



July 21, 2023

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

This memorandum briefly summarizes current Kansas statutes and rules and regulations regarding the security of physical ballots and voting equipment. SB 221 (2023) amended eight of the statutes noted and added two sections to the statutes. Senate Sub. for HB 2053 (2023) amended one of the statutes noted. Those changes 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).

In counties that do not use tabulators or optical scanners to count votes, when the voting place is opened, the ballot boxes required for various elections 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 25-2704, 25-2705, KSA 25-3001).

A county election officer or office employee is prohibited from creating, permitting another person to create, or disclosing an image of the hard drive of any electronic or electromechanical voting system optical scanning equipment, or any other voting system that includes a hard drive without the written consent of the Secretary of State (2023 SB 221, New Sec. 6).

Each county election officer must create a backup copy of any voting system hard drive immediately prior to and immediately after any system updates, repairs, or improvements and before and after each election, and must retain that backup for at least 22 months (2023 SB 221, New Sec. 6).

A special election board conducting an election at a nursing or assisted living facility or hospital-based long-term care unit must certify return of any equipment used to the county election officer (KSA 25-2812).

## **Paper Ballots**

The return envelope for a mailed ballot must require a signature from the voter certifying eligibility and acknowledging that failure to sign such a declaration invalidates the ballot. The county election officer must verify each signature, and the office must attempt to contact a voter who has not signed the envelope or the signature does not match the signature on file, unless the voter has a disability preventing the voter from signing or having a signature consistent with the voter's registration form, so the elector can correct the deficiency before the county canvass (KSA 25-433).

A county election officer may not mail a ballot to a voter unless that voter has submitted an application for an advance voting ballot or has permanent advance voting ballot status (KSA 25-1122).

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. The elections specified for the audits are one constitutional amendment question, if any; certain races; and the presidential preference primary on March 19, 2024 (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. Other illegal actions under the crime are intentionally altering, defacing, impairing, or destroying those items; accessing without authorization or facilitating unauthorized access to the equipment; and knowingly publishing or causing to be published any password or other confidential information relating to the equipment (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).

No person convicted of an election crime may serve as a county election officer (2023 SB 221, New Sec. 5).