

950 CMR 54.00: VOTING AND COUNTING PROCEDURES FOR ELECTRONIC VOTING SYSTEMS

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54.01: General Duties of Election Officers

(1) Election Officers Assigned to Each Polling Place. Each precinct must have assigned to it a warden, clerk, and at least two inspectors (in cities, four), unless in a town where five or fewer precincts vote in the same building the selectmen decide otherwise under M.G.L. c. 54, § 24. In addition, precincts may have a deputy clerk, deputy warden, additional inspectors as are needed to run the election, and as many tellers as are necessary to process the ballots after the election.

(2) Election Officers Must Represent Political Parties. Within each precinct, the election officers must equally represent the two leading political parties. However, two of the officers in each precinct may be unenrolled.

The warden and deputy warden must be from the same party and different from that of the clerk and deputy clerk. No more than half the inspectors may be from the same party. Party representation requirements apply only if the chairman of the city or town committee of each political party or the chairman of the state committee of such party files with the registrars lists of enrolled members of the party who desire appointment as election officers under M.G.L. c. 54, §§ 11B, 12 and 13.

(3) Warden: General Duties and Authority. The warden shall be the chief election officer at the polling place. The warden shall supervise the other precinct election officers before the polls open, during the election, and while the ballots are processed. The warden is responsible for maintaining order and handling violations of election law by election officers or others. The warden may use police assistance when necessary.

If the warden leaves, his deputy shall be in charge, but if there is no deputy, he shall designate a qualified election officer to be in charge.

(4) Clerk: General Duties. The election clerk shall keep a record of all facts relating to the proceedings of the election required by law to be recorded. The clerk shall note any unusual happenings during the conduct of the election. The clerk is responsible for maintaining the Election Record and filling out forms. The clerk shall read and record the ballot box register before and after the election.

(5) Inspectors: General Duties. Inspectors shall be assigned to duties by the warden. An inspector or other election officer shall be assigned to the demonstration marking unit to instruct voters on its use and to observe voters in order to offer assistance to those having difficulties. Two election officers of different political parties shall be assigned to the check-in area at the entrance to the voting area. Two other election officers of different political parties shall be stationed at the voting area exit. Party representation requirements may not apply under 950 CMR 54.01(2).

54.02: Testing

(1) City or Town Clerk Responsible for Testing. The vendor for each electronic voting system shall conduct a training session before each election which all new city or town clerks shall attend. The city or town clerk shall be fully responsible for all pre-election testing and for counting the ballots after the election. This responsibility shall not be delegated to the vendor.

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(2) Ballot Testing. For punch-cards only, no later than two weeks after the delivery of ballots for state elections, the city or town clerk shall randomly select a sufficient number of punchcard ballots to be inserted into at least one marking unit per precinct to test adequately whether the punchcards fit into the marking units. The city or town clerk shall immediately notify the Director of Elections if the test demonstrates an improper fit.

(3) Vendor Responsibility. Any marking units stored by the vendor must be delivered by the vendor to the city or town clerk no later than one week after the delivery of the ballots for the state primary and general elections for the purpose of permitting the city or town clerk to complete the ballot testing requirement. Any additional cost incurred by the Secretary as a result of the failure of the vendor to deliver the marking units on time pursuant to 950 CMR 54.02 shall be the responsibility of the vendor.

(4) Computer Program Testing. Under the supervision of the city or town clerk a "test deck" shall be prepared of at least 50 punch cards or optical scanner ballots marked in such a way as to:

- (a) adequately test the computer program;
- (b) demonstrate rejection of overvoted punchcards or optical scanner ballots; and
- (c) test any other contents of the program which may have a bearing upon the accuracy of the count.

The test deck must contain at least the elements provided in a model test deck prepared by the Secretary.

For primaries a "test deck" of cards/ballots must be prepared and tested for each political party. If more than one punch card or optical scanner ballot format is used in any election, all such formats shall be tested using the proper program and test deck.

Written notice of the time and place of the computer program test shall be given by the city or town clerk to the chairman of the city or town committee of each political party, and shall be posted in the city or town clerk's office, at least three days before the test.

(5) Time of Computer Program Testing. The computer program must be tested using the test deck no later than four days before each election. A copy of the computer print out of the test results, dated and signed by the city or town clerk, shall be filed at once with the Secretary for state elections. For punch-cards only, another test must be completed immediately before the program is used to count the ballots, and a final test immediately after the ballots are counted.

(6) Computer Program Delivered to Secretary. Each vendor or city or town official that prepares a computer program for a state election shall deliver an exact duplicate of the program to the Secretary, along with a certificate signed by the preparer, naming the election jurisdiction for which the program was prepared, and stating that the program is an exact duplicate of the program sent to that jurisdiction.

(7) Security of Computer Programs. The city or town clerk shall secure all computer programs, test decks, and computer results in a container sealed and stored in a secure location.

(8) Reporting Requirements. The city or town clerk shall report all computer problems, including tabulation errors and mechanical failures, to the Secretary.

54.03: Before the Polls Open

(1) Election Officers Report to Polling Place. All election officers must report to work at the polling place at a time to be determined by the city or town clerk, so as to be able to complete all preliminary work and to allow the polls to open on time. They must be sworn in before beginning to work. Election officers shall open the polling place on time.

(2) Replacement of Election Officers. If an election officer assigned to a polling place fails to appear or leaves, the city or town clerk shall be notified. Replacements shall be sent, or the corresponding deputy election officer shall be designated as the replacement.

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- (3) Arrange the Polling Place. The voting booths, ballot box, fiberboard boxes with punch cards and ballot envelopes, and the metal transportation box must be in full view at all times. A guard rail shall be arranged to prevent unauthorized people from interfering with or observing people who are voting.
- (4) Place Demonstration Marking Units at Entrance. One or more marking units must be outside the guard rail for providing instruction to voters.
- (5) Signs to be Posted. The following items shall be posted in a conspicuous place inside the polls but outside the guard rail:
 - (a) Three specimen ballots (for each party in also, put in required return primaries).
 - (b) three "Instructions to Voters" cards
 - (c) three "Penalties Upon Voter" cards
- (6) Ballots or Booklets Correct. Election officers shall check the punch-card ballots or booklets or the optical scanner ballots against a specimen ballot to see that they are the correct ballots or booklets for the polling place. The name (and number, if any) of each office and candidate shall be checked. If the ballots or booklets are incorrect, the warden shall call the city or town clerk. Incorrect ballots or booklets shall not be used.
- (7) Marking units in Working Order. Where punch-cards are used, a marking unit shall be provided for every 125 voters in the precinct, with an implement attached for punching the punch-card ballots. Election officers shall test punch a demonstrator card in each marking unit to ensure it is in working order. Marking units shall be tested frequently throughout the day. If a marking unit is not working properly or a booklet is defaced, the light shall be turned off and the unit turned upside down until it can be repaired. The city or town clerk shall be notified if additional books are needed.
- (8) Count and Record the Number of Ballots. Election officers shall count and record the actual number of punch cards or optical scanner ballots received in the polling place.
- (9) Set Up Check-In and Check-Out Tables. An election officer shall lay out the voting list and one stack of punch cards or optical scanner ballots, for each party in a primary, and envelopes or ballot sleeves on the check-in table. An election officer shall also set up the voting list on the check-out table near the ballot box. At the biennial state election, copies of the official information for voters pamphlet, at least one for every 100 registered voters in the precinct, shall be available to voters at the check-in area.
- (10) Ballot Box. The ballot box shall be placed away from the door, inside the rail, next to the check-out table so it is available to the voters as they leave the polling place.
- (11) Ballot Clerks. The warden shall appoint two election officers of different political parties to be stationed at the entrance to the voting area. Two other election officers of different parties shall be stationed at the check-out table.
- (12) Ballot Box Empty. The warden shall publicly open the ballot box and examine it. It should be shown to be empty and the register set at zero to the satisfaction of all election officers and other persons present. The warden shall close and lock the ballot box.
- (13) Check Printer Tape on Optical Scanner Systems. Where optical scanner systems are used:
 - (a) An election officer shall cause the vote tabulator to print a listing of all candidates and questions in the order they appear on the ballot.
 - (b) At least two election officers of different political parties shall examine the tape to see that there are no votes already on the vote tabulator for each candidate or question.
 - (c) An election officer shall pull the tape out of the machine. Two election officers who observed the printing of the tape must sign their initials at the bottom of the tape and record the date. Any person present shall be allowed to view the printing of the tape within one half hour before the polls open.
 - (d) The tape shall be posted in a conspicuous place inside the polling place.

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- (e) If any of the vote tabulators is not on zero, the warden shall call a technician to service the machine and this event shall be recorded in the clerk's Election Record and signed by the election officers.
- (14) Election Record. The clerk shall record in the election record:
- (a) the examination and condition of the ballot box,
 - (b) the register number on the ballot box before any punch card or optical scanner ballots are cast, and
 - (c) the actual count of punch-card or optical scanner ballots received.
- (15) Ballot Box Key. The warden shall lock the box and give the ballot box key to the police officer. The officer shall keep the key until the polls close.
- (16) Ballot Box Locked. The ballot box must remain locked or sealed throughout the day. It may not be opened nor ballots removed until after the close of the polls, unless the ballot is returned to the voter in an optical scanner system. (The ballot will be returned if it cannot be read by the vote tabulator.). If the box becomes too full to operate, see 950 CMR 54.04(26).
- (17) Open on Time. The warden shall open the polls on time if necessary materials are available, even if some things usually done beforehand must be done after the polls open.

54.04: During the Voting Hours

- (1) Declare Polls Open. The warden shall declare that the polls are open.
- (2) Instruct Voter in Use of Equipment. Election officers at the demonstration unit shall ask the voter if he wishes to have instruction or a review of how to use the equipment.
- (3) Who May Vote. Anyone whose name appears on the voting list is qualified to vote. The election officer shall check the supplementary voting list.
- (4) Voter States Name and Address. The voter must announce his address and name to the election officer in charge of the check-in voting list.
- (5) Look for the Name on the Voting List. The election officer shall find the name and shall repeat it loudly and clearly. If it is a primary, the officer shall announce the party as well.
- (6) Name Dropped or Listed Incorrectly.
- (a) Procedure. If the name, address, or party enrollment of a person claiming the right to vote does not appear on the voting list or is listed incorrectly, the presiding officer must communicate with the office of the registrars of voters to ascertain whether the person is entitled to vote. If the presiding officer or the registrars determine that the person is entitled to vote, the presiding officer shall complete the proper certificate, attach it to the voting list, and allow the voter to vote. If the presiding officer or the registrars are unable to make this determination, the presiding officer shall direct the person to the registrars' office. If the registrars then determine that the person is entitled to vote, the person may vote there immediately by absentee ballot, or may return with the certificate to vote at the polling place. The registrars or their agents shall orally inform each such person at their office of the opportunity to vote there. If a voter at a primary proves under 950 CMR 54.04(6) that his or her party enrollment is listed incorrectly, the voter shall be allowed to vote in the correct party's primary. Whenever a person is allowed to vote under 950 CMR 54.04 and M.G.L. c. 51, § 59, the registrars shall add the current name, address and previously established party enrollment of that person to the register of voters, without requiring further action by the person.
- If the name, address, or party enrollment of a person claiming the right to vote appears on the voting list as an inactive voter, the presiding officer shall allow such inactive voter to vote upon written affirmation by the inactive voter of his current and continuous residence in the municipality, (or, at a state primary or state election, residence

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in the municipality within the previous six months,) signed under the penalties of perjury. Such written affirmation shall be attached to and be considered part of the voting list, returned and preserved therewith, and such inactive voter shall be restored to the active voting list at his current residence, without requiring further action by the person.

(b) Standard. The registrars must determine persons to be entitled to vote under 950 CMR 54.04 and M.G.L. c. 51, § 59 whenever such persons have registered to vote in that city or town in the past and affirm in writing, signed under the penalties of perjury, that they have continuously resided in the city or town (or, at a state primary or election, resided in the community within the past six months), unless the registrars affirmatively establish, by evidence other than failure to respond to the street listing under M.G.L. c. 51, § 4, or failure to respond to a notice under M.G.L. c. 51, § 37, that the person has not in fact continuously resided in that city or town, (or, at a state primary or election, resided in the city or town within the past six months). The written affirmation shall be on a form which must be available at the polling place stating: "I am currently a legal resident of (city or town), and have continuously been a legal resident here since (last date of ascertained registration). Signed under the penalties of perjury." For the purpose of ascertaining past registration, the registrars must check all available records for at least the previous three years.

If the inactive voter has moved within the city or town, the voter will write the address at which he or she last registered to vote, as well as his or her current address. The inactive voter will vote at the polling place which corresponds to his or her address as it appears on the inactive voting list. After the election, if the voter has moved within the city or town, the voter shall be restored to the active voting list at his or her current address, without requiring further action by the person.

All inactive voters shall be asked to show suitable identification showing their name and current address. Inactive voters who fail to show suitable identification must be allowed to vote. However, an election officer shall, and any other person may, challenge their right to vote under M.G.L. c. 54, § 85 and 950 CMR 54.04(23). For the purpose of 950 CMR 54.04(6)(b) suitable identification shall be defined in 950 CMR 54.04(6B).

(c) Communications. To carry out the communications required by 950 CMR 54.04 and M.G.L. c. 51, § 59, a properly functioning telephone or other equivalent communications, and a sufficient supply of blank certificate forms, must be immediately available to the presiding officer at every polling place. At the registrars' office, at least one properly functioning telephone line for every 10,000 registered voters or fraction thereof in the city or town (including lines entering a main city or town switchboard and connecting to the required number of lines in the registrars' office), or other equivalent communications, and sufficient personnel available to staff them continuously, must be available for incoming calls throughout the time when polls are open.

(6A) Escrow ballots. A person claiming the right to vote in a precinct, but who is not allowed to vote for any reason, must be allowed to mark an escrow ballot. Such persons include, but are not limited to, persons who are determined not to be entitled to vote under the certificate procedure of M.G.L. c. 51, § 59 and 950 CMR 54.04(6), voters whose names are already checked on the voting list as having voted, and voters who claim their recorded party enrollment is incorrect, thereby preventing their voting in a party primary. An election officer shall orally inform every such person of his right to mark an escrow ballot, of the procedure for doing so, and of the fact that the escrow ballot will not be counted unless the outcome is sufficiently close and the person is later determined to be entitled to vote; in the case of such persons determined at the polling place not to be entitled to vote under the certificate procedure, the election officer shall also inform such persons of their option to go to the registrars' office and to vote there under the certificate procedure if determined to be entitled to vote, otherwise to mark an escrow ballot there. In all cases, escrow ballots shall be marked according to the following procedure. An election officer shall write the word "escrow" on the punch-card envelope or optical scanner ballot, and the person shall add his or her name and address. The election officer shall administer to the person the challenged voter's oath in 950 CMR 54.04(23)(c). The person shall mark the ballot as usual, but it shall not be cast in the ballot box. An election officer shall instead place it in an envelope marked "escrow ballots," and shall note the event in the clerk's election record.

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(6B) Identification. If so authorized by the city or town clerk or registrars of voters, an election officer may request any voter to present written identification. Such requests shall not discriminate in any way, but shall be entirely random, consistent, or based on reasonable suspicion. For the purpose of 950 CMR 54.04(6B), of M.G.L. c. 54, § 76B, and of 950 CMR 54.04(6)(b), suitable written identification includes a driver's license, recent utility bill, rent receipt on a landlord's printed letterhead, lease, duplicate copy of a voter registration affidavit, or any other printed identification which contains the voter's name and address. If voters fail to present suitable written identification when so requested, they must still be allowed to vote, but an election officer or any other person may challenge their right to vote under M.G.L. c. 54, § 85 and 950 CMR 54.04(23).

(7) Mark the Voting List. The election officer shall check the voter's name by marking it on the voting list. In a primary, the voter shall be given the ballot of the party in which he is enrolled. An unenrolled voter may choose the ballot of any party. An election officer shall place a D or R next to the voter's name to indicate the choice of party. At a presidential primary, election officers shall explain to voters who inquire that they may change their enrollment after voting by filling out a card available at the polls, which then must be transmitted to the city or town clerk.

(8) Hand the Voter a Ballot. As used in 950 CMR 54.00, the term "ballot" means:

- (a) the proper number of one or more punch cards necessary to record votes for all offices and on all questions, and one envelope for enclosing the punch card or cards, or
- (b) the proper number of optical scanner ballots necessary to record votes for all offices and on all questions,

and any separate sheet or sheets of paper on which ballot questions are printed under 950 CMR 50.06. An election officer shall hand the voter a ballot. Where optical scanner ballots are used, the election officer shall also hand the voter a ballot secrecy sleeve. In a primary, an election officer shall hand the voter a ballot for the proper party, and direct the voter to any proper marking unit.

(9) Instruction and Assistance to Voters.

- (a) Instruct Voters. An election officer may answer questions and instruct the voter on the proper method of punching or marking the ballot. Election officers shall use the demonstration model provided outside the voting booth.
- (b) Instruction is Different from Assistance. Instruction shall consist of informing the voter on the proper method of punching or marking a ballot; assistance shall consist of actually voting for the voter. Except as the law permits, a voter must punch or mark his ballot in secret.
- (c) Assistance to Voter. If a voter asks for assistance in casting his ballot due to blindness, physical disability or inability to read or to read English, he may be assisted by a person of his own choice or if he desires instead by two election officers of different parties.
- (d) Do Not Influence Voter. Election officers shall not in any manner request or seek to persuade or influence any voter to vote for or against any person or political party or ballot question.

(10) Write-Ins. A voter may cast a write-in or sticker vote in the space provided on the optical scanner ballot or on the punch-card ballot envelope for a person not listed on the ballot or in the booklet. The office for which the vote is cast must be included on the punch-card ballot envelope.

(11) Spoiled Ballots. If a voter spoils a punch card or envelope or an optical scanner ballot, the voter may return it and ask for another. Voters shall be allowed up to a total of three ballots.

(12) Spoiled Ballot Envelope. The voter shall return each spoiled punch card or envelope or optical scanner ballot to the ballot inspector who shall mark it "spoiled" and place it in the spoiled ballot envelope. A spoiled ballot shall not be placed in the ballot box.

(13) Voter Goes to Check-Out Table. Election officers in charge of maintaining the check-out voting list shall ask for the voter's name and address.

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(14) Look for the Name on List. The election officer shall find the name on the list and shall repeat it loudly and clearly. If it is a primary, the officer shall announce the party as well.

(15) Mark Name on Voting List. The election officers shall check the voter's name by marking it on the voting list. In a primary, the officers shall mark a D or R next to the name of unenrolled voters, corresponding to the party ballot chosen by the voter.

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(16) Tearing Off Stubs on Punch Card Ballots. Either an election officer shall instruct the voter how to tear off the stub, or the officer shall tear off the stub. If a ballot is to consist of more than one punch card, the election officer must tear off the stubs, and shall immediately count the number of stubs to ensure that it is correct; if a voter has already torn off the stubs, the officer shall examine the envelope to ensure that it contains the proper number of cards, without ascertaining how the voter has voted. In all cases, election officers shall ensure that the stub is bent down and then torn cleanly from the card.

(17) Placing Ballots in Ballot Box. If one side of the ballot card is blank, election officers shall ensure that the blank side of the ballot card shows through the envelope window for proper canceling. The voter shall place the ballot envelope with the exposed punch card strip face up into the opening of the ballot box. The ballot box clerk shall wind the ballot into the ballot box. In the case of optical scanner systems, the voter shall place the ballot in a ballot secrecy sleeve so that the tip of the ballot extends past the secrecy sleeve. The voter shall then feed the ballot through the vote tabulator and return the ballot secrecy sleeve to the election officer. Any separate sheet or sheets of paper on which ballot questions are printed under 950 CMR 50.06 shall not be placed in the ballot box, but may be disposed of in any manner.

(18) No One May Take a Ballot from the Voting Place.

(19) One Person Per Voting Booth. Only one person shall be allowed in a voting booth except in cases of assistance provided to a physically disabled or blind person or a person who cannot read or who cannot read English.

(20) Time Allowed. Voters shall be allowed five minutes to vote if others are in line and ten minutes if there are no voters waiting. If a line of voters forms, this rule should be enforced equally. If there is no line, election officers can be more lenient.

(21) Number of Voters Allowed. When all the voting booths are filled, no more than four waiting voters shall be permitted inside the guard rail.

(22) Candidates' and Their Workers' Rights and Restrictions.

(a) Observers. To achieve the legal requirement that the election be held in public view, observers shall be allowed inside the polling place, outside the guard rail, unless they are disorderly or obstruct the access of voters. Observers may keep notes including marked voting lists. If there are so many observers in the polling place that they obstruct voters, they may be asked to cooperate in collecting information. The warden may exclude from the polling place any person who is disorderly or who obstructs the access of voters.

(b) Voting Booths Clear of Campaign Literature. Election officers shall check the voting booths regularly to see that no one has left any literature. The polling place must be kept clear of any campaign material.

(c) Campaign Material. No campaign material intended to influence the vote of a voter in the ongoing election, including campaign literature, buttons, signs, and ballot stickers, may be posted, exhibited, circulated, or distributed in the polling place, in the building where it is located, on the building walls, on the premises where the building stands, or within 150 feet of an entrance door to the building. As used in 950 CMR 54.04(22)(c) and M.G.L. c. 54, § 65, the "premises" where or on which the building stands means only the grounds in the immediate vicinity of the building, and does not include the entirety of a large parcel of real property. No person shall collect or solicit signatures on nomination papers or petitions of any kind within 150 feet of an entrance door to the building. The police officer shall enforce this rule under the direction of the warden. Access to the polling place must be open and unobstructed and the voters may not be hindered.

(d) Activities at Polling Place. Within 150 feet of a polling place as defined in 950 CMR 54.04(22)(c), no person shall solicit votes for or against, or otherwise promote or oppose, any person or political party or position on a ballot question, to be voted on at the current election.

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(23) Challenges.

(a) Challenges of the Right to Vote. Any election officer or other person may challenge a person's right to vote for any legal cause. The challenger may challenge an absentee ballot as well for reasons allowed by law. The challenger must state, based upon information particular to that voter, the reason for challenging the right of a person to vote, for example: this person is not old enough to vote; this person is not a citizen; this person should have been removed from the voting list; this person has already voted; this person is not the person he claims to be.

When asked by an election officer, the challenger shall be required to briefly set forth factual information specific and personal to the challenged voter as to the reasons that voter is not qualified to vote in the election at that precinct. If the election officer determines that the challenger has not provided sufficient factual information specific and personal to that voter demonstrating that the voter is not qualified to vote at that precinct, then the election officer shall reject the challenge on the grounds that the challenge was not based upon a legal cause.

(b) Observers Who May Act as Challengers. An observer-challenger shall remain at a fixed location in the polling place designated by the election officer near enough to the check-in table but behind the guard rail so as to hear and see a voter checking in to cast a ballot. If the polling place is not large enough to accommodate all observer-challengers, to the extent possible, priority shall be given to individuals representing candidates and questions appearing on that election's ballot and to those who provided written notice to the local election official prior to the election. An observer-challenger may observe and keep notes but shall not converse with others or talk on a mobile phone. All challenges shall be directed to the election officer and observer-challengers shall not speak directly to the voter. A challenger must be prepared to exercise his or her challenge at the time the voter's name is announced at the check-in table in a manner so as not to cause delay and interference in the voting process.

(c) Illegal Challenges. A challenger should be aware that any person unlawfully using the challenge procedure for improper purposes, including but not limited to, the intimidation of a voter or to ascertain how he or she voted, may be fined up to \$100 and or be subject to other available legal penalties and/or remedies.

(d) Challenge Procedure. If a voter is challenged, the warden shall ask the challenger to briefly set forth factual information specific and personal to the challenged voter as to the reasons that voter is not qualified to vote in the election in that precinct. If the election officer determines that the challenge is valid the warden shall administer the following oath to the challenged person:

“You do solemnly swear (or affirm) that you are the identical person whom you represent yourself to be, that you are registered in this precinct, and that you have not voted in this primary (or election).”

The warden shall require the challenged person to write his name and present residence on the outside of the punch-card envelope or the optical scanner ballot. (If it is an absentee ballot, the warden shall insert this information.) Where punch-cards are used, the warden shall write the precinct number, the letters "CV," and the number of the challenged voter on the punch-card envelope and ballot card, "CV1" on the first envelope and ballot card, "CV2" on the second, *etc.* The warden shall add the name and address of the challenger and the stated reason for the challenge, and the voter may cast the ballot in the ballot box or feed the ballot through the vote tabulator. No statement shall be made or information given by any person as to how the person voted. The clerk of the precinct shall record in the clerk's Election Record the name and residence of every person who is challenged and has voted. The election officers in charge of the voting list shall mark the letter "CV" next to the challenged voter's name on the voting list.

If the election officer determines that the challenger has not provided factual information specific and personal to that voter demonstrating that the voter is not qualified to vote at that precinct, the election officer shall reject the challenge on the grounds that the challenge was not based upon a legal cause. The election officer shall note in the clerk's election record the name of the challenged voter, the name of the challenger, the factual basis for the challenge and the reason why the challenge was rejected.

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(24) Personnel Permitted Within Guard Rail.

- (a) Election officials
- (b) Voters in the process of voting
- (c) Police officers with the permission of the warden
- (d) Representatives of the clerk's office
- (e) Children may accompany a voter within the guardrail, unless the warden decides that it would disrupt good order.

(25) Information by Election Officers Prohibited. Before the public declaration of the vote, no election officer shall make any statement regarding the number of ballots cast, the number of votes given to any person, the name of any person who has voted or whose name has not been checked, or of any other fact tending to show the state of the polls. But the officer shall, when requested, make a statement of the figures on the ballot box register. That statement shall not be considered an official declaration as to the state of the polls or of the number of ballots cast.

(26) Opening of the Ballot Box. The ballot box shall not be opened nor any ballot removed until the polls are closed, unless the ballot is returned to the voter in an optical scanner system. (The ballot will be returned if it cannot be read by the vote tabulator.) However, in order to make room for more ballots, the warden may, in the presence of all election officers, open the box and press down the ballots. If the ballot box is too full to operate, the warden may, in the presence of a police officer, remove the ballots from the ballot box in convenient packages and place them in the fiberboard or other container. The warden shall lock the fiberboard or container securely and shall keep it in public view. The ballots shall not be separated from their envelopes or otherwise processed until polls close; except for automatic counting by an optical scanner system. If the ballot box becomes impossible to use, the warden shall establish a substitute box, which shall be kept in public view under the same security as the original ballot box; the clerk shall record a statement of the event and of the reason in the election record, and shall also include this statement in the envelope with the ballots cast.

(27) Processing Absentee Ballots. Absentee ballots used with punch-card systems shall be punch-card ballots; absentee ballots used with optical scanner systems shall be optical scanner ballots.

NON-TEXT PAGE

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- (a) Deliver Absentee Ballots. The voted absentee ballots shall be delivered to each polling place during the day, not later than one hour after the polls close.
 - (b) Warden Shall Process Absentees. The warden may process absentee ballots whenever there is free time, from the time the polls open in the morning and throughout the day.
 - (c) Absentee Ballots to be Processed. The city or town clerk and not the election officers shall determine whether to reject an absentee ballot as defective. If the ballot is transmitted to the polls, election officers shall process it through unless the person's name has been marked on the voting list as having voted in person, or unless the name is not on the voting list. Election officers shall make certain that the name of the person who signed the absentee ballot envelope is on the voting list. Election officers shall inform the city or town clerk if the name does not appear on the voting list.
 - (d) Mark the Voting List. The letters AV or SAV shall have already been written in front of the absent voter's name. An election officer shall make a mark beside the name of the voter to indicate the vote has been cast. An election officer shall announce the name and address, and party in a primary, of each absentee voter.
 - (e) Open Ballot Envelope. Election officers shall open the absentee ballot envelope carefully so that they do not deface, mark, or tear the ballot or the ballot envelope. Election officers shall place the absentee ballot envelopes in the proper container.
 - (f) One Ballot Per Envelope. The absentee ballot envelope must not contain more than one ballot. If more than one ballot is in the envelope, neither ballot shall be counted and those ballots shall be placed back in the ballot envelope which shall be marked "Rejected as Defective" and placed in the proper container.
 - (g) Challenging of Absentee Ballots. In the precinct, if an absentee ballot is challenged when cast, the warden shall write the name and address of the absent voter on the punch-card ballot envelope or optical scanner ballot. The warden shall write the precinct number, letters "CV," and the number of the challenged voter on the punch-card envelope and ballot card or on the optical scanner ballot. The challenger's name and address shall also be recorded and the event shall be noted in the clerk's Election Record, and the letters "CV" shall be placed on the voting list next to the name of the challenged voter. After this, the ballot shall be deposited in the ballot box, or fed through the vote tabulator. No statement shall be made or information given by any person as to how the person voted.
 - (h) Placing Absentee Ballots in Ballot Box. The warden shall remove the punch-card ballot envelope containing the punch card from the absentee ballot envelope. If the plastic foam backing has been included, he shall separate the ballot card from the plastic foam backing and shall place the card in the punch-card ballot envelope. The warden shall make certain that the blank side of the card shows through the punch-card envelope window. He shall present the punch-card ballot envelope window side up to the ballot box officer who shall wind it into the ballot box. The absentee ballot envelope shall be kept separate. In the case of optical scanner systems, the warden shall place the absentee ballot in a ballot secrecy sleeve, so that the tip of the ballot extends past the secrecy sleeve. The warden shall then feed the ballot through the vote tabulator.
 - (i) Absentee Ballot Envelopes Shall Be Returned to the Election Authority.
- (28) Absentee Voters Who Seek to Vote in Person. If any person who has been sent an absentee ballot tries to vote in person at the election, precinct officers should see the letters AV or SAV opposite his name on the voting list. This person must present a certificate obtained from the city or town clerk authorizing him to vote in person. The city or town clerk shall by telephone authorize the presiding officer to issue such certificate if the clerk determines that a voter at the polling place is entitled to it, and the presiding officer shall then sign and issue the certificate. The presiding officer shall securely attach the certificate to the voting list and shall duly note that the voter in fact voted in person. If no certificate is authorized, election officers must refuse to let him vote and they shall refer him to the city or town clerk.

54.04: continued

(29) "Specially Qualified Voters" Who Register Late. "Specially qualified voters" who register to vote after the regular registration deadline under M.G.L. c. 51, §§ 50 - 51 shall present their certificates of supplementary registration to the warden at the polling place, and these certificates shall then be attached to the voting list. If the specially qualified voters are applying for absentee ballots, the certificate shall be attached to the voting list before it goes to the polling place, and the procedure on election day shall be the same as for a regular absentee voter.

(30) Announce the Polls Closed. An election officer shall announce that the polls are closed at the designated time. Each person in line when the polls close must be allowed to vote. If possible, all waiting voters shall be inside the polling place. The police officer shall be directed either to stand at the end of the line and move along toward the inspector until the last person eligible has voted, or to hand out certificates stating that the person was in line when the polls closed.

54.05: After the Polls Close: Punch-card Ballots

(1) Public May Observe Counting. The general public must be allowed inside the polling place after the polls close. The public must observe from outside the guard rail. Only election officers may handle ballots. All ballots cast must be kept in full view of the public while the processing of cards and envelopes is going on and until they are sealed in the boxes provided.

(2) The Clerk Shall Record Final Ballot Box Register Number in Election Record.

(3) Take Count of Voters on Both Voting Lists. The election officers in charge of each of the two voting lists shall count audibly and distinctly the number of names checked and shall announce the total numbers. The clerk shall record the numbers.

(4) Seal Checked Voting Lists in Envelopes. After tallying the voting list, an election officer shall place the tallied voting list in the envelope provided for that purpose. The election officer shall seal the envelope. This envelope shall be kept separately. The warden and clerk shall sign the certificate.

(4A) Escrow ballot envelope. Two election officers shall count the number of escrow ballots contained in the escrow ballot envelope, and write this number on the outside of the envelope. They shall not count the votes on any escrow ballots. They shall then seal the escrow ballot envelope.

(5) Count the Unused and Spoiled Ballot Cards. An election officer shall announce the total number of unused ballot cards. The total of used and unused and spoiled ballot cards should equal the total number of ballot cards received.

(6) Open Ballot Box and Remove Ballots. The warden shall unlock the ballot box with a key received from the police officer. The warden shall remove all cast ballots in the presence of other election officers.

(7) Separate and Check Punch-card Ballots. Two election officers, of opposite parties, shall examine each ballot card and envelope. If there is no write-in vote on the envelope, they shall separate each card from its envelope. If there is a write-in, they shall keep the card inside the envelope and put it aside. If there has been a challenged ballot, they shall check to see that matching numbers have been written on both the card and envelope before separating them. Ballot cards which appear to be damaged or improperly punched shall be put aside to be hand counted. If any kind of written mark appears on an envelope, whether it be valid or not, election officers shall not remove the card but shall place it back in its envelope and put it in a separate pile for further examination by the warden and precinct clerk.

54.05: continued

- (8) Invalidating Marks. No ballot shall be counted which contains any mark clearly designed to let election officers know that a certain person voted in a certain way. If a voter writes his name or marks his ballot with the letters of his name, these are distinguishing marks which identify a voter.
- (9) Prepare Four Separate Groups of Ballot Materials. There shall be four separate stacks of:
- (a) voted ballot cards
 - (b) unused write-in envelopes
 - (c) used write-in envelopes with the ballot card still inside.
 - (d) damaged and improperly-punched ballot cards.
- (10) The Warden and Clerk Shall Examine the Ballot Materials.
- (11) Process Write-ins. The warden and clerk shall place an identification number on each ballot card and envelope that contains a write-in, unless no name appears on the ballot for an office and no writing appears on the punchcard. This number shall be the precinct number plus a sequential number. This number should be written in red ink on both the card and the envelope. In a primary, they shall write the party name on the envelope.
- (12) Compare Envelope and Ballot Card for Over-Vote. The warden and clerk shall check the write-in envelope ballot card for a possible over-vote by comparing the write-in vote with the vote cast on the ballot card for the same office.
- (13) If There is an Over-Vote. If the number of votes for any office exceeds the number allowed, the election officers shall circle the punch on the card and shall write "over-vote for the office of " with a soft point pen on both the card and envelope. Over-voted ballots should then be entered on the sheet provided for that purpose. The card shall be inserted into the write-in envelope and the card and envelope shall be placed in the over-vote ballot tally envelope. The rest of the ballot shall be manually tallied either at the polling place or at the tabulation center.
- (14) If There is no Over-Vote. If there is no over-vote and the write-in name is valid, the card shall be separated from the envelope and placed in the stack of cards that shall be tallied by the computer. The used write-in envelopes shall be placed in the envelope provided for them. The hand-written number shall remain on both the card and envelope making it possible to reconcile the two at a later date if necessary.
- (15) Write-Ins. A write-in or sticker vote shall be counted whenever the intent of the voter can reasonably be determined, whether or not the voter has omitted the address or has made a mistake in the name or address of the candidate. The voter is not required to mark an "X" beside the name. At a presidential primary, a vote both for "no preference" and for a write-in or sticker candidate for president shall be counted as a vote for that write-in or sticker candidate. No write-in or sticker vote shall be counted unless the office title is indicated. If an office is to be filled both for a full term and for the remainder of an unexpired term to fill a vacancy at the same election, a write-in or sticker vote shall be counted for the full term unless the "vacancy" or the length of the unexpired term is indicated.
- (16) Record Write-In Votes. Election officers shall record write-in votes on a block tally sheet, either at the polling place or at the tabulation center.
- (17) Place Materials in the Metal Carrying Case. Unless the polling place has been designated as a tabulation center under M.G.L. c. 54, § 33F, election officers shall place the voted punch-card ballots, damaged and improperly-punched ballot cards, the write-in tally sheets (if write-in votes have been counted at the polling place), the challenged ballot envelopes, the valid write-in envelopes, and the envelope containing the over-voted write-in ballots and envelopes in the metal carrying case for transportation to the central tabulation center.

54.05: continued

(18) Place Remaining Materials in the Fiberboard Box. Unless the polling place has been designated as a tabulation center, election officers shall seal checked voting lists including absentee voters lists in their envelope. The warden and clerk shall sign the certificate. They shall return the materials sealed in the fiberboard box, and the sealed voting list envelope, to the city or town clerk's office.

(19) Boxes Are Sealed, Locked and Readied for Transportation. Boxes shall be locked in the presence of the warden and the clerk.

(20) Election Officers Shall Not Throw Anything Away.

(21) Accompany Ballots. The warden and the clerk shall accompany the metal carrying case with the police officer to a central tabulation center, or to the clerk's office if the tabulation center is in another municipality.

54.06: After the Polls Close: Optical Scanner Ballots

(1) Votes Counted Continuously. The tabulation of the votes shall take place in the polling place. The tabulation shall continue without interruption until all the votes are counted and the results are announced.

(2) Public May Observe Counting. The general public must be allowed inside the polling place after the polls close. The public must observe from outside the guard rail. Only election officers may touch ballots. All ballots must be kept in full view of the public while the counting is going on.

(3) Take Count of Voters on Both Voting Lists. The election officer in charge of each of the two voting lists shall announce the total number. The clerk shall record the number.

(4) Clerk Shall Record Final Ballot Box Register Number in Election Record.

(5) Number of Voters Should Equal the Total of the Votes. The total number of voters checked in on the voting list should equal the sum of the number of votes recorded on the final ballot box register.

(6) Seal Checked Voting Lists in Envelope. After tallying the voting lists an election officer shall place the tallied voting lists in the envelope provided for that purpose. Election officers shall seal the envelope. The warden and clerk shall sign the certificate. This envelope shall be kept separate.

(7) Print Results and Record them on Tally Sheets.

(a) Print Results. The election officer shall cause the vote tabulator to print the results of the election and shall remove the results paper tape from the vote tabulator and give it to the clerk.

(b) Read Results Out Loud. One election officer shall read the results paper tape out loud. The officer shall read the name of each candidate, the number of each question, the number of votes recorded, and the number of overvotes and undervotes/or blanks for each office.

(c) Record Numbers on Total Tally Sheet. As each number of votes is read aloud, it shall be recorded on the total tally sheet by an election officer of a different political party than the reader.

(8) Examining Ballots. The election officers shall remove all ballots that have been deposited in the ballot box and shall examine each ballot for write-ins or stickers and for any invalidating mark. No ballot shall be counted which contains any mark clearly designed to let election officers know that a certain person voted in a certain way. If a voter writes his name or marks his ballot with the letters of his name, this ballot shall be counted as a blank and the election officer must subtract one vote from all candidates and questions marked on the ballot.

54.06: continued

- (9) Read and Record Write-Ins and Ballots Segregated by the Vote Tabulator.
- (a) The election officers shall hand count all ballots which have been segregated by the vote tabulator into a separate compartment and any other write-in or sticker vote. In the case of a primary, election officers shall first divide the ballots by party before segregating write-in votes.
 - (b) Two tellers of different parties shall make a team; both shall review each ballot specified above. One person shall read the vote and the other shall record the tally. Only the teller actually marking the tally sheet shall have any marking device, which must be a red pencil or pen.
 - (c) The election officers shall read and record each write-in vote whenever the intent of the voter can reasonably be determined, whether or not the voter has omitted the address, made a mistake in the name or address, or failed to mark the vote indicator for the write-in, sticker candidate, or ballot candidate.
 - (d) If there is no vote indicator marked for a write-in or ballot candidate but the name of a candidate has been written-in on the ballot, the election officer shall count the write-in vote and make a notation on the write-in tally sheet to subtract one vote from the blank total for that office.
 - (e) On a ballot segregated by the vote tabulator, if there are no vote indicators marked for any ballot candidate, but the election officer can reasonably determine the intent of the voter, the election officer shall count the vote for the ballot candidate(s), and subtract one ballot from the "uncounted ballots" total of the results paper tape.
 - (f) If there are more vote indicators marked than there are candidates to be elected, then a blank has already been registered on the vote tabulator for that office and the name of a write-in candidate, if any, shall not be counted by the election officer. The election officer shall indicate this on the write-in tally sheet.
 - (g) If (because of write-ins or stickers) the number of votes for an office exceeds the number allowed, but the number of vote indicators marked for an office does not exceed the number allowed, the election officer shall count a blank for that office, make a notation on the write-in tally sheet to subtract a vote from the total of the appropriate ballot candidate(s) and add a vote to the blank total for that office.
 - (h) A separate block tally sheet shall be used for recording write-in votes and then the totals and necessary subtractions transferred to the total tally sheet.
- (10) Total Votes. Election officers shall total the write-in votes and the votes listed on the results paper tape, making all subtractions necessary according to 950 CMR 54.06(8) and (9), on the total tally sheet.
- (11) Candidates May Check Votes on the Results Paper Tape. Any person present shall be allowed to check the vote count on the results paper tape for one-half hour after the announcement of the vote for the office.
- (12) Escrow Ballot Envelope. Two election officers shall number escrow ballots contained in the escrow ballot envelope, and write this number on the outside of the envelope. They shall not count the votes on any escrow ballots. They shall then seal the escrow ballot envelope.
- (13) Warden and Clerk Sign Total Tally Sheet. After the total tally sheet is correct, the warden and clerk shall write the date, ward and precinct and city or town on the tally sheet. They shall attach the results paper tape to the total tally sheet.
- (14) Clerk Shall Complete Election Record.
- (15) Announce Final Returns. Officials shall wait until tally sheets balance before announcing any vote totals. The warden or the clerk shall announce the final returns.
- (15A) Reporting Results to Central Reporting Service. The clerk may report by telephone the results of final precinct tallies for any presidential preference primary, state primary or general election to a central media reporting service in consideration for a contribution, in an amount approved by the state secretary, to the respective state-wide municipal clerks association to be used for continuing education programs for municipal clerks.

54.06: continued

- (16) Count Spoiled Ballots. The number of ballots spoiled by voters and returned during the day shall be noted in the clerk's Election Record.
- (17) Count Unused Ballots. Election officers shall count all unused ballots. The clerk shall note in the Election Record the number and party of unused ballots.
- (18) Spoiled and Unused Ballots. Election officers shall place the spoiled and unused ballots in the container provided under seal.
- (19) Gather All Counted Ballots. Election officers shall put all cast ballots in envelopes. They shall place all envelopes in the containers provided for the cast ballots.
- (20) Seal Container. The warden shall seal the container with the seal provided and shall attach the proper tag for cast ballots only. In addition, an election officer may affix a private seal.
- (21) Sign Cast Ballot Container. The warden and clerk shall sign the container and shall enter the election and the date. They also shall fill out and sign a certificate stating that all ballots cast are contained therein.
- (22) Total Tally Sheets. The warden and clerk shall place the total tally sheet along with the results paper tape and the write-in tally sheet, in an envelope, seal it and sign the outside of the envelope. This envelope shall be kept separate.
- (23) Return All Election Materials. The election officers shall have all election materials returned to the city or town clerk, as follows:
 - (a) the counted ballots and the spoiled and unused ballots sealed in the proper containers;
 - (b) the marked voting lists, the write-in and total tally sheets with the results paper tape attached, and escrow ballots in separate envelopes;
 - (c) all other election supplies.The election officers shall not throw anything away.

54.07: Counting Procedures for Punch-Card Ballots

- (1) Application. 950 CMR 54.07 applies wherever punch-card ballots are used. As used in 950 CMR 54.07 "computer" means any device for counting or tabulating punch-card ballots.
- (2) Establishment of Tabulation Center. The city or town clerk must designate a central tabulation center, or must designate all the polling places as tabulation centers, not later than one week before the date of the election. The center must have a barrier of some sort to enclose the counting area so that no unauthorized persons may touch any election materials or be in the counting area at any time.
- (3) Personnel. The center shall be staffed by a warden, a clerk, and as many inspectors as the city or town clerk determines to be necessary. The warden is the presiding officer at the tabulation center, but the city or town clerk is the presiding officer at a central tabulation center. The presiding officer shall assign election officers any duties that will assure compliance with this chapter. The warden and clerk must be from different political parties and the inspectors equally divided among the two leading political parties. All tabulation center personnel must be adequately trained in advance in the use of equipment which they will operate.
- (4) Observers. The chairman of each city or town political committee may appoint in writing a computer expert to observe the proceedings at the tabulation center. The general public must be allowed to observe all proceedings at the tabulation center, but election officers may establish a guard rail or similar device to separate observers from the election officers, ballots, and counting equipment. If there are so many observers that they obstruct the proceedings, election officers may take appropriate steps to ensure cooperation in observing and collecting information.

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(5) Transportation to Central Tabulation Center.

(a) If a central tabulation center is within the city or town, the container shall immediately be transported to the tabulation center accompanied by the precinct warden, the precinct clerk, and a police officer, who shall exercise constant control and supervision over the locked metal carrying case.

(b) If a central tabulation center is outside the city or town, the locked metal carrying case shall instead first be similarly transported to the office of the city or town clerk and all metal carrying case shall be transported together to the tabulation center in vehicles designated by the city or town clerk and owned by the city or town. Each presiding officer shall transfer possession of the key to his carrying case to the city or town clerk. The carrying cases shall be loaded in full public view and unloaded in the presence of the election officers at the tabulation center. The vehicle transporting the carrying cases outside the city or town shall be accompanied at all times by the city or town clerk or his designee, and the carrying cases shall not be opened at any time before they arrive at the tabulation center.

(6) Tabulation by Computer.

(a) At the tabulation center, each precinct shall be tabulated separately. An inspection team shall examine the punch-card ballots and remove those which cannot be tabulated by the computer and which were not already removed. The inspection team shall also riffle the cards to remove any loose or hanging chads.

(b) The cards that are to be tabulated by computer shall be checked by the inspection team to make certain they are in proper condition to be counted.

(c) In the case of a primary, the inspection team must make certain that there is one group of cards for each party, and they shall check the cards in each group to make sure all cards in the group are of the same political party.

(d) If any ballot cards are rejected by the computer, they shall be counted manually.

(e) After the computer completes the printout of the votes, the tabulation center warden and clerk shall sign the computer printout, but in primaries, sign each of the party computer printouts, and take the computer printout to the tally station.

(f) Where the ballot cards are fed into a computer one-by-one by hand, the ballot cards shall be separated into convenient blocks, and one election officer shall feed the cards into the computer while the other watches the tape. A stacker tray must be used to receive ballots counted by the computer.

(7) Counting by Hand.

(a) The election officers shall place all rejected cards, whether removed by the inspection team or rejected by the computer, in a plainly marked envelope along with the damaged cards and the write-in over-voted cards and envelopes, separated previously. At primaries, these rejected, damaged and write-in over-voted cards should be put in separate envelopes for each party.

(b) The envelope shall then be taken to a tally station which is staffed by election officers equally representing the two leading political parties. The officers must manually count any rejected, damaged, and write-in over-voted cards, except for the over-voted office, that have not been counted at the polling place, and record the results on a block tally sheet headed "Rejected Cards". At a primary, each party must be counted separately.

(c) When the rejected, damaged and write-in over-voted card count is completed and the votes totaled, the totals from the tally sheets shall be entered on the precinct total tally sheet.

(d) The rejected, damaged and write-in over-voted cards shall then be put into an envelope, appropriately marked, and placed in a metal carrying case for delivery to the city or town clerk. At a primary, separate envelopes must be used for each party.

(8) Tallying and Announcing Result.

(a) The sheet showing the result, as printed by the computer, shall be fastened to the precinct total tally sheet for transmission to the city or town clerk. Each precinct total tally sheet shall show:

54.07: continued

1. the total number of names checked on the voting lists,
2. the total number of ballots cast,
3. the names of all persons voted for,
4. the number of votes for each person and the title of the office for which he was a candidate,
5. the number of blank ballots for each office, and, including an allocation of blanks corresponding to any punch cards improperly not cast by voters,
6. the number of yes and no votes in answer to any question to voters.

The electronic machine record, the totals of write-in votes, and the totals of rejected, damaged, and write-in over-voted ballots shall then be signed by the warden and clerk. The presiding officer at the tabulation center, or whatever election officer he designates, shall then publicly and in the presence of the other election officers distinctly announce the number of votes cast for each candidate for each office and the number of yes and no votes cast on any question. At a central tabulation center, this announcement shall be made for each precinct as soon as the precinct record has been completed.

(b) The warden and clerk shall then sign the precinct total tally sheet, any block or total tally sheet, and the computer printout. They shall then place these items in a separate marked envelope which is then signed by the warden.

(8A) Reporting Results to Central Reporting Service. The clerk may report by telephone the results of final precinct tallies for any presidential preference primary, state primary or general election to a central media reporting service in consideration for a contribution, in an amount approved by the state secretary, to the respective state-wide municipal clerks association to be used for continuing education programs for municipal clerks.

(9) Sealing and Transmitting Materials.

(a) All official election materials, except tally sheets and voting list envelopes and keys, shall be placed into the precinct's metal container as a part of the election record. The warden shall then lock the metal carrying case.

(b) The warden shall give the metal carrying case, an envelope containing the tally sheets, an envelope containing the voting lists used at the election, and the keys to the city or town clerk.

REGULATORY AUTHORITY

950 CMR 54.00: M.G.L. c. 54, § 37.