



# Directive Concerning the Use, Implementation and Operation of Electronic Voting Systems by the County Boards of Elections

Date: September 25, 2023

Directive 3 of 2023

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The following Directive is issued September 25, 2023, by the Secretary of the Commonwealth pursuant to authority contained at Sections 201 and 1105-A of the Pennsylvania Election Code, 25 P.S. §§ 2621, 3031.5(a).

The use, implementation, and operation of electronic voting systems by county boards of elections are governed by the following procedures. Electronic voting systems are defined at Section 1101-A of the Pennsylvania Election Code, 25 P.S. § 3031.1.

### Activities prior to opening the polls on Election Day

- 1) **Notice of voting system preparation.** On or before the fortieth (40<sup>th</sup>) day preceding any primary or election, a county board of elections shall mail a notice stating the times and places where preparation of the voting system will be started.<sup>1</sup> This letter shall be sent to the chairmen of the county committee of each political party that is entitled to participate in primary elections in the county, as well as to the presiding officer of any organization of citizens in the county whose purpose is to investigate or prosecute election frauds and which organization has registered with the county board of elections at least fifty (50) days before the primary or election.
- 2) **Instructions on use of electronic voting systems.** A county board of elections shall instruct voters on the use of electronic voting systems in the following way.
  - a. **Public exhibition thirty (30) days before each primary or election.** During the thirty (30) days before an election, the county board of elections shall place on public exhibition the components of an electronic voting system that are used by the voter, containing a sample ballot for instructional use. "Such components shall be under the charge and care of a person competent as custodian and instructor. No voting system component which is assigned for use in an election shall be used for such public exhibition and instruction after having been prepared and sealed for the election."<sup>2</sup>
- 3) **Testing central automatic tabulating equipment.** A county that uses an electronic voting system that provides for central tabulation of ballots shall, by the fourth (4<sup>th</sup>) day prior to

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<sup>1</sup> Section 1110-A(d) of the Election Code, 25 P.S. § 3031.10(d)

<sup>2</sup> Section 1111-A(a) of the Election Code, 25 P.S. § 3031.11(a).

each election, have the central automatic tabulating equipment publicly tested to ascertain that it will accurately count the votes cast for all offices and all questions.<sup>3</sup> Public notice of this test shall be given at least forty-eight (48) hours prior to the test, unless the central automatic tabulating equipment was tested during the voting system preparation provided for in part 1. In either event the testing must be done publicly, and public notice must be given at least forty-eight (48) hours prior to the test.

- 4) **Secrecy in voting.** To assure compliance with the constitutional and statutory requirements that secrecy in voting be preserved,<sup>4</sup> boards of elections should use privacy screens or hoods or take other physical measures that prevent other individuals in the polling place from seeing how an elector has cast his or her ballot on the machine. Electronic voting machines shall be positioned in the polling place in such a manner that other individuals may not watch an elector casting his or her ballot.

## Activities while the polls are open on Election Day

- 1) **Instructions on use of electronic voting systems.** Elections officials may use diagrams to show a voter how to use an electronic voting system before the voter enters the voting booth and give the voter audible instructions while the voter is in the voting booth whenever the voter asks for such help.<sup>5</sup> When providing this help, elections officials shall not enter the voting booth with the voter or while the voter occupies the voting booth, and shall not request, suggest or try to persuade or induce the voter in any manner to vote for any particular candidate, ticket of candidates, or other persons, or in favor of or against a ballot question.
- 2) **Inoperable electronic voting systems — repairs, substitutes and emergency back-up paper ballots.** A county board of elections that uses a voting machine as both a ballot marking device and tabulator must ensure that if at least **50%** of the electronic voting machines in a precinct are inoperable, then “paper ballots, either printed or written and of any suitable form,” for registering votes (described herein as “emergency back-up paper ballots”) shall be distributed immediately to eligible voters.<sup>6</sup> These emergency back-up paper ballots shall be used thereafter until the county board of elections is able to make the necessary repairs to the machine(s) or is able to place into operation a suitable substitute

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<sup>3</sup> Section 1114-A(a) of the Election Code, 25 P.S. § 3031.14(a)

<sup>4</sup> See, e.g., Pa. Const. Art. VII, § 4; and 25 P.S. § 3031.7(1).

<sup>5</sup> See Section 1111-A(b) of the Election Code, 25 P.S. § 3031.11(b).

<sup>6</sup> See Section 1120-A(b) of the Election Code, 25 P.S. § 3031.20.

machine(s).

For this purpose, county boards of elections may use, as “emergency back-up paper ballots,” ballots specifically designed for use as emergency back-up paper ballots; surplus, un-voted absentee ballots; surplus, un-voted alternative ballots; ballots that the county board of elections has supplied to the district election board for use as provisional ballots; or other paper ballots that are “either printed or written and of any suitable form.”

***Except as noted below, the procedures applicable to the casting of absentee ballots, alternative ballots or provisional ballots (declaration and affidavit requirements) do not apply to an emergency back-up paper ballot that is cast under section 1120-A(b) of the Election Code.***

- a. When ballots originally intended for use as absentee ballots, alternative ballots or provisional ballots are used as emergency back-up paper ballots under section 1120-A, the ballot is cast as a regular ballot, and not as an absentee ballot, alternative ballot or provisional ballot. ***Provisional ballots which are used as emergency back-up paper ballots must be clearly distinguished from provisional ballots and may not be rejected if the envelope in which the ballot is placed is missing any information that would be required of a provisional ballot.***
- b. A county board of elections must supply an adequate amount of emergency back-up paper ballots to ensure that voting continues uninterrupted until the voting machines become operable.

As a regular ballot, the emergency back-up ballot shall be deposited by the voter in a ballot box or other secure receptacle designated by the board of elections for the deposit of completed emergency back-up paper ballots, as required for paper ballots by Pennsylvania law. Absentee ballots, alternative ballots or provisional ballots that are being used as emergency back-up paper ballots must be identified as regular ballots and must be segregated from absentee ballots, alternative ballots and provisional ballots.

***EXCEPTION NOTE: Persons permitted or required to vote by provisional ballot must follow the procedures applicable to casting of provisional ballots, whether electronic voting systems or paper ballots are used to conduct an election.*** When ballots labeled as provisional ballots are employed under section 1120-A as emergency back-up paper ballots in cases of inoperable machines, the local board of elections must continue to require individuals to cast provisional ballots when those individuals are required by law to vote in that manner, subject to all the procedures prescribed for casting a provisional ballot.

- 3) ***Inoperable precinct scanners - repairs, substitutes and emergency ballot box.*** A county board of elections that uses a precinct scanner must ensure that if all **precinct**

**scanners** in a precinct are inoperable, district election boards must allow voters to drop voted ballots in a secure container to be tabulated after close of polls. County board of elections can use the emergency bin on the precinct ballot box used by precinct scanners. County board of elections must train poll workers on proper methods for instructing voters to securely drop the ballots into the secure ballot box.

- 4) ***Accessible Electronic Voting Systems.*** County boards of elections must direct the district election boards to prepare, in the manner provided by the Election Code, an electronic voting system for voting in a precinct where such system is necessary to provide to a disabled voter the same opportunity for access and participation in the voting process as is afforded voters who do not have a disability.<sup>7</sup> Audio components for the visually impaired must be in working order and must present instructions and information in a user-friendly and understandable format. **All district election boards must comply with this requirement regardless of whether the district board anticipates that a disabled voter will present themselves to vote on the day of the primary or election.**

## Activities after closing the polls on Election Day

1. ***Computation and canvass of returns – random sampling.*** As part of the computation and canvass of returns, the county board of elections must conduct a statistical recount of a random sample of at least two percent (2%) of the ballots cast or two thousand (2,000) ballots, whichever number is fewer.<sup>8</sup>
  - a. For those counties using optical scan electronic voting systems, the county board of elections shall conduct the statistical recount manually or by scanning on a scanner of a separate make and model than used originally.
2. ***Sealing voting system terminals for recounts and election contests.*** A county board of elections shall keep voting terminals sealed or otherwise locked against voting for at least twenty (20) days or longer if there are recounts or election contests pending, unless a court should order the terminals to be opened.<sup>9</sup>
3. ***Reuse of memory cards and retention of ballot images.*** A county board of elections may reuse memory cards for the next election if the board fully reformats the cards and the

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<sup>7</sup> See Section 1110-A(g) of the Election Code, 25 P.S. § 3031.10(g); see also Section 301(a)(3) of the Help America Vote Act, 42 U.S.C. § 15481(a)(3).

<sup>8</sup> Section 1117-A of the Election Code, 25 P.S. § 3031.17.

<sup>9</sup> See Section 1230 of the Election Code, 25 P.S. § 3070.

county maintains either a printed or electronic copy of the ballot images contained in the system. For Federal elections, a county board of elections must retain these ballot images for (twenty-two) 22 months from the date of the election.<sup>10</sup> For municipal elections, the county board of elections must retain the ballot images for a least (twenty) 20 days, unless ordered otherwise by a court.<sup>11</sup>

## Conducting the Recount and Recanvass

1. In counties with an election district that uses an electronic voting system utilizing paper ballots (that is, optical scan systems), the recount should be conducted as follows:<sup>12</sup>
  - a. The county board of elections must recount all ballots using manual, mechanical or electronic devices of a different type than what was used for the specific election.<sup>13</sup> Moreover,
    - i. Counties using a central-count tabulator shall conduct the recount using a precinct-count tabulator or conduct the recanvass by a hand count of the paper ballots.
    - ii. Counties using a precinct-count tabulator shall conduct the recanvass by using a central-count tabulator or conduct the recanvass by a hand count of the paper ballots.
  - b. All ballots containing overvotes must be counted **manually**.
    - i. For additional guidance on recounts, please review the Department's [Directive on Election night Reporting and Recounts](#).
2. Appeals of determinations made by a county board of elections following an order for a recount by the Secretary of the Commonwealth subject to the statewide recount must be

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<sup>10</sup> 42 U.S.C. § 1974.

<sup>11</sup> See Section 1230 of the Election Code, 25 P.S. § 3070.

<sup>12</sup> See Section 1404(e)(3)(i) of the Election Code, 25 P.S. § 3154(e)(3)(i) (requiring that the recount be conducted using manual, mechanical or electronic devices of a different type used for the specific election.)

<sup>13</sup> See Section 1404(e)(3)(i) of the Election Code, 25 P.S. § 3154(e)(3)(i) (requiring that the recount be conducted using manual, mechanical or electronic devices of a different type used for the specific election.)

taken to the Commonwealth Court — even after the recount and recanvass ordered by the Secretary has been completed.<sup>14</sup>

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Version	Date	Description
1.0		Initial document release
1.1	09.25.23	Updates for paper-based voting machines

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<sup>14</sup> See Section 1407(a) of the Election Code 25 P.S. § 3157(a).