

## NEW MEXICO JUSTICE PROJECT

### Public Comments on Proposed Amendments to 1.10.19 NMAC

#### Secured Containers (Drop Boxes)

Regarding the collection of Mailed Ballots from the Drop Boxes (Secured Containers), the Proposed Rule provides:

*1.10.19.13 BALLOT RETRIEVAL PROCEDURES:*

*A. Pursuant to paragraph (5) of Subsection E of Section 1-6-9 NMSA 1978, the county clerk, deputy county clerk, election board member or an appointed messenger shall collect the ballots from a secured container. One or more deputy county clerks may be hired by the county clerk on a temporary basis to fulfill this requirement for the time period in which a secured container is available for use. Only personnel designated to retrieve the ballots may transport the retrieved ballots.*

*B. The county clerk shall provide the approximate time the ballots will be collected from a secured container. Ballots shall be collected at least once every three days beginning 28 days prior to election day through 7:00 P.M. on election day.*

The Proposed Rule does not conform to the Best Practices recommended by the federal Election Assistance Commission (EAC) in their published Election Guidelines. The EAC states, “teams of two (preferably bipartisan) should empty each drop box at least once a day.”

([https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC\\_Election\\_Management\\_Guidelines\\_508.pdf](https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC_Election_Management_Guidelines_508.pdf))

The Proposed Rule must be amended to provide that teams of two election board members who are not members of the same party shall collect the ballots from the secured container at least once per day.

In the Proposed Rule, Section 1.10.19.9(G), it provides:

*When secured containers are not in use and immediately after 7:00 P.M. on election day as is practical, the county clerk shall install the slot closer on the secured container to prevent access.*

The EAC Guidelines provide:

*Election officials must ensure teams are present at each drop box as the ballot return deadline passes. Teams must allow any voters in line by the deadline to deposit their ballots, then collect all ballots, and lock the box so no additional ballots can be deposited.*

The Proposed Rule must be amended to comply with the EAC Guidelines. The EAC’s newest guidelines were issued on June 7, 2023, with the EAC stating on its website:

*The Election Management Guidelines (EMG) was created to assist state and local election officials in effectively managing and administering elections. These guidelines complement the*

*technical standards for the Voluntary Voting System Guidelines for voting equipment. Each chapter of the Election Management Guidelines is vetted by recognized election experts and offers practical discussions of election issues, including examples and helpful tips. The EMG's goal is to familiarize election officials with election processes and challenges they will likely encounter during their tenure and is designed to be accessible to election officials at all levels.*

*The EAC recognizes that the election administration landscape has changed since the previous EMG was released over 15 years ago, necessitating this update. Since the federal designation of elections as critical infrastructure in 2017, physical security, cybersecurity, and continuity of operations in the event of a disaster have become essential components of national security. State election laws and regulations, election technologies, and best practices are constantly evolving to meet the needs of resilient and secure election systems. As result, the EAC has updated the EMG to address these issues and more.*

The Election Code, in § 1-9-14(A) NMSA 1978 provides that all voting systems used in the State of New Mexico comply with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States EAC. The Ballot Drop Boxes (Secured Containers) are an adjunct part of the voting system in New Mexico under the definition for a voting system set forth in § 1-9-1.

The Proposed Rules are required, at a minimum, to meet the standards set out in the Guidelines by the EAC. The Proposed Rules must be amended to provide for bipartisan teams of two (2) election board members to retrieve the ballots from the boxes at least once per day. Additionally, teams must be present at 7:00 p.m. on Election Day to close and secure each Drop Box and retrieve the final ballots as described in the EAC Guidelines. Interposing the term "as is practical" (after 7:00 PM) to the closing of the drop boxes creates a new standard that is not equal to that of in-person voting. It violates the requirement found in Section 1-2-1 NMSA 1978 for the Secretary of State to "obtain and maintain uniformity in the application, operation and interpretation of the Election Code."

Voting ends at 7:00 PM, period. Accordingly, to ensure that both procedures are the same, and that one process does not provide anyone with the opportunity to game the system by voting after the close of the polls, teams must be present to implement the process described in the EAC Guidelines – to allow voters who are already in line at 7:00 p.m. to deposit their ballots, retrieve all ballots cast and lock the drop box at the time of the closing of the polls.

If the Secretary of State and/or the County Clerks do not have the resources to follow the EAC Guidelines regarding the Drop Boxes, then the Drop Boxes cannot and should not be implemented.