



# Pennsylvania District Attorneys Association

## **PDAA Election Guidance for District Attorneys and Pennsylvania Law Enforcement**

The PDAA, in collaboration with the Office of Attorney General, is providing the following election related guidance materials to our membership. The following information is to help our membership determine the best course of action when dealing with issues that may arise before, during or after the election date of November 3, 2020.

In addition to thanking the Office of Attorney General for its help with preparing this memorandum, the PDAA would also like to thank the Bucks County District Attorney's Office, the Montgomery County District Attorney's Office and the Pennsylvania State Police for providing additional guidance materials.

Given the current election climate, the PDAA encourages all offices to be as forthcoming and transparent as possible with the public when addressing the reasons for either prosecuting election related conduct or declining to prosecute election related conduct.

### **Jurisdiction (25 P.S. § 3555)**

- District Attorneys and the Office of Attorney General have concurrent jurisdiction over offenses arising under the PA Election Code.

### **General Regulations in Effect at Polling Places**

25 P.S. § 3060 (Regulations in Force at Polling Places) describes the kinds of general regulations that are in force at every polling place they include:

- No unauthorized persons in the polling place. Authorized persons include voters, those waiting to vote, election officials, constables/peace officer necessary to preserve the peace, poll watchers, and other enumerated individuals from the Election Code such as overseers.
- No elector shall be allowed to occupy a voting compartment or machine booth that is occupied by another unless they are authorized to provide assistance. *See Also* 25 P.S. § 3530.
- No elector can reenter the enclosed space of the polling place unless authorized to give assistance.



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- All persons must be ten feet away from the polling location while it is operational unless otherwise authorized to be there.
- No person shall electioneer (campaign) or solicit votes when within the polling place or within ten feet of the entrance.
- No written or printed material shall be posted within the polling room unless authorized by the Election Code.
- At the time the polling place is to be closed, any person in line qualified to vote is to be permitted to vote.

Violations of these regulations often amount to the most common complaints received by offices on election day.

## **County Board of Elections (25 P.S. § 2642)**

The county board of elections is vested with a great amount of authority on election day. They are responsible for nearly everything that occurs on election day. **The County Board of Election must report all suspicious circumstances to the district attorney of their county.**

It is recommended that each district attorney office inquire as to whether the county board of elections has promulgated any rules or regulations and obtain a copy of any rules and regulations that have been promulgated. It is also recommended that there be an established line of communication between the office and board so that any election day issues can be handled in a timely manner.

Given that the county board of elections has such broad power on election day, and the limitations on police involvement during election day (as addressed below), it is important to remember that the normal avenues of inquiry and investigation may not be available on election day. Certain investigative tools or methods of inquiry may have to wait until after election day. For example, on election day investigators will not be able to take possession of ballots, may not be able to conduct certain interviews, and may have to defer to the county of board of elections with regard to the resolution of a complaint.

## **Polling Place – who can be present (25 P.S. § 3060)**

- Voters
- People waiting to vote
- Election officials
- Poll watchers



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- Constables and Deputy Constables for the purpose of preserving the peace.<sup>1</sup> Other peace officers and law enforcement are also permitted when necessary to preserve the peace and at discretion of Judge of Elections. Specific regulations and other exceptions related to police officers are set out below.
- Other individuals enumerated under the election code such as Overseers

**Examples of Election Officials:** Please note that election officials are also shielded from other persons interfering, hindering, or delaying with the performance of their duties under various Election Code laws. 25 P.S. §§ 3508, 3549, 3527.

- Members of the County Board of Elections
- Poll workers: includes judge of elections, inspectors, clerks, overseers

These persons have immunity from arrest on election day and while tabulating and transmitting election returns except by arrest warrant for election fraud, felony, or for wanton breach of the peace. 25 P.S. § 2683. Members of a county's election board have the same limited immunity from arrest but it applies whenever they are "performing their duties...under this act" and includes an arrest warrant for any violation of the Election Code. 25 P.S. § 2651.

**Poll Watchers** (25. P.S. § 3060; § 2687): representatives of a candidate, political party or a political body. They are barred from electioneering or soliciting votes while within the polling place. 25 P.S. § 3060(c). The Pennsylvania Department of State has issued guidance that states poll watchers "**may not engage voters or otherwise interfere with the process of voting**"<sup>2</sup> and "poll watchers should direct permitted challenges directly to the Judge of Elections."<sup>3</sup> Poll watchers are certified by the board of election and granted credentials before election day. 25 P.S. § 2642(e); § 2687(b). They are not considered election officials or officers under the Election Code and do not share the same privileges and immunities. Though poll watchers are granted limited permission to be present at polling places, they are not exempt from the other criminal provisions of the Election Code including prohibitions on voter intimidation. *See* 25 P.S. § 2687(b), § 3060.

- Can be in the polling place but cannot be in the room where election officials meet and store election related materials
- Can keep their own list of voters

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<sup>1</sup> Pennsylvania Department of State, Guidance on Rules in Effect at the Polling Place on Election Day (October 2016). *See Also* 44 Pa.C.S.A. § 7152.

<sup>2</sup> Pennsylvania Department of State, Guidance on Rules in Effect at the Polling Place on Election Day (October 2016). (emphasis in original)

<sup>3</sup> Pennsylvania Department of State, Guidance Concerning Poll Watchers and Authorized Representatives (October 6, 2020)



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- May make a good faith challenge of a voter, through the Judge of Elections, on identity or residency (challenges cannot be based on race, ethnicity, national origin, language, religion, or other characteristics not related to qualifications to vote)<sup>4</sup>
- Can inspect the poll book under supervision of an election official. This only occurs when voters are not present.
- Can observe the computation of ballots
- No immunity on election day

## **POLICE (25 P.S. §§ 3047, 3520)**

A police officer may not be within 100 feet of a polling place. There are certain exceptions set forth in the Election Code and listed below. Officers should not hesitate to respond to immediate and readily apparent emergencies that threaten public safety, such as active shooters. Though there is no specific exception in the Elections Code, permission in such immediate emergencies should be presumed.

The following exceptions related to police presence at a polling place are found in the Election Code:

- A police officer may be present when voting
- A police officer may be present within 100 feet of a polling place when the polling place is in the same building/premises as the police department and the entrance/exit is within 100 feet of the polling place
- When called upon by the Judge of Elections to assist in the performance of their duties.<sup>5</sup>
- When summoned by an election official for assistance (i.e. member of board of election, judge of elections, inspector of elections or overseer)<sup>6</sup>
- When summoned by any election official or three electors of a polling precinct, to quell a disturbance, clear an obstruction, or preserve the peace<sup>7</sup>
- Or for the purpose of serving warrants<sup>8</sup>

Police officers cannot unlawfully intimidate/threaten/use force against an elector; unduly influence an elector, stop an elector from voting, restrain an elector's freedom of choice, or electioneering.

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<sup>4</sup> See Also Pennsylvania Department of State, [Guidance Concerning Poll Watchers and Authorized Representatives](#) (October 6, 2020). There is currently pending litigation regarding challenges based on signature comparison for mail-in and absentee ballots.

<sup>5</sup> 25 P.S. § 3060(f)

<sup>6</sup> 25 P.S. § 3511

<sup>7</sup> 25 P.S. § 3521

<sup>8</sup> 25 P.S. § 3047; 25 P.S. § 3520.



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The following offenses are those for which police can be criminally charged and are found in the Election Code:

- **25 P.S. § 3511: Peace Officers; Failure to Render Assistance; Hindering or Delaying County Board Members and Others. (M – two years exposure and three-month mandatory minimum)**
- **25 P.S. § 3520: Police Officers at Polling Places. (M – one-year exposure)**
- **25 P.S. § 3521: Peace Officer; Failure to Quell Disturbances at Polls; Hindering or Delaying Election Officers and Others. (M – one-year exposure)**

Certain election officials also have the power to legally compel law enforcement assistance. A Judge of Elections may call upon a “constable, deputy constable, police officer or other peace officer to aid him in the performance of his duties” under the election code. 25 P.S. § 3060(f). Law enforcement officers, defined as sheriff, deputy sheriff, constable, deputy constable, police officer, or other peace officer, are legally obliged to respond to a judge of elections, majority/minority inspector of elections, a county election board member, or overseer’s request for aid and to render assistance. 25 P.S. § 3511. Law enforcement officers are also legally compelled to quell any disturbances, clear obstructions, and maintain order when called upon to do so by any election officer or overseer. 25 P.S. § 3521 (also applies to requests by any three electors of the voting precinct). Failure to respond or perform these duties amount to misdemeanor crimes as indicated above. 25 P.S. §§ 3511, 3521.

### **Firearms**

The Election Code does not specifically address firearms or weapons at a polling place. Therefore, if a person can legally possess a firearm, there is no law prohibiting them from having that firearm at a polling place unless the polling place is located in a location where firearms are prohibited by law. Firearms are prohibited by law at courthouses and schools. (18 Pa.C.S. §§ [912](#) & [913](#)). A person cannot be prohibited from voting if they are merely carrying a firearm while voting. **However, if a person uses a firearm to threaten, coerce, intimidate, assault, or commit other acts prohibited by law, they could be removed and charged with voter intimidation or other applicable criminal statutes.**

### **Provisional Ballots and Voter Identification (See Generally 25 P.S. § 3050)**

- A person need only provide identification, either photo or non-photo identification, if it is their first time voting or their first time voting at that polling place/precinct. Identification can also be required when a lawful challenge is made to a person’s eligibility to vote. Please note that this requirement is different than the language in the statute, since the requirements were modified by the Commonwealth Court ([Applewhite, et.al. v. Commonwealth](#)).



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- A person will not be denied the opportunity to vote even if there is an issue/question on election day with regard to their eligibility to vote. Any voter/elector who shows up at a polling place and states that they are legally registered shall be given a provisional ballot if that person is denied the right to vote for any reason.

## **Criminal Statutes**

There are various violations found in the Election Code related to offenses that could be committed by electors or elections officials. Below is a list of violations found in the Code. Depending on the circumstances involved, violations found under Title 18 may also be warranted or may be more appropriate than Election Code violations. Specific crimes related to police interference are located in the section addressing police conduct above.

### **Voter Intimidation Statutes**

- 25 P.S. § 3527 Interference with Primaries and Elections; Frauds; Conspiracy. (F3)
- 25 P.S. § 3528 Persons Interfering in Other Districts. (F3)
- 25 P.S. § 3529 Assault and Battery at Polls. (M1)
- 25 P.S. § 3547 Prohibiting Duress and Intimidation of Voters and Interference with the Free Exercise of the Elective Franchise. (M2)

### **NOTE:**

25 P.S. § 3547 is the broadest statute on voter intimidation and can include direct, or indirect, conduct that can be violent, threatening, fraudulent or even contrivances done to unduly compel someone to vote, not vote, or otherwise interfere with their elective franchise. Voter intimidation is not confined to any time or place and can occur outside of election day or a polling place.

### **Voter Fraud Statutes**

- 25 P.S. § 3050 Manner of Applying to Vote; Persons Entitled to Vote; Voter's Certificates; Entries to Be Made in District Register; Numbered Lists of Voters; Challenges. (F3)
- 25 P.S. § 3502 Perjury. (M1)
- 25 P.S. § 3512 Nomination Petitions and Papers; Offenses by Signers. (M – 2 years exposure and three-month mandatory minimum)
- 25 P.S. § 3513 False Signatures and Statements in Nomination Petitions and Papers. (M – one-year exposure)
- 25 P.S. § 3514 Nomination Petitions; Certificates and Papers; Destruction; Fraudulent Filing; Suppression. (M – 5 years exposure and six-month mandatory minimum)



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- 25 P.S. § 3516 Unlawful Possession of Ballots; Counterfeiting Ballots. (M2)
- 25 P.S. § 3517 Forging and Destroying Ballots. (M2)
- 25 P.S. § 3518 Tampering with Voting Machines. (M2)
- 25 P.S. § 3527 Interference with Primaries and Elections; Frauds; Conspiracy. (F3)
- 25 P.S. § 3533 Unlawful Voting. (M1)
- 25 P.S. § 3534 Elector Voting Ballot of Wrong Party at Primary. (M2)
- 25 P.S. § 3535 Repeat Voting at Elections. (F3)
- 25 P.S. § 3536 Removing Ballots. (M2)
- 25 P.S. § 3538 Fraudulent Voting by Soldiers. (M – one-year exposure)
- 25 P.S. § 3539 Bribery at Elections. (F3)
- 25 P.S. § 3553 Violations of Provisions Relating to Absentee and Mail-in Ballots. (varies)

## Unlawful Interference Statutes

- 25 P.S. § 3507 Driving away Watchers, Attorneys, Candidates or Overseers. (M – two years exposure and one-month mandatory minimum)
- 25 P.S. § 3508 Refusal to Permit Election Officers, Clerks and Machine Inspectors to Act; Driving away Said Persons (M – two years exposure and one-month mandatory minimum)
- 25 P.S. § 3519 Destroying, Defacing or Removing Notices, Et Cetera. (M – three months exposure)
- 25 P.S. § 3527 Interference with Primaries and Elections; Frauds; Conspiracy. (F3)
- 25 P.S. § 3536 Removing Ballots. (M2)
- 25 P.S. § 3549 Hindering or Delaying Performance of Duty. (M – one-year exposure)

## General Prohibitions and Catch-All Statutes

- 25 P.S. § 3501 Disobeying Lawful Instructions. (M – one-year exposure)
- 25 P.S. § 3526 Prying into Ballots. (UM – one-year exposure)
- 25 P.S. § 3529 Assault and Battery at Polls. (M1)
- 25 P.S. § 3530 Unlawful Assistance in Voting. (M – one-year exposure)
- 25 P.S. § 3550 Violation of Any Provision of Act. (M – one-year exposure)
- 25 P.S. § 3553 Violations of Provisions Relating to Absentee and Mail-in Ballots. (varies)





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## Crimes Committed By Election Officials

- 25 P.S. § 3050 Manner of Applying to Vote; Persons Entitled to Vote; Voter's Certificates; Entries to Be Made in District Register; Numbered Lists of Voters; Challenges. (F3)
- 25 P.S. § 3503 Refusal to Permit Inspection of Papers; Destruction or Removal; Secretary of the Commonwealth. (M – 2 years exposure and one-month mandatory minimum)
- 25 P.S. § 3504 Refusal to Permit Inspection of Papers; Destruction or Removal; County Boards of Elections (M – 2 years exposure and one-month mandatory minimum)
- 25 P.S. § 3505 Insertion and Alteration of Entries in Documents; Removal; Refusal to Deliver. (M – 2 years exposure and one-month mandatory minimum)
- 25 P.S. § 3506 Refusal to Permit Overseers, Watchers, (M – one-year exposure)
- 25 P.S. § 3508 Refusal to Permit Election Officers, Clerks and Machine Inspectors to Act; Driving away Said Persons (M – 2 years exposure and one-month mandatory minimum)
- 25 P.S. § 3509 Refusal to Administer Oath; Acting Without Being Sworn. (M – six months exposure)
- 25 P.S. § 3510 Violation of Oath of Office by Election Officers. (M – one-year exposure)
- 25 P.S. § 3515 Offenses by Printers of Ballots. (M – 5 years exposure and six-month mandatory minimum)
- 25 P.S. § 3517 Forging and Destroying Ballots. (M2)
- 25 P.S. § 3518 Tampering with Voting Machines. (M2)
- 25 P.S. § 3523 Election Officers Permitting Unregistered Electors to Vote; Challenges; Refusing to Permit Qualified Electors to Vote. (F3)
- 25 P.S. § 3524 Election Officers Refusing to Permit Elector to Vote in Proper Party at Primaries. (M1)
- 25 P.S. § 3525 Frauds by Election Officers. (F3)
- 25 P.S. § 3526 Prying into Ballots. (M – one-year exposure)
- 25 P.S. § 3527 Interference with Primaries and Elections; Frauds; Conspiracy. (General) (F3)
- 25 P.S. § 3531 Election Officers Permitting Unlawful Assistance. (M – one-year exposure)
- 25 P.S. § 3532 Failure to Keep and Return Record of Assisted Voters. (M – two years exposure and two-month mandatory minimum)
- 25 P.S. § 3536 Removing Ballots. (M2)
- 25 P.S. § 3537 Commissioners to Take Soldiers' Votes. (not classified - one-year exposure)
- 25 P.S. § 3548 Failure to Perform Duty. (M – two years exposure)





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- 25 P.S. § 3553 Violations of Provisions Relating to Absentee and Mail-in Ballots.  
(varies)