★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

the Handbook

Chapter 11
Election Day Manual

June 2018

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11. Election Day Manual

REQUIRED FORMS	ADDITIONAL RESOURCES
ELECT-Management-Incident-Report.docx HAVA Administrative Complaint Procedure final 05-03-12.docx Emergency Polling Place Relocation Approval Request Form (SBE-310) Town.doc.docx Emergency Polling Place Relocation Approval Request Form (SBE-310) County or City (2).doc.docx	Voter Complaint Form SBE-15512.docx Voter Complaint Form SBE-15512.pdf Voter Complaint Form SBE-15512SPN.docx List of Institutions of Higher Education 8.22.xlsx Officer of Election Election Day Oath (SBE-611.1).docx Election Page Oath (SBE-604(H)).docx Noncitizen Student Volunteer Oath.docx Oath or Affirmation for Officers of Election SBE-120.docx
REFERENCE	**REGULATIONS**
ELECT-604G-Management-Guidelines-for-Campaigners-and-Authorized-Representatives (7-17).docx What Ifs (07-17).doc ELECT-103CAP Election Day Guide (7-17).docx ELECT-103EDG Election Day Guide (7-17).doc	**1 VAC 20-60-30** *Electronic Devices in Polling Places* **1 VAC 20-60-40** *When Ballot Cast* **1 VAC 20-60-50** *Overfull Optical Scan Ballot Container* **1 VAC 20-60-60** *Provisional Votes* **1 VAC 20-20-80** *Complaints*

11.1 CHAPTER ORGANIZATION

This chapter should be a resource for general registrars, local electoral board members, and officers of election. §11.2 addresses common questions and situations that can arise on election days such as general disruptions, campaigning near or in the polling place, voters or elections officials bringing weapons into polling places, electronic devices, authorized representatives, and children in the polling place. This section also addresses the exception in the Code of Virginia permitting a voter on the sex offender registry to go to a public school if that is the voter's lawful polling place.

Read §11.3 before an election day, so that you can be familiar with emergency procedures. However, you can also use §11.3 as a quick resource guide. §11.3 can be used in each polling place by the chief officers of election who are responsible for reacting to emergencies, providing notice, and following emergency protocols. §11.3.1 specifically discusses preparedness planning; §11.3.2 provides guidance for where, when and how to resume voting if the circumstances require a polling place be evacuated. Use §11.3.4 as a resource for emergencies that will arise immediately such as the inability to enter a polling place due to high water or locked doors. Refer to §11.3.5 for all other emergency responses.

§11.5 discusses election day complaints (both informal complaints and Help America Vote Act complaints. §11.6 covers common election day offenses and how to respond appropriately.

11.2 GUIDELINES FOR ELECTION DAY

11.2.1 General Disruption and Campaigning Within the Polling Place

If a voter or any other person is disrupting the polls, or any person is campaigning within the prohibited area or polling place, there are certain steps that can be taken to contain the situation.

As a first step, election officials (preferably two officials) should ask the person to cease the disruption, or ask the person who is campaigning to leave the prohibited area and polling place. If the person is entering or inside the polling place to vote, make the voter aware of the prohibition on campaigning in this area. If the person continues to campaign or becomes disruptive, officers of election should call 9-1-1. (Note: If you call 9-1-1, be sure to identify yourself as the chief election officer or an election official.) Remember to **complete an Incident Report**.

Please keep in mind the restrictions applicable to any person in the polling place, outlined in the Code of Virginia §24.2-604 and 607, which include the following:

- **No person** in the polling place may **hinder or delay** a qualified voter, give, tender or in any manner **try to influence a voter**, be in a position to **see the marked ballot of any voter**, or **otherwise impede** the orderly conduct of the election. Code §24.2-604(D).
- **Do not allow observers to provide any assistance to any voter**. Make sure observers are not wearing any indication that they are authorized to help voters. Code §24.2-604(C).
- **No person can intimidate or interfere** with any qualified voter so as to prevent the voter from casting a secret ballot. Code §24.2-607.

These prohibited activities shall not be construed to prevent a person approaching or entering the polling place for the purpose of voting from wearing a shirt, hat or other apparel (including a sticker or button) with a candidate's name or slogan on it.[1]

Officers of election are authorized to appoint in writing one or more persons, who will have all the powers of a law-enforcement officer in the polling place and within the prohibited area. This action should be taken as the *last resort* for the protection of election officials and the public.[2]

11.2.2 Weapons in the Polling Place

Currently, Virginia law prohibits bringing firearms and other weapons into the following polling place locations:

- Public, private, or religious elementary, middle, or high schools (extending to the building and grounds of these institutions)
- Courthouses

[1] See the Code of Virginia §24.2-604.
[2] See the Code of Virginia §24.2-606.

- Any private property location used as a polling place with an owner-established policy restricting or prohibiting the presence of weapons.

If your polling place is not one of the types listed above, a person with a weapon or firearm may be removed from the polling place only if they are acting in a way to intimidate, hinder or interfere with any qualified voter as to prevent them from casting a secret ballot, or are acting in a noisy or riotous manner.[3]

Officers of election have authority to preserve order in the polling place. If a person in possession of a weapon or firearm is acting in violation of Virginia law, the officers of election may first order the person to stop. If the person does not stop, the officers of election, or a majority of them, may order the arrest of the individual by a law enforcement officer.

In no circumstance should an officer of election or other elections official possess any weapon while in the polling place.

11.2.3 Sex Offender Registry Exception

A voter listed on the sex offender registry normally cannot go near or inside a public school. However, the Code of Virginia §18.2-370.5 provides an **explicit exemption for voters** whose polling location is located inside a school: these provisions "shall not apply to such adult if he is a lawfully registered and qualified voter, and is coming upon such property solely for purposes of casting his vote".[4]

11.2.4 Electronic Devices in the Polling Place (1 VAC 20-60-30)

The use of electronic devices in the polling place is generally accepted. However, representatives of candidates and political parties authorized to observe the election are prohibited from taking photos or video within the polling place.[5]

Officers of election may restrict the use of electronic devices *if* such use hinders, delays, or disrupts the voting process. The decision to restrict the use of electronic devices must be agreed to by the majority of officers of election. This decision is immediately appealable to the local electoral board. While an individual may be asked to leave the polling place for being disruptive, no voter may be removed from the polling place until after the voter has cast their ballot.

No electoral board may enact a policy that completely disallows the use of electronic devices by all individuals.[6]

11.2.5 Representatives and Observers

Questions regarding authorized representatives and neutral observers are addressed in the Code of Virginia § 24.2-604(C). Please remember that no person in the polling place may hinder

[3] *See* the Code of Virginia §24.2-607.
[4] *See* the Code of Virginia §18.2-370.5
[5] *See* 1 Va. Admin. Code 20-60-30.
[6] For more on this subject, please see an Attorney General opinion issued in 2016 regarding the use of cameras and phones in polling places: https://www.oag.state.va.us/files/Opinions/2016/16-038_Bell_Lind_issued.pdf.

or delay a qualified voter, give, tender or in any manner try to influence a voter, be in a position to see the marked ballot of any voter, or otherwise impede the orderly conduct of the election.

Do not allow observers to provide any assistance to any voter. Make sure observers are not wearing any indication that they are authorized to help voters.

11.2.5.1 Authorized Representatives

Officers of election shall admit authorized representatives for the Democratic and Republican parties and independent candidates to the polling place as long as the total number of representatives complies with the Code of Virginia §24.2-604(C). Code §24.2-604(C) limits the number of representatives for each political party or candidate to either one authorized representative per pollbook, or up to three representatives for each in the room – whichever number is greater.[7]

Each authorized representative must be a qualified voter in the Commonwealth (of any jurisdiction). Each authorized representative must present a written statement authorized and signed by the party chair or independent candidate. Photocopies of the written statement are acceptable.

11.2.5.1 Neutral Observers

The local electoral board or general registrar may authorize in writing the presence of additional neutral observers as appropriate. If your locality (whether the general registrar or the local electoral board) grants authorization to additional neutral observers, consider the implications of granting permission to one group without also providing notice and the opportunity to other similar or opposing groups that may wish to be present.

11.2.5.1.1 Must be Authorized in Writing

The **local electoral board or general registrar may authorize *in writing* the presence of additional neutral observers** as may be deemed appropriate. Local electoral boards and registrars should consider adopting a consistent policy for responding to such requests and objective criteria for making a determination. This will help ensure fair treatment of requestors.

11.2.5.1.2 Grant Equal Access

If a local EB or GR grants authorization to neutral observers in addition to the authorized representatives, please keep in mind the optics of granting permission to one group without also providing notice and the opportunity to other similar or opposing groups that may wish to be present. Other factors that may be considered by the electoral board or general registrar are the number of voters expected, the amount of equipment allocated, and the number of officers scheduled to be in each precinct.

While a general policy denying requests from any group not required to have access to polling places is allowable, you should consider if there are other options that would assist in making the election process more transparent. These options include limiting neutral

[7] See the Code of Virginia §24.2-604(C).

observers to the less busy times of day and/or offering to allow access during a non-presidential election.

11.2.6 Children in the Polling Place

As a rule, a voter may be accompanied into the voting booth by children aged fifteen or younger.[8] Under laws that prohibit disruption of voting, the officers may ask a parent whose child becomes unruly to get them under control. **In no case should an officer of election or electoral board member ever touch or discipline the child.** It is the parent's responsibility to control the child he or she has brought into the polling place. If the child feeds the ballot into the tabulator or otherwise casts the ballot and the voter has not completed the ballot, a new ballot will **not be provided**. If a ballot is damaged, the voter may "void" it and a new ballot can be issued. However, children should not be allowed to mark or play with a ballot. While Code language allowing a child to accompany the voter is written in the singular, there is not a one child per voter limit.

The officer should normally assume that the child accompanying the voter is "his [or her] child." No affirmation of kinship is required. Only the most obvious abuses should be questioned. For example, a teacher trying to claim a class of twenty as "his children" obviously does not fall within the intended meaning of the law. The class would fall under the definition of "neutral observers" which can only be authorized in writing, in advance, by the electoral board.[9]

11.3 IN CASE OF EMERGENCY

The Code of Virginia states that polls MUST be open for voters to place their vote at 6:00 a.m.[10] Officers of election MUST be present by 5:15 a.m.[11] Officers other than the chief and assistant chief may be assigned to work less than a full election day.[12]

11.3.1 Preparedness and Immediate Response

Each Chief Officer of Election should be instructed to divide the below in-case-of-emergency tasks amongst the officers of election *before voting commences at 6 am on election day*. If this has not been done, the Chief Officer of Election should assign these tasks by priority prior to announcing the emergency to the public.

Prepare by assigning one of the below mandatory tasks to each officer of election *in advance of the emergency.*

1. Take a headcount of all persons in the polling location.
2. Call the general registrar and/or electoral board.
3. Alert all present individuals of the emergency circumstances as calmly as appropriate and remind them of the predetermined assembly area. All present persons should assemble at a

[8] See the Code of Virginia §24.2-643(A).
[9] See the Code of Virginia §24.2-604.
[10] See the Code of Virginia §24.2-603 (polls must be open by 6:00 a.m.).
[11] See the Code of Virginia §24.2-639 (officers of election must be present by 5:15 a.m.).
[12] See the Code of Virginia §24.2-115.1 (officers other than the chief and assistant may work less than a full day).

predetermined assembly point at least 300 feet away from the building (or as close to 300 feet as terrain/conditions will allow) and outside of parking areas, if possible.

4. Take quick note of the "Public Counter" number on the machine(s).
5. List the names of those who checked in before the evacuation but were unable to vote.
6. If the emergency permits, all officers of election should be prepared to take the below items out of the compromised polling place:
    a. Counter
    b. Ballot container(s)
    c. Pollbook(s)
    d. Unused ballots
    e. Necessary forms and materials to allow voting to continue
        i. Affirmation of Eligibility
        ii. Provisional voting materials
        iii. Precinct lists
    f. Vital Supplies (cell phone, tape, etc.)

11.3.2 Resume Voting After Evacuation: How, When and Where

General registrars and officers of election should seek to ensure that voting can recommence (outside the polling place) as soon as it is both possible and safe.

11.3.2.1 If the polling place does not have operational voting equipment or sufficient ballots

Use emergency paper ballots as per the Code of Virginia §24.2-642.[13] If electronic pollbooks are used and unavailable, provisional ballots should be issued to all voters.

11.3.2.2 If you cannot re-start voting outside the polling place

Contact your local electoral board to request authorization for an alternative polling location. The local electoral board may authorize moving the polling to another location, but must do so with the Department of Elections' approval. If the relocation is authorized, an election official must leave directions to the new location posted on the doors (post on both regular and handicapped accessible entryways).

The directions should indicate the time this polling place was vacated and on whose authority, e.g., "Vacated by authority of the electoral board, 2 p.m. To vote, please report to _____."

11.3.3 Emergency Polling Place Relocation on Election Day

After receiving notice of an emergency at a polling place, the general registrar or electoral board should

➔ Contact local law enforcement and local emergency management.

[13] See the Code of Virginia § 24.2-642.

- ➔ Contact the Commissioner of the Department of Elections to propose an alternative location. An alternate location must be established within the precinct or within 1 mile outside the precinct boundary. The safest, most efficient shelter should be used to resume voting as soon as possible after the Commissioner has approved the new location.
- ➔ Prepare and email or fax the Emergency Polling Place Relocation form (ELECT-310) located in the SharePoint Forms Warehouse Category *Emergency Procedures* to the Department of Elections as quickly as possible. Links to these forms are also provided on page 2.
- ➔ Advise voters and candidates on the ballot (or their campaigns) must be notified by the most efficient means, such as fliers and the news media (television and radio, if possible), of the new polling location.

The chief officer of election should

- ➔ Make arrangements to transport the necessary equipment & supplies to the new location.
- ➔ Advise voters at the polling location who had not yet voted, of the new polling location.
- ➔ Post notices at and outside the old (original) polling place, if possible.

11.3.4 Common Election Day Emergencies

11.3.4.1 Cannot Enter the Polling Location

In the case of **high water** before or after the polls open:

- First notify the registrar, who will in turn contact the local electoral board.
- The electoral board must follow the guidelines established in your Election Emergency Procedures.
- After the alternate plans have been finalized, the electoral board and chief election official will notify election officials on how to proceed.

In the case of **locked doors**:

- If the Chief Officer of Election does not have the key for the polls, she should ensure, prior to election day, that she has phone numbers for contacting a facility custodian or the management staff.
- If the Chief Officer of Election cannot make contact with facility staff, she should contact the registrar and begin following the guidelines for an alternate polling location.

11.3.5 Emergencies Involving Election Officials and Supplies

If the **chief election official does not arrive with the supplies by 5:15 a.m.**:

- Any election official present should notify the general registrar.
- The office staff will attempt to reach the chief at her home.
- If the chief cannot immediately get to the polls with the supplies and books, the electoral board will deliver supplies, ballots, and a machine key immediately to the polling place.

- Until the pollbooks (which are in the custody of the chief) arrive, the registrar's office must be called to verify that each voter is qualified. For each qualified voter who votes on the registrar's authorization before the pollbooks arrive, record the voter's full name, street address and pollbook count (PBC) number on a note pad.
- Once the officers have the pollbooks, they record the voters and PBC numbers in the appropriate sections (double-checking names and addresses to make sure the correct voter is marked).
- If there is no phone service, or the registrar is not available, follow the normal procedures for a voter who is not listed on the pollbook, using a paper ballot and completing the Provisional Ballot envelope. Do not mark these voters on the notepad or pollbook.

If a voter must leave before you receive ballots, take his/her name and phone number. If the voter returns later in the day, place him/her at the front of the line, if one exists. However, a voter who has already been checked in on the pollbook as present to vote and then leaves may not return and vote later.

If the chief election official is ill or has a family emergency before the election

- The assistant chief or other designated official will be notified to pick up the supplies and ballots.
- That individual will serve as chief in absence of the originally designated chief.

If the supplies are destroyed, immediately call the registrar so that new supplies may be furnished.

- The supplies and ballots must not be left overnight in an automobile. The chief should ensure the supplies, equipment, and ballots are safely secured both at home and at the polling location when they go to check their equipment. If the supplies are destroyed, the registrar's staff will then replace supplies.

In the event that the **precinct is short of election officials**

- The shortage must be reported as the chief or assistant chief becomes aware.
- The registrar's office will attempt to replace the official.
- The other election officials must proceed in opening the polls.
- If an officer of election is absent or unable to serve and the polls have been open for one hour, the remaining officers of election shall appoint a substitute officer of election for the precinct. The substitute officer shall possess the same qualifications and, after taking the requisite oath, have the same powers as officers appointed by an electoral board.[14]

11.4 OTHER DIFFICULTIES ON ELECTION DAY

In the event that voting equipment **malfunctions or is damaged**:

[14] *See* the Code of Virginia §24.2-118.

- Immediately report to the voting machine technicians or the registrar/electoral board's office.
- Follow procedures in the Code under "Inoperative Equipment."
- When using optical scan ballots, voting will continue normally except for the tabulating.
  - Any voted ballots must be placed in the emergency ballot container. The ballots will remain in that container until the polls close and then the ballots will be fed through the counter.
  - If the officials neglect to place the ballots in the emergency ballot container before running the tapes, the technicians and an electoral board member must be summoned to the precinct and observe while all the ballots are run through the counter again before the results can be reported.
  - The ballots may have to be read or hand counted if the locality does not have the equipment.

In the event that the **ballot container is damaged or missing**

- Immediately report this to the registrar and a technician will be sent to repair or replace the container.
- If the emergency ballot slot cannot be used, the voters must place their ballots in the black supply container, or other container that is sealed and has a slot on top.
- The ballots must remain in that container until the polls close and then the ballots must be fed through the tabulator.

In the event that the **precinct phone is not working**

- Report the problem to the facility's custodial or the management staff.
- Another phone may be obtained to report the nonfunctional phone or down service to the registrar.
- If needed, a wireless phone may be provided until phone service is restored.[15]

In the event that the **registrar's phones are not working**

- Use wireless phones until service is restored.
- Notify all precincts of the new temporary number at which the registrar's staff may be reached.

In the event of **power failure at the registrar's office**

- Decide if the staff will be relocated.
- Notify election officials of the new location and contact information.

In the event of a **power failure at the polling location**

- Immediately report this to the registrar.
- If multiple outages are reported, the general registrar must report the outages to the Department of Elections.

[15] *See* the Code of Virginia §24.2-625.2 (prohibitions for wireless phone communication in poll use, refers to in voting machines).

- Report the problem to the facility's custodial or the management staff.
- Continue voting on available ballots, using provisional ballots as needed if electronic pollbooks are unavailable.

In the event the **ballot box fills**, officers of election may open the ballot container and empty the ballots with the following safeguards:

- The optical scan ballot container shall be opened in plain sight of any authorized party representatives or other observers and, once the ballots have been deposited into an auxiliary ballot container, both ballot containers shall remain in plain sight in the polling place.
- Any such auxiliary ballot container used shall have a lock and key and an opening of sufficient size to admit a single folded or unfolded ballot and no more.[16]
- At least two officers of election, representing both political parties, must transfer the ballots.[17] Two members of one single party may transfer the ballots if the election taking place is a single-party primary.

11.5 ELECTION DAY COMPLAINTS

One of the most important responsibilities of state and local election officials is ensuring the transparent and fair operation of elections. In support of this endeavor, local election officials should ensure that all election day workers are trained in election day procedures and be prepared with appropriate responses to any complaints or violations. The purpose of this section is to discuss election officials' response to complaints and violations that may occur.

11.5.1 Election Day Complaints

Voters should make complaints directly to the local general registrar or to the Department of Elections at any time. Complaints can range from a polling place having a long line to voting equipment being inaccessible. Election officials should take each complaint seriously and decide what solutions they can provide and also be aware of when complaints or conflicts should be escalated to proper authorities. Generally, complaints can be categorized into informal and formal. Election officials that witness election day violations or receive complaints should document the incident or complaint using the Incident Report Form supplied in the Forms Warehouse.

[16] See the Code of Virginia §24.2-623.
[17] See 1 Va. Admin. Code 20-60-50; SBE Policy 2008-010.

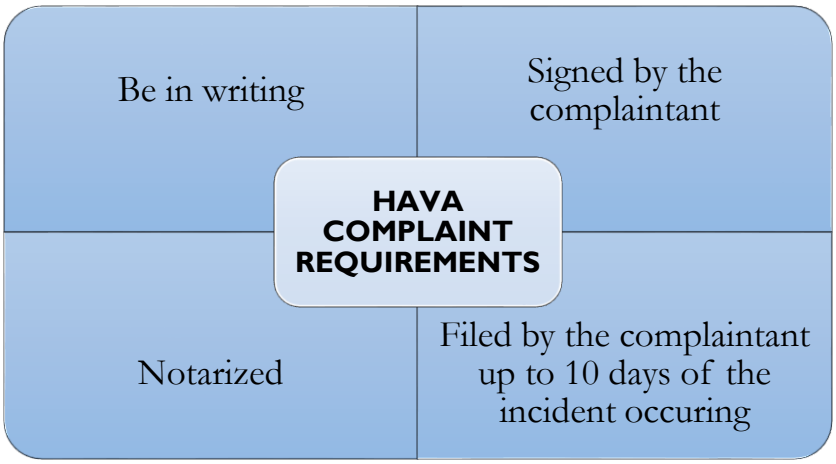
11.5.2 Informal Complaints

Local election officials can receive informal complaints from any voter; thus, procedures should be in place to handle complaints or conflicts and officials should aim to resolve these issues on the local level. Voters may also make informal complaints directly to the Department of Elections. Complaints filed online, by e-mail, or received by phone to the Department will immediately be sent to the appropriate election official. The Department will assign the appropriate staff member as expeditiously as possible to resolve informal complaints.

11.5.3 HAVA Complaints

The Help America Vote Act (HAVA) of 2002 made reforms to America's voting process by establishing minimum standards for states regarding election administration. Title III of HAVA contains standards regarding voting systems, provisional voting and voting information, computerized statewide voter registration list, and requirements for first-time voters who register by mail. HAVA standards are critical to the operation of an election.

Section 402 of HAVA requires states to establish a procedure for election day complaints. The State Board of Elections developed the HAVA Administrative Complaint Procedure for handling complaints consistent with HAVA requirements. HAVA complaints in particular will fall into two categories: informal and formal.



Regulation Note

1VAC 20-20-80: Complaints

A. Any person may make an informal complaint electronically or by telephone. Localities are primarily responsible for responding to all voter complaints they receive and may request board staff for assistance as needed.

B. A person may file a formal written complaint with the board as required by the Help America Vote Act of 2002, 42 USC § 15301 et seq., using the form and instructions available from the board. Formal complaints require review and response by the Commissioner or Deputy Commissioner who may contact local election officials for information. Any complaints not meeting the criteria for formal complaints will be responded to informally by appropriate staff. *See* the Code of Virginia §24.2-103.

The State Board of Elections adopted a formal grievance procedure to handle HAVA complaints See: SBE HAVA Administrative Complaint Procedure. This procedure has been implemented through State Board regulation 1 VAC 20-20-80. The complaint form is available for printing through the Forms Warehouse and should be available at each polling location for voters. A voter may also file a HAVA complaint without a Department complaint form. The general registrar or local electoral board will be contacted for information concerning the complaint and will be allowed an opportunity to review the proposed response.

A HAVA complaint must be in writing (a complaint does not have to be on the Department's official complaint form), signed by the complainant, notarized, and filed up to 10 days before or after the incident occurs. If a complaint is improperly notarized, please report the notary to the Secretary of the Commonwealth. The Department of Elections determines the severity of the complaint and whether a complaint is formal or informal. HAVA requires complaints be resolved within 90 days or referred to alternative dispute resolution as per 52 U.S.C 21112.

11.6 ELECTION DAY OFFENSES

Local election officials may receive complaints regarding violations or witness violations that are outside the scope their authority. An official should know what situations should be referred to authorities and what situations can be handled within their office.

Best Practice
Properly training election day workers is the best way officials can prevent confusion and misunderstandings that might lead to offenses.

11.6.1 Common Election Day Offenses

Loitering within the prohibited 40-foot boundary area of a polling place is probably the most frequent election day violation as per 24.2-604. Usually, officers of election warn such violators before taking legal action. If a violator repeatedly refuses to heed such a warning, then law enforcement may be requested.

Offenses relating to assisting voters: Any voter who needs assistance in preparing his ballot because of a physical disability or inability to read or write (including those with limited English proficiency) can request such assistance as per 24.2-649. The assistant (who can be an officer of election) must cast the ballot for the voter according to the direction of that voter. The assistant cannot in any way influence the decision of the voter. Finally, the assistant cannot divulge how the person voted. Violation of any of these laws related to assistance is punishable as a Class 1 misdemeanor, and may be a felony if related to absentee voting or fraudulent as per 24.2-649(D).

11.6.2 Campaign Finance Related Offenses: Reporting and Advertising

The general registrar is required to perform certain duties relating to the filing of campaign finance reports, assessing civil penalties, and referring matters to the Commonwealth's attorney. Campaign related offenses are, for the most part, outside the scope of local election officials' authority.

Complaints about campaign telephone calls to solicit or convey information for participating candidates or political parties are also not within the scope of the authority of the local election official.

The local government is responsible for enforcing ordinances such as the placement of campaign signs.[18] Refer all complaints to the city or county attorney or administrator. Political calls are not covered by the federal or state "Do Not Call" laws and lists. Voters may ask political parties and committees voluntarily to remove the voter's information from their contact lists.

11.6.3 Violations of Federal Law

Questions or complaints regarding violations of federal laws should be directed to the appropriate United States Attorney for the geographic area (Eastern or Western District of Virginia) or to the United States Department of Justice Voting Rights Section.

11.6.4 Severe Offenses

Local election officials often receive complaints regarding issues outside the scope of their authority. When this occurs, the official should refer the complainant to the appropriate authorities. Officials may also witness violations and should be prepared to document and report these violations. The Department of Elections staff, local election officials, or the public may report an alleged violation of any provision of Title 24.2 to the Commonwealth's Attorney as per the Code of Virginia §24.2-1019. Questions regarding state offenses and suspected violations of state law should be directed to the Commonwealth's Attorney for the locality in which the incident allegedly occurred or may be directed initially to the Virginia Attorney General.

[18] *See* the Code of Virginia §15.2-109.

APPENDIX A: 1VAC20-20-80. Complaints.

A. Any person may make an informal complaint electronically or by telephone. Localities are primarily responsible for responding to all voter complaints they receive and may request board staff for assistance as needed.

B. A person may file a formal written complaint with the board as required by the Help America Vote Act of 2002, 42 USC § 15301 et seq., using the form and instructions available from the board. Formal complaints require review and response by the deputy secretary or secretary who may contact local election officials for information. Any complaints not meeting the criteria for formal complaints will be responded to informally by appropriate staff.

Statutory Authority
§ 24.2-103 of the Code of Virginia.

APPENDIX B: Emergency Reproduction of Ballots

SBE Policy 2008-004 defines inoperable or unavailable equipment for the purposes of the Code of Virginia §§ 24.2-642 and 24.2-646.1, which allow for the use of paper ballots, and the reproduction of emergency paper ballots by the officers at the polls in certain emergency situations.[19] SBE Policy 2008-004 "Inoperable Equipment" and 2008-011 "Unavailable Voting Equipment," are available online.[20]

The Department of Elections also granted permission to all localities which used optical scan ballots for any precinct (including absentee voting), to use the optical scan ballot or a copy of the optical scan ballot in lieu of the official paper ballot.[21]

When distributing election materials to the polling locations, ensure each precinct is provided a master copy of form,[22] Authorization to Reproduce Ballots. Chief and assistant chief officers should be instructed on the purpose and use of this form in their training, which should also include examples of situations in which such reproduction might be needed. Emergency supplies should include copies of the form and instructions.

Before the election, the electoral board or general registrar for each polling place should determine if a copy machine is available for officer use, and how the officers can obtain access to it, especially before and after normal business hours. If there is no access to a copy machine at the polling location, the Chief should know where the nearest quick copy store is, and its hours.

Such copying capability might also be needed if the polling hours are extended by court order and the number of provisional ballot envelopes runs low and cannot be resupplied in time to continue voting without interruption.[23] If additional provisional ballot envelopes are needed, an officer may photocopy both sides of a blank provisional ballot envelope to be attached to a plain envelope or securely wrapped and sealed around the outside of the folded paper or optical scan ballot (with the information normally on the envelope visible, but the ballot kept private) if no plain envelopes are available. Do not staple through any ballot.

[19] See the Code of Virginia §§24.2-642, 24.2-646.1 (explaining when emergency equipment may be allowed).
[20] Both SBE Policy 2008-004 Definition of Inoperable Equipment, and 2008-011 "Definition of Unavailable Equipment" are available online.
[21] See SBE Policy 2008-005, authorizing the Reproduction of Optical Scan Ballots.
[22] ELECT-646.1.
[23] See the Code of Virginia §24.2-653(C) (explaining the circumstances in which a court may extend the polling hours).

APPENDIX C: Court Extends Polling Hours

In any situation where the officers of election are notified that the polling hours have been extended by court order, any person who offers to vote after the normal closing time of 7 p.m. must vote a provisional ballot. This does not apply to voters who are in line at 7 p.m.[24]

- If news of the extended hours did not come from the general registrar or electoral board or via delivery of an official copy of the order from the court, the chief or assistant chief officer should immediately attempt to verify the extension with the registrar or electoral board. If a copy of the order is delivered to the polling place, the chief or assistant chief should immediately inform the general registrar or electoral board of its receipt and contents.
- Estimate the number of extra paper or optical scan ballots and provisional ballot envelopes that will be needed during the extended polling hours (all voters during that time must vote provisional ballots), and ask the general registrar or electoral board to have them delivered to the polling place. If there is not enough time to have them delivered, proceed with the stock on hand and use the procedures for emergency paper ballots, only if approved by the electoral board.[25] If additional provisional ballot envelopes are needed, an officer may photocopy both sides of a blank provisional ballot envelope to be attached to a plain envelope or securely wrapped and sealed around the outside of the folded paper or optical scan ballot (with the information normally on the envelope visible, but the ballot kept private) if no plain envelopes are available. Do not staple through any ballot. Provisional voting envelopes can also be printed from SharePoint Forms Warehouse or stored on a flash drive.
- All qualified voters who are in line when polls would normally close must vote in the usual manner.
- Any voter entering the line after the normal closing time, but before the extended closing time, must vote by provisional ballot. Keep a separate running count of the number of provisional ballots issued after the normal poll closing time. What one judge orders, a higher court may overturn, so the ballots and counts must be kept completely separate. These voters may also be voting a provisional ballot for any of the usual reasons such as lack of ID and all applicable reasons should be marked. These voters will not be marked with a pollbook count number to indicate that they have voted but will be listed in the same manner as other provisional voters. These ballots will be counted and added to the results by the electoral board; they are not counted at the polls by the officers.[26]
- After all voters in line by the extended poll closing time have voted, proceed to close the polls and report the results normally. If extra lines or comments must be added to the Statement of Results to separately account for the ballots cast after the normal poll closing time, do so before the Statement is signed and the materials are sealed.

[24] See the Code of Virginia §24.2-653(C).
[25] See the Code of Virginia §24.2-642.
[26] See Chapter 13 Provisional Ballots.

APPENDIX D: 1VAC20-60-40. When Ballot Cast.

A. A voter, voting in person on election day or voting absentee in-person, has not voted until a permanent record of the voter's intent is preserved.

B. A permanent record is preserved by a voter (i) pressing the vote or cast button on a direct recording electronic machine, (ii) inserting an optical scan ballot into an electronic counter, or (iii) placing a paper ballot in an official ballot container.

C. A vote has not been cast by the voter unless and until the voter or an officer of election or assistant at the direction of and on behalf of the voter pursuant to § 24.2-649 of the Code of Virginia completes these actions to preserve a permanent record of the vote.

D. If any voter's ballot was not so cast by or at the direction of the voter, then the ballot cannot be cast by any officer of election or other person present. Notwithstanding the previous sentence, if a voter inserts a ballot into an optical scanner and departs prior to the ballot being returned by the scanner due to an undervote or overvote, the officer of election may cast the ballot for the absent voter.

E. An absentee voter who votes other than in person shall be deemed to have cast his ballot at the moment he personally delivers the ballot to the general registrar or electoral board or relinquishes control over the ballot to the U.S. Postal Service or other authorized carrier for returning the ballot as required by law.

Statutory Authority

§ 24.2-103 of the Code of Virginia.

APPENDIX E: 1VAC20-60-50. Overfull Optical Scan Ballot Container.

If an optical scan reader in use in a registrar's office or a polling place malfunctions because the connected ballot container includes too many ballots, election officials may open the ballot container and empty the ballots with the following safeguards:

1. The optical scan ballot container shall be opened in plain sight of any authorized party representatives or other observers and, once the ballots have been deposited into an auxiliary ballot container, both ballot containers shall remain in plain sight in the polling place.

2. Any such auxiliary ballot container used shall meet the requirements of § 24.2-623 of the Code of Virginia.

3. In a general, special, or dual-party primary election, a minimum of two officers of election, not representing the same political party, shall execute such a transfer of ballots. In a single-party primary election, the transfer shall be conducted by a minimum of two officers of election who may represent the same party.

Statutory Authority

§ 24.2-103 of the Code of Virginia.

APPENDIX F: 1VAC20-60-60. Provisional Votes.

The electoral board or general registrar may attempt to contact an individual who has voted a provisional ballot when required by § 24.2-643 of the Code of Virginia and remind the individual that he is permitted to provide a copy of a form of identification as specified in subsection B of § 24.2-643 of the Code of Virginia to arrive no later than noon on the Friday after election day. However, there shall be no requirement that the electoral board or general registrar contact such individual.

Statutory Authority

§ 24.2-103 of the Code of Virginia.