canvass.
- Video surveillance requirement for recount:
  - Call our office if your county will be involved in a recount and we can give guidance based on your specific situation
    - Sometimes recounts are held in another location
    - It might be a multi-county recount



# Electronic Media

- Removable Storage Media – Chapter 129
  - Tracking electronic storage media at all times - Sec. 129.051
  - Securing the storage or programming media before and after it is installed into the BMD or DRE or precinct ballot scanner
  - Removing the storage media after voting has concluded and securing it before and after counting
  - Procedures for clearing the memory of the storage media
  - Securing the storage media after the election and while it is not in use
    - Whenever a transfer of custody occurs, two or more individuals are required to perform a check and verification check
- Review SOS Advisory No. 2019-23
  - In depth guidance from SOS about storage media as it moves through the election cycle



# Records Management

- Make a Records Management Plan and put it in writing
- As you prepare to store your records...
  - Think about a **color coded** filing or numbering system for your records not just the election name
  - If you are using pallets, record the pallet and box number
  - Label each box with “Number 1 of \_\_\_\_\_”
  - Label each box with a detailed list of its contents
  - Create a spreadsheet so you know exactly which box has which records so you don’t have to search through boxes
  - Especially important if you are using a company to store records on your behalf
  - **Keep testing materials and any other records needed for a recount readily available**
- It does take time, but I think you will find that it’s worth the effort



Election Name: \_\_\_\_\_

Box # \_\_\_\_\_ of \_\_\_\_\_

Contents:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prepared by: \_\_\_\_\_ Election Date: \_\_\_\_\_  
Printed Name

Prepared by: \_\_\_\_\_ Destruction Date: \_\_\_\_\_  
Printed Name



# Records Management

- What to do if you store you own records in the long term...
  - All ballots, media, testing materials and other items must stored be in a secure area.
  - If using ballot boxes, the slots must be locked or sealed with a numbered seal that is documented on a chain of custody form and kept in the election records.
  - County officials outside the elections office should not have access to the election records.
    - If you share an area with other county departments, consider moving the records to a non-shared or cordoned off area
  - Custodial staff should not be in an area where records are stored unless accompanied by a member of the elections office.
    - Arrange cleaning times and dates



## Some Things to Consider

- All links in the chain of custody must be documented so we know who “*handled our rights*”
- If your current chain of custody documents only ask for initials, consider updating so that full printed names AND signatures are required
- If only one person has been signing the chain of custody forms, we recommend that two people always perform the check and verification check
  - Election Security Best Practices Guide (Election Security Toolkit)
- Implement two person ballot and records drop off **for regular paper ballots** if possible
  - Poll workers can ride in separate cars following each other
- If you don't have certain processes in place, consider adding them
  - Seal Assignment Envelopes
  - Making a Records Management Plan
  - Receipt of Voting Materials



# Chain of Custody = Security and Transparency

- The whereabouts of all things “Election” must be known at all times
  - Voting equipment
  - Removable media
  - **Test materials**
- Know where the chain of custody forms are at all times
  - Label your records management boxes with a form on the outside that lists exactly what is in the box
  - List the election date, the contents **and the destruction date**
- If you are thinking of tracking certain documents electronically, be sure to get our approval first
- Following the chain of custody procedures safeguards the election
- If all procedures were followed **and all documents are able to be produced** an election contest will be easier to withstand





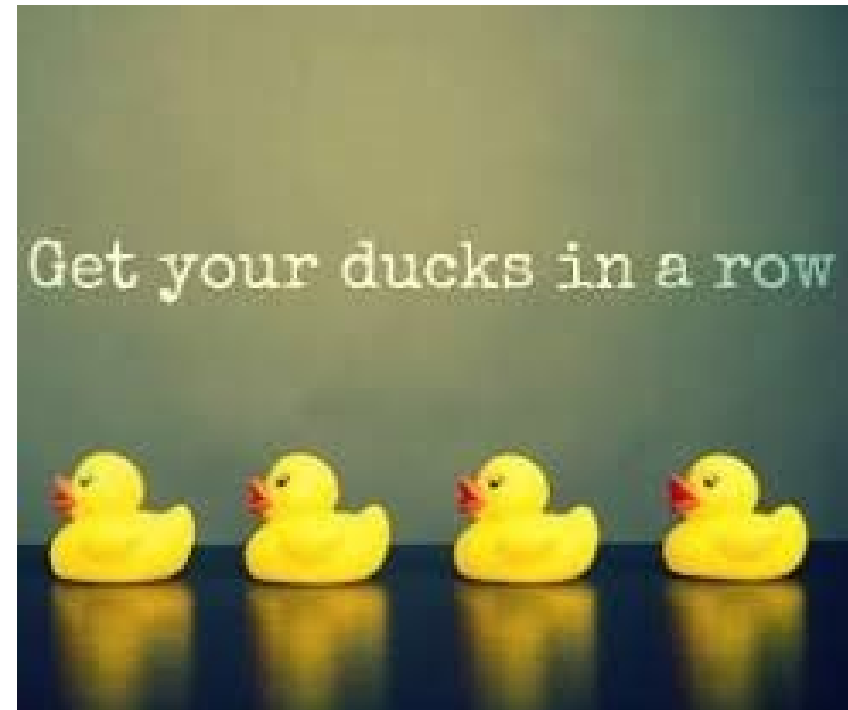
## What Chain of Custody, Really?

- Chain of Custody is not just a conglomeration of mundane policies, procedures and tracking
- Chain of Custody is a mechanism for safeguarding the elections process and voters' rights
- If anyone questions the integrity of the voting process, proper chain of custody documentation can prove there were safeguards all along the way.
- Chain of Custody procedures and documents can and should be reviewed and improved at regular intervals
- Especially important as many counties move to paper-based systems
  - DRE storage consumes less space, so consider the amount of space needed when you convert to a paper-based system



# Importance in our Current Climate

- Election Security is foremost in people's minds today
- Increased scrutiny of elections
- Make sure all your ducks are in a row
- Store records properly
- Be neat and organized
- Be ready to produce your paperwork
- If you leave your job, **ensure** you have written policies in place to aid your successor???



# Questions?

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