September 11, 2020

To: County Auditors and Local Election Officials

From: The Office of the Minnesota Secretary of State

Subject: Use of Ballot Drop Boxes for Secure Absentee and Mail Ballot Return

I. Overview

In light of the increase in absentee voting, and in order to respond to voter concerns about delivery times of the USPS and the dangers of the COVID-19 pandemic, many counties and cities administering absentee balloting are considering adding additional drop boxes or establishing drop boxes for the first time. Although counties and cities townships in Minnesota have utilized drop boxes for many purposes, including some for ballot delivery, drop boxes for ballot return have not been as widely used in Minnesota as in some other states. As counties and cities look at expanding the use of or establishing drop boxes for the first time, this memo is intended to provide guidance on the use of drop boxes, including some proposed best practices to ensure the safety and security of ballots returned through a drop box.

This memo incorporates guidance from the Election Assistance Commission (EAC), the Cyber Security and Infrastructure Security Agency (CISA) Elections Infrastructure Coordinating Council, as well best practices from states which have utilized drop boxes extensively for multiple elections. While each county or city should evaluate its own specific circumstances, the Office of the Secretary of State (OSS) is encouraging jurisdictions that have not yet established a drop box to consider establishing one or more drop boxes for individual voter use, as well as additional staffed ballot drop off locations, in the 2020 election. And while we understand that establishing these additional resources for voters may be resource and cost intensive for cities and counties, these are expenses that are authorized for CARES Act funding use.

II. Legal Restrictions – Drop Boxes May Only Be Used by a Voter to Return Their Own Ballot

A voter may return his or her own ballot directly to the county auditor or city clerk administering absentee voting, which can mean handing the ballot to an election official or depositing the ballot in a receptacle administered by the respective county or city. See Minn. Stat. 203B.08 (stating a ballot may be “left with the county auditor or municipal clerk who transmitted the absentee
ballots.”). However, voters who are returning another voter’s ballot may not use a drop box -
and must instead deliver that ballot to an election official in order to complete the process for
“agent delivery.” Under Minnesota R. 8210.2200, subp. 3, when an agent returns a ballot for a
voter, the agent must show the auditor or clerk identification, and must provide the agent’s name
and address, the name and address of the absent voter whose ballot the agent is delivering, and
the agent’s signature on the form provided by the auditor or clerk.

A legal memorandum on this subject with more detail is appended to this memo.

III.  Best Practices for Establishing a Drop Box for Secure Ballot Return

Whether a county or city is establishing a new drop box or utilizing an existing government drop
box for ballot return, counties or cities have an obligation to ensure the security of the ballots,
ensure a proper chain of custody of the ballots, and inform the voter about how to properly return
a ballot via drop box. Below are recommended best practices to achieve these requirements.

- Physical Security Recommended Best Practices
  - Box Security:
    ▪ Drop boxes should be monitored at all times they are accessible to the
      public. This could be in the form of a city or county staff person or in the
      form of video monitoring.
    ▪ Drop boxes should be physically secured to prevent an unauthorized
      individual from moving or removing the drop box.
    ▪ Drop boxes that are located outside a government building should be
      fastened to a building or structure, bolted to a concrete pad, or
      attached to
      another similarly secure structure.
  - Secure Deposit: Drop boxes should have a slot or chute that a voter can use to
    deposit his or her ballot but that would protect the deposited ballot from access by
    others and from the elements if outside.
  - Limited Access to Deposited Ballots: When ballots are deposited in a drop box,
    they should be secure from access by the public. Access by county or city
    employees should be limited to county election staff or city clerks or their
    designees. If the drop box is used for other government correspondence, access to
    the drop box during the absentee period should be limited to the county election
    staff or city clerk and their designees, and the election official should be
    responsible for removing the ballots before other personnel have access to the
    remaining documents.

- Notice and Signage Consideration for Ballot Boxes
  - Drop boxes should have signage informing voters that:
    ▪ This is an official county or city drop box, and ballots from county or city
      voters may be returned at this location.
    ▪ Individuals may only return their own ballot in a drop box, and if they
      wish to return another individual’s ballot they must return it by hand to the
      county or city election official.
Absente ballots returned to the drop box will only be accepted if the signature envelope is properly sealed and completed.

- Counties and cities should also consider including signage that informs voters about the security of the drop box (if it is being monitored by video, for example) and the frequency that the box is checked for ballots.

- **Chain of Custody and Other Consideration for Ballot Boxes**
  - Counties and cities should establish procedures for collecting ballots from the drop box that ensure only authorized election personnel have access.
  - Counties and cities should ensure that the drop box is checked at least once a day but no less than is necessary to ensure that the ballot box does not get so full that ballots cannot be deposited.
  - Counties and cities collecting ballots from the drop boxes should make sure that they follow the procedures in Minn. R. 8210.2400 for date-stamping and storing ballots once collected.
  - Counties and cities should establish procedures for the handling and transfer of ballots that may be delivered to the wrong city or county in error.

**IV. Additional Options for Ballot Return – Staffed Ballot Drop Off Locations**

In addition to establishing drop boxes, counties and cities should consider other methods to increase the options for in-person absentee ballot return. One option that some jurisdictions have used is to establish temporary in-person drop off locations, staffed by election judges or county or city employees. These locations would operate like a county or city ballot counter for the purpose of ballot collection, and could be established for different periods and at different locations throughout the absentee period, including establishing a temporary counter in a parking lot to allow for drive up return.

These staffed drop off locations are more labor intensive in that they require county or city elections officials to staff the location, but have some additional benefits:

- Staffed locations allow the establishment of drop off locations in a variety of locations, beyond the city or county offices, and can more likely allow for drive up locations and increased accessibility.
- Staffed locations allow for the delivery of a voter’s own ballot as well as agent delivery.
- Staffed locations allow for a real-time review of the ballot envelope to ensure no errors on the signature envelop and that the envelope is properly sealed.
- Staffed locations may provide additional voter confidence that their ballot has been received by the county or city.

Staffed ballot drop locations, like unstaffed drop boxes, should have a secure receptacle to place ballots that protect ballots from access from the public and from the elements, and should ensure proper chain of custody including return of all ballots to the city or county each day.
V. Additional Considerations

In considering temporary in-person drop off locations, whether a drop box or staffed drop off location, the OSS recommends considering the following:

- Locations that take into account accessibility, including access to public transportation.
- Locations that could allow for drive up drop off of ballots.
- Locations that consider equitable distribution and access throughout the jurisdiction.
- Locations that increase access to underserved communities or communities with historically low vote by mail usage.
- Locations that protect ballots and staff workers from the elements.

There is no requirement in state law as to the duration of either drop boxes or staffed drop off locations, but the OSS encourages counties and cities to use unstaffed drop boxes for as much of the absentee period as possible. The demand and desire for staffed drop off locations will likely increase as election day approaches. The OSS encourages the establishment of additional alternative locations to return ballots throughout the absentee period, but at minimum in the week before election day.

When a jurisdiction establishes a drop box or staffed drop off location, please share the information on the location and duration of the drop box or drop off location with the OSS at elections.dept@state.mn.us. The OSS will publish this information on our webpage for voters to access.
MEMORANDUM

Date: September 11, 2020
To: County Auditors and Election Directors
From: Bibi Black, General Counsel, Office of the Secretary of State
Re: Absentee Ballot Drop Boxes

The question of whether and how an absentee ballot may be returned validly to a county auditor or municipal clerk has arisen.

Regular Absentee Ballots

This memorandum addresses the return of regular absentee ballots, by personal delivery to drop boxes of completed absentee ballots, (as opposed to military and overseas ballots which are administered under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and sections 203B.16 to 203B.27, and which almost always are returned to the auditor or clerk by mail or other commercial delivery services).

While this memo speaks only to absentee balloting, it should be noted that Minnesota law already requires the use of drop boxes for precincts that are conducting mail balloting. Minnesota Rules, part 8210.3000 states, in subp. 9:

On election day, the official conducting the election shall provide one or more secure drop boxes where voters can deposit return envelopes containing ballots.

Law

The return of absentee ballots is governed by Minnesota Statutes, section 203B.08 as well as Minnesota Rules, part 8210.2200. The texts of both the statutory section and the rule part are attached to this memo for your reference.

Minnesota Statutes, Section 203B.08

Section 203B.08 provides that the ballot envelope “may be left with the county auditor or municipal clerk who transmitted the absentee ballot to the voter.” Section 203B.08, subd. 1 (emphasis added).

This is very broad language and allows the county auditor or municipal clerk to establish their own systems for the receipt of these absentee ballots and to deputize or authorize others to accept these absentee ballots on their behalf, within the other provisions applicable to absentee ballots. This includes drop boxes.
Minnesota Rule, part 8210.2200

Minnesota Rule, part 8210.2200 does impose certain additional requirements, however, particularly upon agent delivery.

Absent Voters

Absent voters who are leaving their own absentee ballot materials with the auditor or clerk are subject only to the following portion of Minnesota Rules, part 8210.2200, subp.1:

When an absent voter hand delivers an envelope which is unsealed or has an improperly completed absent voter’s certificate, the absent voter shall be allowed to seal the envelope and correct or complete the certificate.

The remainder of this rule applies only to agent delivery.

The following issues with respect to absent voters arise:

1) Must the drop box be staffed, in order to fulfill the rule text quoted above?
2) Must the drop box, if not staffed, be monitored, and if so, by what method?
3) How must the drop box be secured and accessed?

1) **Staffing:** Neither the statute nor the rule require staffing, although a jurisdiction may staff the drop box at their discretion. What is necessary is that an absent voter’s right to seal the envelope and correct/complete the certificate be recognized and accommodated. The voter has the opportunity to enter the office of the auditor or clerk and have staff review the submission, but the voter also has a right to forego entering the office and simply place the envelope in the drop box. However, in order to alert the voter to the necessity of sealing and properly completing the certificate on, the envelope, and to meet the rule 8210.2200, subp.2 requirement quoted above, there should be signage at the drop box that explains exactly what constitutes an acceptable absentee ballot in those respects. If the voter deposits the ballot, this constitutes a waiver of this right by the voter for reasons of convenience or precaution.

2) **Monitoring:** The rule does not require monitoring, but counties and cities may monitor the drop box, either through direct visual monitoring such as through a window or otherwise in close proximity to auditor or clerk staff or authorized persons, or through technological means such as video cameras.

3) **Security:** Neither the statute or the rule referenced above address either security for or access to absentee ballots handed in within the office, or for ballots placed in receptacles such as drop boxes.

However, there are some more general provisions that apply:

a. Section 203B.08, subd. 3, requires that:

   When absentee ballots are returned to a county auditor or municipal clerk, that official shall stamp or initial and date the return envelope
and place it in a secure location with other return envelopes received by that office.

This establishes an obligation to make the ballots secure.

b. Rule 8210.2400 provides:

The county auditor or municipal clerk shall establish measures for safeguarding absentee ballot return envelopes received prior to election day.

A. The auditor or clerk shall establish a record of absentee ballot return envelopes which are retained in the office. The record shall state the absent voter's name, address, and precinct number; the agent's name, if any; and the date the ballot was received by the auditor or clerk.

B. All retained envelopes shall be placed in a locked, secure location after being dated, stamped or initialed, and recorded. The envelopes shall not be removed from this location or handled, except as necessary in an emergency or to process ballots as provided in Minnesota Statutes, section 203B.121.

C. A part-time municipal clerk who receives return envelopes shall notify the auditor prior to each election of the safeguarding procedures which the clerk plans to follow, and the procedures shall be subject to the auditor's approval.

D. When the ballot board opens accepted return envelopes pursuant to Minnesota Statutes, section 203B.121, subdivision 4, all absentee ballot return envelopes retained by the county auditor or municipal clerk shall be removed from the place of safekeeping and compared with the record required by this rule to ensure that all envelopes are accounted for. Any discrepancy shall be reported to the secretary of state promptly.

Thus, an absent voter has the discretion to deposit their absentee ballot in a drop box, subject to these signage, monitoring, and security concerns.

Agent Delivery

With respect to agent delivery of ballots, agents are authorized to collect absentee ballots from voters and place them in the mail. Agents are also authorized to deliver up to three absentee ballots in an election with the auditor or clerk but a number of processes must be followed, under rule 8210.2200, subp. 2 and 3.
The agent must register with the auditor or clerk their name and address, after showing the auditor, clerk or their staff identification showing that information, and the name and address of the voter whose ballot they are delivering. They must sign the register.

1) If the absentee ballot envelope is sealed, the auditor or clerk is to determine whether the certificate has been properly completed. If it has not, the auditor or clerk is to return it to the agent, who may return it to the absent voter to properly complete the certificate.

2) If the envelope is not sealed or appears to have been tampered with, the auditor or clerk retains the envelope, writes “Rejected” and the reason therefor on the envelope, notifies the voter of the ballot’s non-acceptance. The voter may request a replacement absentee ballot.

These requirements make the use of a drop box for agent-delivered ballots unsuitable, unless staffed and unless the agent can complete the required register entry, and the envelope can be reviewed on the spot for the completeness of the certification. One additional potential issue is the possibility that an agent might deposit ballot envelopes in the drop box, thus avoiding completing the register. At the very least, signage will be necessary to inform the agent that this is not allowed, due to the register requirement.
Controlling legal provisions:

**Minnesota Statutes**

**203B.08 MARKING AND RETURN OF ABSENTEE BALLOTS.**

Subdivision 1. **Marking and return by voter.** An eligible voter who receives absentee ballots as provided in this chapter shall mark them in the manner specified in the directions for casting the absentee ballots. The return envelope containing marked ballots may be mailed as provided in the directions for casting the absentee ballots or may be left with the county auditor or municipal clerk who transmitted the absentee ballots to the voter. If delivered in person, the return envelope must be submitted to the county auditor or municipal clerk by 3:00 p.m. on election day.

The voter may designate an agent to deliver in person the sealed absentee ballot return envelope to the county auditor or municipal clerk or to deposit the return envelope in the mail. An agent may deliver or mail the return envelopes of not more than three voters in any election. Any person designated as an agent who tampers with either the return envelope or the voted ballots or does not immediately mail or deliver the return envelope to the county auditor or municipal clerk is guilty of a misdemeanor.

Subd. 1a. [Repealed, 1999 c 132 s 46]

Subd. 2. **Address on return envelopes.** The county auditor or municipal clerk shall address return envelopes to allow direct mailing of the absentee ballots to the county auditor or municipal clerk who has the responsibility to accept and reject the absentee ballots.

Subd. 3. **Procedures on receipt of ballots.** When absentee ballots are returned to a county auditor or municipal clerk, that official shall stamp or initial and date the return envelope and place it in a secure location with other return envelopes received by that office. Within five days after receipt, the county auditor or municipal clerk shall deliver to the ballot board all ballots received, except that during the 14 days immediately preceding an election, the county auditor or municipal clerk shall deliver all ballots received to the ballot board within three days. Ballots received on election day either (1) after 3:00 p.m., if delivered in person; or (2) after 8:00 p.m., if delivered by mail or a package delivery service, shall be marked as received late by the county auditor or municipal clerk, and must not be delivered to the ballot board.

Subd. 3a. [Repealed, 1999 c 132 s 46]

Subd. 4. **Rules.** The secretary of state shall adopt rules establishing procedures to be followed by county auditors and municipal clerks to assure accurate and timely return of absentee ballots. The rules of the secretary of state may authorize procedures and methods of return in addition to those specified in this section.
Subpart 1. **Personal delivery.**

Absentee ballot return envelopes that are delivered in person by an absent voter or an agent must be received by the county auditor or municipal clerk by 3:00 p.m. on election day. Ballots received by personal delivery after 3:00 p.m. of election day shall be marked as received late by the county auditor or municipal clerk, and must not be delivered to the ballot board.

Subp. 2. **Inspecting for seal.**

Before accepting an absentee ballot return envelope that is hand delivered by an absent voter or an agent, the county auditor or municipal clerk shall inspect the envelope to verify that it is sealed and that the absent voter's certificate is properly completed.

When an absent voter hand delivers an envelope which is unsealed or has an improperly completed absent voter's certificate, the absent voter shall be allowed to seal the envelope and correct or complete the certificate.

When an agent hand delivers a sealed envelope with an improperly completed absent voter's certificate, the agent may return the envelope to the absent voter for correction or completion in compliance with the time requirements in subpart 1.

When an agent hand delivers an envelope that is not sealed or which the auditor or clerk has reason to believe has been tampered with, the envelope shall not be accepted. The auditor or clerk shall write "rejected" across the absentee ballot return envelope and shall write the reason for rejection on the envelope. The absentee ballot return envelope shall be retained by the auditor or clerk in the auditor's or clerk's office. A notice of nonacceptance shall be mailed to the absent voter promptly, stating the date of nonacceptance, the name and address of the agent, and the reason for nonacceptance. A replacement ballot notice may be sent in place of the notice of nonacceptance. The absent voter may apply for replacement absentee ballots.

Subp. 3. **Recording name and address.**

When an absentee ballot return envelope is hand delivered to the county auditor or municipal clerk by an agent, the agent shall, on a record maintained by the auditor or clerk, print the agent's name and address, the name and address of the absent voter whose ballot the agent is delivering, and sign his or her name. The agent shall show to the auditor or clerk identification which contains the agent's name and signature.