

Election Day Procedures: Duties of Election Judge



Duties - Judges

- What does a judge do?
 - Manage polling place; must be present all day.
 - Administer any oaths required
 - Including the constitutional oath
 - Complete and sign judge's portion of provisional voter affidavit.
 - Sign off on other necessary forms such as Statement of Compensation and Oaths.
 - Designate working hours and assign duties for clerks.
 - May appoint special peace officers (required to be licensed as peace officers by Texas Commission on Law Enforcement), as needed, to preserve order.
 - Has power of district court judge while serving at polling place, including power to issue arrest warrants. (32.071-32.075)

Setup of Polling Place

- Must arrange check-in table and voting booths, and list of registered voters (and/or e-pollbook). (62.004)
- Must post required notices/signs, e.g. sample ballot, acceptable ID poster, distance marker. These are listed in the handbook.
- Must take/give oaths and prepare name tags. (62.003, 61.010, Texas Constitution Art. XVI, Sec. 1)
- Place signs outside (distance marker, etc.) and post required notices on outside door(s).
- Polling place must be open from 7 a.m. to 7 p.m. (41.031)

Preparing Ballots/Boxes/Equipment

- PROVISIONAL/EMERGENCY
- Scanned/ Paper Ballots: This will only apply if the voting equipment is not working. You will have to use Sample Ballots or you can have the voter write their choices on a piece of paper. Presiding Judge must sign or stamp their signature on the back of each ballot used at the polling place (62.008) and assign a serial number to make the ballot official. The voted ballot is then deposited in the provisional ballot box. (More on next page.)
- **Election Day:**
 - Using DRE: The equipment will be delivered securely sealed and locked. Judge will ensure the equipment is still properly sealed at the beginning of the day by verifying the numbers against the paperwork. The seals will be removed from the equipment to allow voting on the machines. A partial tape showing zero votes will be on the machine. A tape will be run before any voting begins(Ch. 129/SOS Advisory).

Emergency Ballot Procedures

In our county, we do not use paper ballots in the polls but if the electronic equipment is not working, you will have to find a way to process voters. It is not appropriate to direct them to another location unless there is no other option. Code says the votes may be placed on a piece of paper. Use sample ballots as first choice but save one to use if voter needs to write their choices on a piece of paper and they can use the one remaining sample ballot as a template.

—Contact County Election Officer for instructions on how to proceed.

If you do run out of ballots....

- you can duplicate (copy) an sample ballot for use by voters (if possible)
 - Obscure ballot serial number on subsequent ballots
 - Indicate number of ballots duplicated on ballot register
 - Presiding judge needs to number and sign the back of emergency ballots
- What form the ballot takes will depend on the number of voters and the situation in the polling place

Activities in Vicinity of Polling Place

- * Bystanders
- * Electioneering and Loitering
- * Wireless/Recording Devices
- * Sound Devices
- * Written Materials
- * Exit Polling

Bystanders

- A person may not be in the polling place from the time the presiding judge arrives until the polls have closed and the judge has completed closing polls and prepared for delivery to the Central Counting Station of the required equipment/paperwork. It is a class C misdemeanor.
- Exception:
 - Candidates (if voting or conducting official business within building, and not within view/hearing of voters and not engaged in campaign activity.) (61.001)

Electioneering

- Electioneering is advocating for or against a candidate, measure, party or issue. This may be in the form of a sign, shirt, button, hat, etc. and cannot be
 - Section 61.003 provides that electioneering includes, but is not limited to “the posting, use, or distribution of political signs or literature.”
- Electioneering within the protective legal boundary surrounding a polling place is a crime; it is a Class C misdemeanor.
- The required 100 foot distance markers surrounding polling places mark the legal boundaries against electioneering.
- **Tex. Elec. Code Ann. §61.010(a) (West 2010) (prohibiting the wearing of “a badge, insignia, emblem, or other similar communicative device relating to a candidate, measure, or political party appearing on the ballot, or to the conduct of the election”).**

What is NOT electioneering?

- Voter Assistance Materials (§ 61.011)
 - Voters are permitted to bring their own written materials into the voting place to help them vote. This does not include cell phones since no electronic recording devices may be in the polls.
 - Election officials should periodically check the polling place and dispose of any such materials left behind.
- Exit polling, if not disruptive.
- Notices of party conventions (for primary election)
- Official name tags worn by certain workers (§ 33.051, 61.010)
 - Election judges, clerks, state or federal inspectors, peace officers, and poll watchers must wear name tags or official badges while on duty to identify them.

If electioneering is going on ...

- What if someone is electioneering? (§ 32.075)
 - Presiding judge has responsibility to ensure safe, confidential voting at polling place.
 - Presiding judge may ask a disruptive person to leave.
 - If a voter, they must be given the opportunity to vote before removal from polling place.
- What if they won't stop?
 - The presiding judge may summon a peace officer.
 - Presiding judge may not enforce outside of distance markers.

Sound Devices

- A person may not operate a sound amplification device within **1,000** feet of building that contains polling place, if being used to:
 - make a political speech, or
 - electioneer. (61.004)

Wireless/Recording Devices

- Wireless communications devices or devices to record sound or images may not be used within 100-feet of voting stations.
 - This includes cell phones, cameras, tablets, that can communicate wirelessly or take pictures.
 - Presiding election judge has authority to require persons to deactivate any such devices and to require persons who do not comply to leave the polling place. (§§ 61.014, 62.0111)
- Poll watcher may not be accepted for service if poll watcher has possession of a device capable of recording images or sound unless poll watcher agrees to disable or deactivate the device. (§ 33.051)
- Media is also prohibited! (§ 61.001)

Exceptions: Wireless/Recording Devices

- **Exception:** Election officer conducting officer's official duties;
- **Exception:** Use of election equipment necessary for the conduct of the election.
- **Exception:** Persons employed at the polling location while acting in course of person's employment.
- **Exception:** Persons using assistive technology devices. Presiding Judge has discretion on this type of use.

Exit Polling

- Presiding Judge may allow non-disruptive exit polling within the 100-foot boundaries surrounding each early voting and election day polling place.
 - Must determine that such exit polling does not constitute either (1) “loitering” in violation of Section 61.003(a) of the Code or (2) a disruption of order or a contribution to a breach of the peace at the polling place. (61.003(a), 32.075, 81.002)

Procedures for Voting

- | | |
|------------------------------------|--------------------------|
| * Persons Allowed in Polling Place | * Qualifying Voters |
| * Provisional Ballots | * Cancelling Mail Ballot |
| * Assistance | * Curbside Voting |
| * Interpreting | * Complaints |
| * Emergency Ballot Procedures | |

Persons Allowed in Polling Place

- Voters (63.001)
- Election Workers (including voting system technicians) (Ch. 32, 125.010)
- Minors if with parent/guardian or voting in student election (64.002, 276.007)
- Assistants (including Interpreters) (61.032, 64.032, 64.009)
- Pollwatchers (33.052)
- State and Federal Inspectors (34.004, VRA)
- County Chair (in primary election only) (172.113)
- Law Enforcement (if requested by Presiding Judge) (32.075)

Assistance

- Who is eligible for assistance?
 - Any voter who is physically unable to mark the ballot.
 - Any voter who cannot read the languages on the ballot.
 - Any voter who cannot speak English, or communicates only with sign language, and wants assistance in communicating with election officials
- What types of assistance are allowed?
 - Reading the ballot to the voter.
 - Directing the voter to read the ballot.
 - Marking the voter's ballot as directed by the voter.
 - Directing the voter to mark the ballot.
 - Serving as an interpreter (must also fill out a separate oath) (33.057, 64.031, 64.032)

- Who is eligible to assist a voter?
 - Any person that the voter chooses.
 - Except: the voter's employer, an agent of their employer, or an officer or agent of the voter's union.
 - **This includes candidates!**
- Person can provide assistance regardless of:
 - The fact that they have assisted someone else.
 - Their residence.
 - Their citizenship.
 - Their voter registration status.
 - Their age.
- What if the voter doesn't choose the assistant?
 - Election workers may assist a voter.
 - **Two workers must assist together.** (One worker may assist during early voting.)
- Who else can be there?
 - If the voter chooses their assistant, no one else may be present.
 - If election workers are assisting a voter, poll watchers may be present to observe.
- What else does an assistant need to do?
 - Take the Oath of Assistance.
 - Name and address must be entered next to voter's name on poll list.

Election Officials - Assistance

- Two election officials may assist a voter. (One during early voting.)
- Entire ballot must be read to voter unless voter states that they only want to hear certain offices or measures.
- Election officials must also take Oath of Assistance, though only need to take oath once.
- Must NOT mark ballot in any way other than how the voter indicates he/she wants the ballot marked. Offense is a Class A misdemeanor.
- **Election workers' names are not entered next to voter's name on poll list.**
- (§ 33.057, 34.002(b), 64.032, 64.033)

Interpreting

- An interpreter is also an assistant
 - If an assistant is also serving as an interpreter, the person is **BOTH** an interpreter and an assistant, and **must take Oath of Interpreter and the Oath of Assistance.** (61.035)

Notice of Voting Order Preference

- An election judge may, on the voter's request, allow a voter with mobility problems to skip the line
 - This is not automatic, and is permissive for the judge and voter
 - Notice of this will be posted in each polling place
 - Individual assisting voter with mobility problems may be accepted to vote concurrently with voter

Curbside Voting/Accessibility

- Accessibility
 - All buildings used as polling places in Texas must be accessible to voters with disabilities.
 - With certain exemptions, each polling place must provide at least one accessible voting machine for use by voters with disabilities so that such voters may vote in private and without assistance.
- Curbside Voting
 - Voter physically unable to enter polling place may vote curbside. (64.009)
 - Election worker(s) qualify voter, bring a selection of ballots or a DRE to the voter, and allow voter to choose, mark, and cast ballot curbside.

One election official may deliver a ballot to voter at the entrance to the polling place. In Tom Green County, two should deliver the ballot.

- If using a DRE system, the official(s) will deliver the DRE unit to voter rather than a ballot.
- Poll watchers and inspectors may observe curbside voting.
- Once voter has marked the ballot, the election official deposits the ballot in the ballot box.
 - At the voter's request, a person accompanying voter must be able to select voter's ballot and deposit in ballot box.
 - If the curbside voter also requires assistance with their ballot, they may use an assistant of their choice, or may be assisted by two election officials.

Cancelling Mail Ballot on Election Day

- If the voter arrives at the polling place on election day with their mail ballot:
 - Execute affidavit “A” from form AW5-17
 - Voter returns mail ballot to election worker
 - This is a cancellation of that mail ballot
 - Voter votes a regular ballot
- If the voter arrives at the polling place on election day without their mail ballot:
 - Does the voter have a notice that their mail ballot was improperly returned?
 - * If yes, voter votes a regular ballot
 - * If no, voter votes provisionally

Provisional Voting

When would someone vote provisionally? Some examples:

- Voter does not possess one of the 7 forms of acceptable photo IDs on “List A”, can reasonably obtain one, does not have an (E) notation on voter’s voter registration certificate, and does not return to the polling place with a “List A” ID to vote at that time.
- Voter does not possess one of the 7 forms of acceptable photo IDs on “List A”, cannot reasonably obtain one, does not have an (E) notation on voter’s voter registration certificate, and does not have, or does not bring a “List B” ID to the polling place and does not return with one to vote and sign the Declaration at that time.
- Voter who does not have a “List A” ID due to a religious objection to being photographed or does not present their acceptable form of photo ID due to a natural disaster declared by the U.S. President or Texas Governor.
- Voter whose name on the acceptable form of ID is determined by the election officer to not exactly match or be substantially similar to the name on the List of Registered Voters.
- A voter whose identity cannot be verified by the identification presented.
- A voter who has received a disability exemption but does not have or otherwise fails to present the voter’s voter registration certificate with a (E) notation.
- Voter is not on the list of registered voters for the precinct and does not present a voter registration certificate indicating the voter is currently registered.
- Voter is not on list of registered voters for the precinct, and is registered in another precinct.
- Voter is on list of people that voted early by mail, but voter has not cancelled mail ballot application.
- Voter votes after 7:00 pm due to a court order extending hours.
- Voter on list of registered voters, but residence address is outside the political subdivision.

It is Federal Law that any voter that requests a provisional ballot **MUST be given one. You can NEVER refuse to provide a voter a provisional ballot!**

What to do? (1 T.A.C. § 81.173)

- Inform the voter of their right to cast a provisional ballot.
- If ID-related, advise the voter of the 6 day cure period. If not ID-related, complete identification procedures.
- Advise the voter that in order to have ballot counted, voter must be voting in their correct precinct.
- Have the voter complete the Provisional Voter Affidavit Envelope prior to voting provisionally.
- If the voter indicates they are registered, the election officer must ask the voter if the voter registered at DPS. If the voter states they did register at DPS, the election officer must ask the voter for the approximate date the voter went to DPS. The election officer must then note that the voter went to DPS, and, if the voter knows, the approximate date the voter went to DPS, on the Provisional Ballot Envelope in the "Other" line.
- Election officer will check "yes" or "no" as to whether voter met ID requirements.
- Election officer will complete the remainder of their portion of provisional ballot. *(Verify that the information provided by the voter is complete and that they qualify for a ballot in our county – if residence address is not in our county, they do not qualify!)*

What to do (con't)?

- **Election officer signs Provisional ballot and marks the ballot provisional.**
- **Election officer adds the voter's name on the List of Provisional Voters form,** indicates whether the voter met identification requirements, and marks the voter as “provisional” on the poll list or combination form.
- **Provisional voter signs the regular signature roster or combination form.**
- **Election officer provides voter with Notice to Provisional Voter. (*If ID provisional, notice includes additional paperwork.*)**
- Provisional voter casts ballot on paper or optical scan ballot, or on DRE voting machine. Election officer informs provisional voter of procedures to follow, which depend on the method of casting ballot.
- **Notice to Provisional Voter (ID Voter) includes:**
 - A Description of the Acceptable Photo IDs from “List A”.
 - The procedure for curing not meeting ID requirements.
 - Presenting acceptable photo ID from “List A” to the VR.
 - Executing affidavit for temporary exemption.
 - Applying for a disability exemption.
 - A map of the location(s) to cure not meeting ID requirements.
 - Information relating to the process for determining and reporting whether the voter's ballot will be counted.
 - A place for the voter's name, VUID, and precinct polling place where provisional ballot was voted.

- **During the “cure period,” voter may:**
 - Present to Voter Registrar (VR) one of 7 forms of identification on “List A” for examination, or present a form of “List B” identification and complete a RID.
 - Execute in the presence of VR an affidavit stating:
 - voter has a religious objection to being photographed; or
 - voter does not have any identification meeting the requirements of Section 63.001(b) as a result of a natural disaster that occurred not earlier than 45 days before the date the ballot was cast.
 - Apply for and receive a permanent disability exemption for the county the voter is registered in.

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It is important to note that due the new law requiring certification of the Voter laptops (Kiosks) a lot of the information listed below will be automatically performed as you are checking the voter in for voting. The material remains in case the Kiosks are not working.

You will still be required to follow the procedures for the Photo ID requirement but the Kiosk will help you process the voter.

Qualifying a Voter



1. Voter Meets Identification Requirements
2. Voter is Located on List of Registered Voters
3. Have You Moved?
4. Check-in Voter
5. Voter Signs Combination and Accepts Applicable Affidavits
6. Voter Casts Ballot

The Address on the ID does **NOT** have to match the voter record.

Step 1: Voter Identification

- The Voter Kiosk will now prompt the voter for the required information beginning with the information about qualifying forms of ID. If the KIOSK is not working, you will need to follow the instructions below.

The voter should be asked whether the voter possesses one of the acceptable forms of photo ID on “List A” that is either current or not expired more than four years.

- If the voter says “yes”, the voter is required to present that form of photo ID.
- If the voter says “no”, the voter does not possess one of the acceptable forms of photo ID on “List A”, ask the voter if they are able to reasonably obtain one of the acceptable forms of photo ID on “List A.” If the voter indicates “no”, you must inform the voter that he or she can present a supporting form of ID on “List B” and complete a “Reasonable Impediment Declaration.”
- **If the voter presents a supporting form of ID and completes the Declaration, the voter will then complete their check-in, and proceed to the voting booth to cast a regular ballot.**

Step 2: List of Registered Voters

- Locate the voter's name on the List of Registered Voters (Laptop), and:
 1. Confirm registration status;
 2. Confirm name is the same or "substantially similar"
 3. Look for early voting status ("early" or "voted" notation);
 4. Check for suspense list status ("s" notation – laptop has note that the voter must complete a statement of residence).

Confirming Registration Status

- If voter appears on list of registered voters, election worker should move to the next step.
- If voter the voter does not appear on the List of Registered Voters, one of the following situations may apply:
 1. Incorrect Certificate, Appearing at Correct Precinct
 2. Correct Certificate, Erroneously Omitted from List
 3. No Certificate, Not On List

Contacting Voter Registrar

- Election judges and clerks may contact the voter registrar when a voter comes into the polling place, but his/her name is not on the list of registered voters for the precinct, to determine if the voter is registered in another precinct.
- The judge or clerk should direct the voter to the correct precinct if appropriate.
- A voter who has not updated his registration information and who insists on voting in the "wrong" precinct must vote provisionally; the ballot will not be counted.

“Voted” Notation

- If “voted” appears next to the person’s name on the List of Registered Voters, that signifies they voted early.
 - If the voter has their by-mail ballot or a notice of improper delivery, the voter may cancel their application for a ballot by mail and vote a regular ballot
 - If the voter cannot cancel, the voter should be offered a provisional ballot.

Step 3: Have You Moved? This is now done on the Kiosk.

- Clerks must ask **EVERY** voter if they still live at the address shown on the List of Registered Voters.
- If the voter has moved, they need to complete a Statement of Residence (“SOR”) form showing their new address.
- A voter must also complete a Statement of Residence if there is an "S" notation next to voter's name on the list of registered voters.

NOTE: The voter may only vote a regular ballot if the address the voter lists on the SOR is still within the same county and within the boundaries of the political subdivision holding the election. Limited Ballot procedures apply only during EV.

REMEMBER:

Q: Does a voter’s address on their ID have to match the address listed on the List of Registered Voters?

A: **No. However, a voter’s address can be used to help verify a voter’s identity in the case of determining whether there is a “substantially similar” name.**

Residency Issues

1. Voter Moved to Another Precinct
2. Voter Moved Into This Precinct
3. Voter Moved Into the County

Since we use countywide polling places you should not have to worry about the first two scenarios.

Don't forget to have voter complete a Statement of Residence if:

- *Their record says "Voter must complete Statement of Residence before voting."*
- *Voter indicates they have a different address and/or name than what is reflected in the system.*

Scenario 3 - Voter Moved Into the County

If the voter has moved to this county from another county and shows up to vote here, in their new precinct:

- A voter may not vote here unless they are registered in the new county of residence.
- If the voter insists on voting in this precinct, they may vote with a Provisional Ballot.
- **NOTE: This voter may be eligible for a limited ballot during early voting, however voting a limited ballot is **NOT** an option on election day.**

Step 4: Check-In Voter



Step 5: Voter Signs Combination Form and Accepts Applicable Affidavits

- Please ask the voter to sign their name in the appropriate location (on KIOSK tablet).
- If the voter needs to accept either or both the Voter's Affidavit or Similar Name Affidavit, please ask the voter to initial in the appropriate location.

Labels will be printed when you check the voter in. Have the voter sign one of the labels and tape it to the yellow Combination Form. The second label will be taped to the pink Poll List (does not need signature) and the third label is the label the voter will take to the Ballot Station to get their ballot.

*If the voter has a similar name, they will initial the similar name affidavit on the KIOSK tablet **and** you will need to offer them the opportunity to complete a form to update our records to match the ID they are using to vote (IT IS NOT A REQUIREMENT).*

Step 6: Voter Casts Ballot

