



December 29, 2022

## **STATUTORY REQUIREMENTS FOR PHYSICAL SECURITY OF BALLOTS AND ELECTION EQUIPMENT**

The statutes briefly summarized below are among current Kansas statutes, and applicable rules and regulations, regarding the security of physical ballots and voting equipment. Senate Sub. for HB 2138 (2022) amended nine of the statutes listed, and those amendments are incorporated into the information provided.

### **Equipment**

The board of county commissioners (county commission) and the county election officer may provide for and adopt any electronic voting system, electronic poll book, or optical scanning equipment approved by the Secretary of State and use them while that equipment continues to have the Secretary's approval. (KSA 25-4403, KSA 25-4602)

With some exceptions, all expenses necessary to provide for elections shall be paid by a county. (KSA 25-119, KSA 25-2201)

Any electronic voting system must be approved by the Secretary of State and must meet certain requirements, including requirements in federal statutes and regulations. (KSA 25-4406) The Secretary also must have approved any kind or make of electronic poll book (KSA 25-4404) and optical scanning equipment (KSA 25-4603).

No voting system approved by the Secretary of State, any component of it, or optical scanning equipment may have the capability to be connected to the internet or any other communications or computer network. Network connectivity for an electronic poll book must meet security standards established by the Secretary. (KSA 25-4403, KSA 25-4406, KSA 25-4613)

Vote tabulation and optical scanning equipment must be tested for accuracy within five days before the election and again within five days after completion of the canvass. The testing is open to the public. (KSA 25-4411, KSA 25-4610)

When the voting place is opened, the ballot boxes must be opened in the presence of the people there assembled to ensure the box is empty. Then, the ballot boxes shall be locked securely and not opened again until opened for canvassing. (KSA 25-2705, KSA 25-3001)

## **Paper Ballots**

Any voting system used must provide a paper record of each vote cast. (KSA 25-4403, KSA 25-4406) For elections on or after January 1, 2024, all voting systems must require the use of an individual, durable, voter-verified paper ballot with a distinctive watermark established by the Secretary of State. The marked ballot must be available to the voter for inspection and verification before the vote is cast and counted. (KSA 2023 Supp. 25-2912)

Ballots must be securely preserved. (KSA 25-3003)

Before leaving the voting place, the supervising judge must ascertain that election supplies and ballots are packaged, packed, and separated as provided by statute. For example, ballots must be separated into categories, such as voted, unvoted, or spoiled. (KSA 25-3008) After a recount, the election board must package and reseal the ballots. (KSA 25-3107)

## **Security of Physical Facilities**

The county commission must provide for the storage of voting systems, electronic poll books, and optical scanning equipment. The county election officer has complete charge of the systems, their safekeeping when not in use, keeping them in repair and working order, delivery to voting places, and ensuring the systems are ready when the polls open. (KSA 25-4408) The county election officer also is required to take security measures to assure the machines are not damaged or tampered with in any manner during their use. (KSA 25-1122b)

Each election board must control its voting place and election procedure under the sole supervision of the Secretary of State, county election officer, deputy county election officers, and the supervising judge at each polling place. (KSA 25-2810)

Authorized poll agents may be present to observe voting and a canvass, and the supervising judge of each polling place is in charge and may direct authorized poll agents as to their conduct within the voting place. (KSA 25-3005; KAR 7-45-2) A poll agent must be authorized by law or appointed by a person authorized by law. Each authorized poll agent must wear a badge clearly identifying the authorized poll agent as such and, if appointed, must have a copy of an appointment document. (KSA 25-3005a)

## **Documenting Locations of Election Items**

Receipts must be issued when election supplies, including ballots and poll books, are delivered to a supervising judge or returned to the county election officer. (KSA 25-2707; KAR 7-24-2)

The Secretary of State must develop an affidavit system for the transfer of ballots. Each person who transfers ballots for a county election office must sign the affidavit listing, if applicable, the numbers of blank, spoiled, provisional, and counted ballots; the number of advanced ballots in envelopes; the name of the person to whom such ballots were delivered; and the location to which the ballots were delivered. (KSA 2023 Supp. 25-2713)

## **Auditing of Votes and Election Procedures**

After an election and before the county canvass, the county election officer must conduct a manual audit or tally of each vote cast in 1.0 percent of all precincts, with a minimum of one precinct in each county. Certain races are specified for the audits. (KSA 25-3009)

The Secretary of State must audit county election procedures in four counties, chosen at random in specified population categories. (KSA 2023 Supp. 25-3010)

## **Crimes Related to Ballots or Equipment**

The crime of electronic or electromechanical voting system or electronic poll book fraud is defined as being in unlawful or unauthorized possession of voting system equipment, electronic poll book equipment, operating systems, firmware, software, or ballots. Also included in that crime is intentionally altering, defacing, impairing, or destroying those items. (KSA 25-4414) Similar provisions define optical scanning equipment fraud. (KSA 25-4612)

The crime of election tampering includes making or changing any election record unless lawfully carrying out an election duty, changing or attempting to change or conceal any vote, or knowingly producing false vote totals. (KSA 25-2423)

The crime of disorderly election conduct includes leaving or attempting to leave a voting place with any ballot, except as specifically permitted by law. (KSA 25-2413)

The crime of election fraud by an election officer includes possessing any altered, forged, or counterfeit poll books, registration books, party affiliation lists, election abstracts, returns, or any other election papers; receiving, canvassing, counting, or tallying any ballots, votes, or election returns that are fraudulent, forged, counterfeited, or illegal; changing any poll book, registration book, or party affiliation list; and declaring any false election result. (KSA 25-2420)

Also prohibited are changing the ballot of a voter (KSA 25-2419, KSA 25-2433); printing and circulating ballots except official ballots (KSA 25-2426); marking a ballot to identify it (KSA 25-2427); destroying election supplies (KSA 25-2428); defacing or tearing a ballot (KSA 25-2902); and improperly removing a ballot from the voting place (KSA 25-2907).