

U.S. ELECTION ASSISTANCE COMMISSION



2010 Election Administration & Voting Survey

West Virginia

Statutory Overview

In order to better understand state laws governing federal elections, the U.S. Election Assistance Commission, as part of its biennial Election Administration and Voting Survey, is collecting information on state election laws and procedures. These answers will help EAC to better understand the quantitative data relating to the 2010 general election that we are collecting from all U.S. states and territories.

EAC understands that responding to this Statutory Overview may require significant staff time on the part of your office. Please be assured that we have attempted to minimize the burden, and we appreciate your cooperation in this very important project.

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DIRECTIONS AND EXAMPLE

Please provide your state's legal citation for the responses to these questions (where applicable). Prior to beginning the Statutory Overview, please ensure that "track changes" is turned on; this will provide a record of all changes that are made including insertions, deletions, and formatting changes. To turn on track changes hold down "Control" and "Shift" and "E" at the same time. For additional assistance in working with "track changes" please contact your Technical Assistance point of contact at ICF International.

We have provided you with your answers to the 2008 Statutory Overview. If there has not been a change in your State's laws or legal citation in the response to a question, please mark No Change Since 2008 with an "X" as shown below:

X No Change Since 2008

If the response has changed since 2008, please mark Changed Since 2008 with an "X" and modify the answer as needed using track changes. If you need to replace the entire answer, please delete the 2008 response and record your 2010 response between the red bracketed text lines, as described below.

X Changed Since 2008

Please answer each question to the best of your ability. If terms are ambiguous or not relevant, please explain why. If a question is not applicable to your state, please explain why. If a definition or term lacks statutory reference but is widely understood in practice, please explain. If election procedures vary at the local level within your state, please explain to the best of your ability.

If state laws are currently enjoined or otherwise blocked from enforcement by a state or federal court, or executive decision, please specify.

Please keep your responses between the red, bracketed text lines. This will help us extract your answers into our central database.

Example:

A1. How does your state define the following terms related to votes and ballots? Please provide your state's legal citation defining these terms, where applicable.

- a. Over-vote

[Begin definition (a) below this line.]

Your answer goes here. You may enter the text directly, or cut and paste from another word processing program.

There is no limit to the length of your response.

[End definition (a) above this line.]

SECTION A: GENERAL

A1. How does your state define the following terms related to votes and ballots? Please provide your state's legal citation defining these terms, where applicable.

a. Over-vote

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin definition (a) below this line.]

WV Code §3-6-5(f) "If the voter marks more names than there are persons to be elected to an office...the ballot shall not be counted for the office.

[End definition (a) above this line.]

b. Under-vote

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin definition (b) below this line.]

(No code section available defining under-vote.)

[End definition (b) above this line.]

c. Blank ballot

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin definition (c) below this line.]

(No code section available defining under-vote.)

[End definition (c) above this line.]

d. Void/Spoiled ballot

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin definition (d) below this line.]

WV Code §3-1-36, a ballot that is returned unvoted, spoiled, defaced, or mutilated...the voter shall receive another in its place, and the spoiled ballot is documented.

[End definition (d) above this line.]

e. Provisional/Challenged ballot

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin definition (e) below this line.]

Various, WV Code §3-1-41, a ballot is challenged and processed in accordance with this section at the canvass. Challenge reason can include signature not matching poll book, voter not registered, voter receiving assistance when not needed, etc...

[End definition (e) above this line.]

f. Absentee

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin definition (f) below this line.]

WV Code §§3-3-1 et. al

[End definition (f) above this line.]

g. Early voting

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin definition (g) below this line.]

WV Code §3-3-3

[End definition (g) above this line.]

h. Active Voter

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin definition (h) below this line.]

WV Code §3-2-2 defines a qualified voter as a person who is a citizen of the US and a legal resident of WV and of the county where registering, is 18 or will be 18 before the ensuing general election and is not currently under conviction of a felony

[End definition (h) above this line.]

i. Inactive Voter

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin definition (i) below this line.]

WV Code §3-2-27, a voter who has not responded to a confirmation notice forwarded by the voter registrar

[End definition (i) above this line.]

j. Other terms (please specify) _____

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Identify each TERM and definition separately and begin below this line.]

[End TERM(s) and definition(s) above this line.]

A2. Please provide the legal citation for any *significant* changes to election laws or procedures that have been enacted or adopted since the previous Federal election. “Significant” does not include routine or technical changes (such as changes to election district boundaries or polling place changes). However, EAC would like to learn about any new identification requirements for voters or registrants; changes in eligibility for voting or registering; adoption of alternative voting methods; and other changes that you believe represent a significant change in the way your state runs its elections.

☒ **No Change Since 2008**

☐ **Changed Since 2008**

2008 Response:

[Begin response to above question (A2) below this line.]

N/A

[End response to above question (A2) above this line.]

SECTION B: VOTER REGISTRATION

B1. Is your state's voter registration database system best described as a bottom-up, a top-down, or a hybrid? (Note: A bottom-up system generally uploads information retained at the local level and compiled at regular intervals to form the statewide voter registration list. A top-down system is hosted on a single, central platform/mainframe and is generally maintained by the state with information supplied by local jurisdictions. A hybrid is some combination of both systems described above.)

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin response to above question (B1) below this line.]

Top-down

[End response to above question (B1) above this line.]

If your state uses a bottom-up or hybrid system, how often do local jurisdictions transmit registration information to the state list?

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin response to above clarification question to B1 below this line.]

[End response to above clarification question to B1 above this line.]

B2. Please describe the process used in your state to move voters from the active list to the inactive list, and from the inactive list to the active list. Is a different process used for UOCAVA voters?

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin response to above question (B2) below this line.]

Voters are made inactive by the procedures outlined in WV Code §§3-2-25 et. Al. The list is compared to the USPS records through the NCOA process, once this occurs, the changes are forwarded to the counties, the voters are sent a confirmation card, and if the card is returned undeliverable, the voter is made inactive, or if there is no response by the first day of February of the next year, the voter is then made inactive. After being made inactive, if a voter updates, changes, or participates in some election process (voting or petitioning) there file is then returned to active status. This is the same process for UOCAVA voters.

[End response to above question (B2) above this line.]

B3. Please describe your state's process for removing voters from the voter registration rolls (not merely moving them from active to inactive). Please include information regarding notices and confirmations. Are these procedures the same for UOCAVA voters?

 X No Change Since 2008 Changed Since 2008

2008 Response:

[Begin response to above question (B3) below this line.]

Voter's can be cancelled in the voting system upon verification of the voter's death, upon receipt from a state or federal court noticing that the voter has been convicted of a felony, upon receipt of a notice from the appropriate court of competent jurisdiction of a determination of a voter's mental incompetence, upon a written receipt from the voter asking to be cancelled, upon failure to respond and produce evidence of continued eligibility to register following the challenge of a voter's registration, and after remaining inactive for two federal election cycles. These procedures are the same for UOCAVA voters.

[End response to above question (B3) above this line.]

B4. Can your state's voter registration database (or equivalent) share information electronically with your state's drivers license agency (for example, to match records or trace changes in address)? Can your voter registration database be similarly linked with databases in any other state or federal agencies? Please describe these links, including any use of database matching to verify voter registration applications.

 X No Change Since 2008 Changed Since 2008

2008 Response:

[Begin response to above question (B4) below this line.]

Yes, our statewide voter registration system (SVRS), however, the comparison is not done within the system, but a separate site and the results are then loaded into our system. This can be done for any type of list. (Vital statistics, corrections, etc...) In essence, the databases are matched and then the results are loaded into our system for verification by the County Clerks.

[End response to above question (B4) above this line.]

B5. Please describe how your state uses National Change of Address (NCOA). What has been your state's experience with NCOA?

 X No Change Since 2008 Changed Since 2008

2008 Response:

[Begin response to above question (B5) below this line.]

Every other year, our office utilizes the NCOA program. Our SVRS data is compared to the NCOA data and any updates are then forwarded to the county clerks who then send notification out to the voters. This comparison is done with all active voters.

[End response to above question (B5) above this line.]

B6. Please describe your state's voting eligibility requirements as they relate to individuals with a felony conviction. (For example, are convicted felons allowed to vote while in prison or while on parole or probation? Are voting rights automatically restored or does the individual have to apply for a pardon, certificate of eligibility or other similar certificate? Does an individual whose voting rights have been restored have to produce documentation of his/her status when registering to vote?)

 X No Change Since 2008 Changed Since 2008

2008 Response:

[Begin response to above question (B6) below this line.]

A convicted felon can not vote in WV's elections until all probation and parole requirements are met. Once that is complete, the felon must re-register. No documentation is required; however the applicant is attesting that they currently are not under parole or probation of a felony.

[End response to above question (B6) above this line.]

B7. Does your state currently use the Internet in any way to facilitate voter registration? If yes, please describe how your state allows voters to use the Internet in the registration process (e.g., entire registration completed online; completed online but then must be printed, signed, and mailed by voter, etc.).

 X No Change Since 2008 Changed Since 2008

2008 Response:

[Begin response to above question (B7) below this line.]

Our voter portal allows applicants to fill in the application, print and mail. We also allow voters to search our database online to determine that they are currently registered and there precinct information.

[End response to above question (B7) above this line.]

SECTION C: ELECTION ADMINISTRATION

C1. Please describe how all votes cast at a place other than the voter's precinct of registration are tabulated (for example, please include descriptions of such votes as absentee ballots, mail-in ballots, votes cast at vote centers, provisional ballots, early voting locations, etc.).

a. Are the votes counted centrally or at the precincts?

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin response to above question (a) below this line.]

In paper ballot counties the absentee and early voted ballots are forwarded to the precincts of the voter to be counted. All electronic voting equipment counties forward absentee and early voted ballots to the central count center to be tallied on election night.

[End response to above question (a) above this line.]

b. If centrally tabulated, are the votes redirected to the appropriate precinct for reporting in the canvass?

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin response to above question (b) below this line.]

Yes

[End response to above question (b) above this line.]

c. Are the absentee, mail, etc., votes reported separately for each precinct, or are they added to the in-precinct results and reported as just a single number?

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin response to above question (c) below this line.]

The votes of the absentee and early voted ballots are tallied in with the election day tallies as a single report.

[End response to above question (c) above this line.]

d. How are UOCAVA ballots counted and reported?

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin response to above question (d) below this line.]

In the same manner that an absentee ballot is counted and reported.

[End response to above question (d) above this line.]

C2. Does your state require a reason for voting absentee, or does your state allow no-excuse absentee voting? (If a reason is required, please provide the legal citation.)

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin response to above question (C2) below this line.]

WV requires a reason for voting absentee. WV Code §3-3-1

[End response to above question (C2) above this line.]

C3. Does your state provide for in-person early voting? If so, how is early voting defined? When early voting is used, are the ballots counted at the precinct or at a central location? How are these votes reported?

☐ **No Change Since 2008** ☒ **Changed Since 2008**

2008 Response:

[Begin response to above question (C3) below this line.]

WV has no-excuse in-person early voting for every election in each jurisdiction. Depending on the election day ballots, the ballots can be sent to the precinct (in paper ballot counties), or sent to the central count center (in touch screen and optical scan systems). The tallies are reported in combination with election night results, they are not separated out.

[End response to above question (C3) above this line.]

C4. Do any jurisdictions in your state use a vote-by-mail system to replace (and not merely supplement) at-the-precinct voting in any elections?

__X__ No Change Since 2008 _____ Changed Since 2008

2008 Response:

[Begin response to above question (C4) below this line.]

No

[End response to above question (C4) above this line.]

C5. Please list each of the situations that require a provisional ballot in your state. Please provide the relevant legal citation for each situation.

__X__ No Change Since 2008 _____ Changed Since 2008

2008 Response:

[Begin response to above question (C5) below this line.]

West Virginia Code §3-1-41 requires a ballot to be challenged when the voter is not registered, the signatures do not match and any other legal disqualification, which would include casting a ballot in the primary of a different party than the one registered, voting with assistance if it is determined that assistance is not needed, or if the voter is a poll worker voting in the incorrect precinct.

[End response to above question (C5) above this line.]

C6. Does your state count provisional ballots of voters who are registered in different precincts, or are those ballots automatically rejected? Please describe the process used by local election officials in determining whether to count a provisional ballot.

__X__ No Change Since 2008 _____ Changed Since 2008

2008 Response:

[Begin response to above question (C6) below this line.]

Voter's who vote in precincts that are not the precincts assigned to the location where they live will NOT have their ballots counted. Each provisional ballot is forwarded to a board of canvassers who make a determination on whether to count the ballot or not.

[End response to above question (C6) above this line.]

C7. Please describe your state's laws regarding post-election audits, if any.

 No Change Since 2008 X **Changed Since 2008**

2008 Response:

[Begin response to above question (C7) below this line.]

During the canvass, in electronic voting system elections, 5% of the total precincts are hand counted. This would include optical scan ballots and touch screen. The totals are then compared and if there is a difference of more than 1% of the total votes cast, the entire jurisdiction must be recounted. The canvass process is used to confirm the results of the election are true and accurate.

[End response to above question (C7) above this line.]

C8. Please describe any state requirements for poll worker training.

 No Change Since 2008 X **Changed Since 2008**

2008 Response:

[Begin response to above question (C8) below this line.]

WV state law requires that all poll workers receive training within 30 days of each election. The state elections office is required to produce the training to be used by the local jurisdictions.

[End response to above question (C8) above this line.]

SECTION D: ELECTION DAY ACTIVITIES

D1. Please describe your state's process for capturing "over-vote" and "under-vote" counts.

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin response to above question (D1) below this line.]

Currently, the voting equipment in use, captures this information. However, with paper ballot counties, this information is not gathered as the ballots are hand counted at the precinct level.

[End response to above question (D1) above this line.]

D2. What identification does your state require from voters in the following situations:

a. registering to vote;

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin response to above question (a) below this line.]

A valid HAVA ID is required to register

[End response to above question (a) above this line.]

b. casting an in-person ballot;

☒ **No Change Since 2008** ☐ **Changed Since 2008**

2008 Response:

[Begin response to above question (b) below this line.]

No ID required unless not provided during registration, then HAVA ID or photo ID, no address required

[End response to above question (b) above this line.]

c. casting a mail-in or absentee vote;

☒ No Change Since 2008 ☐ Changed Since 2008

2008 Response:

[Begin response to above question (c) below this line.]

No ID required unless not provided during registration, then HAVA ID with current address

[End response to above question (c) above this line.]

d. casting a ballot under UOCAVA;

☒ No Change Since 2008 ☐ Changed Since 2008

2008 Response:

[Begin response to above question (d) below this line.]

No ID required unless not provided during registration, then HAVA ID with current address

[End response to above question (d) above this line.]

e. any other stage in registration or voting process in which identification is required (please specify).

☒ No Change Since 2008 ☐ Changed Since 2008

2008 Response:

[Begin response to above question (e) below this line.]

N/A

[End response to above question (e) above this line.]

D3. Please describe your state's laws regarding access to the polling place for election observers. Election observers are people allowed inside the polling place who are not poll workers, election officials or voters. If decisions on access to observers are left to local jurisdictions, please explain.

☒ No Change Since 2008 ☐ Changed Since 2008

2008 Response:

[Begin response to above question (D3) below this line.]

No election observers other than full time employees of the Secretary of State's Office, the County Clerk's Office, or law enforcement are allowed in precincts in WV.

[End response to above question (D3) above this line.]

SECTION E: OTHER

E1. Under HAVA, Section 402, states are required to establish and maintain administrative complaint procedures to remedy grievances. Has your state revised its administrative complaint procedures since they were first implemented? If so, how?

 X No Change Since 2008 Changed Since 2008

2008 Response:

[Begin response to above question (E1) below this line.]

No

[End response to above question (E1) above this line.]

E2. The Military and Overseas Voter Empowerment Act (MOVE) was signed into law on October 22, 2009. The MOVE Act contains, among other things, provisions regarding States' methods of communication with UOCAVA voters and UOCAVA ballot transmission.

Please describe your State's processes and procedures for implementing MOVE (including any changes in your State's laws or regulations) as they relate to:

- Protecting the security and integrity of the voter registration and ballot application process, the privacy and personal information of the voter, and absentee ballots. (Sect. 577, 578)
- Designating a means of electronic communication for all voting-related materials to UOCAVA voters. (Sect. 577)
- Establishing a ballot tracking mechanism to allow voters to determine whether their ballots were received by the appropriate election official. (Sect. 580(d))

Also, please describe your State's plans to capture data related to the number of registration applications, ballot applications, and blank ballots transmitted to UOCAVA voters via mail and electronic means (Internet, email, fax) *and* the number of registration applications, ballot applications, and completed ballots returned by UOCAVA voters via mail and electronic means (Internet, email, fax).

This question was not asked in 2008. Please provide your answer below.

[Begin response to above question (E2) below this line.]

On March 12, 2010, the West Virginia legislature adopted a measure to ensure full compliance with the provisions of UOCAVA amended by the MOVE Act. Specifically, the bill requires ballots to be transmitted by mail or electronically (per the voter's instruction) no later than 46 days prior to any primary, general or special federal election to any voter

covered by the provisions of UOCAVA who has timely submitted an absentee ballot application.

- 1) No specific modification to existing law was required to protect the security and integrity of the voter registration and ballot application process, the privacy and personal information of the voter or absentee ballots since these protective measures were already in place.
- 2) Each County Clerk has the capability of sending and receiving electronic mail and facsimile transmissions. Ballot vendors have been instructed to provide hard-copy and pdf (or similar) versions of ballots in such timely fashion as to guarantee the ability of local clerks to transmit ballots by the aforementioned 46-day deadline. In addition, the Secretary of State has initiated several pilot programs to study expedited means of ballot transmission. These include an online voting pilot project involving two service providers and several counties, as well as participation in the FVAP Ballot Delivery Wizard pilot project which covers all 55 West Virginia counties.
- 3) Each pilot program vendor has incorporated a free-access ballot-tracking mechanism as a integral component of the project. County clerks enter absentee ballot data into the statewide, centralized voter registration system. This, in turn, allows cumulative reports to be obtained on a daily basis by program vendors. Updated ballot data is then posted to a site that may be accessed by an individual voter online or may be accessed by a county clerk for in-person or telephonic communication.
- 4) Tracking voter registration applications and absentee ballot applications *provided* to UOCAVA voters is very difficult since these forms are readily available through a number of sources. Prior to submission of an application it is difficult to pre-identify an individual as a UOCAVA voter. However, blank *ballots* are only sent after the approval of an absentee ballot application, and are therefore captured in the statewide centralized voter registration system along with the specific absentee reason code provided by the voter (military, military dependent, overseas citizen, etc.).

At this time, original voter registration applications require a hardcopy signature; electronic submissions must be followed by the original document. There is no true “electronically-submitted” voter registration application. E-mailed and faxed absentee ballot applications are easily-identifiable and may be tracked manually. Data on every returned ballot is captured in the statewide-centralized voter registration system and may be centrally collected and reported.

[End response to above question (E2) above this line.]

E3. Please add any additional comments or information about your state's election administration processes that would help to inform the EAC's interpretation of your data.

 X No Change Since 2008 Changed Since 2008

2008 Response:

[Begin response to above question (E3) below this line.]

N/A

[End response to above question (E3) above this line.]

* The information collection associated with the Election Administration and Voting Survey is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301), the National Voter Registration Act (NVRA) (42 U.S.C. 1973gg-1 et seq.), and the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) (42 U.S.C. 1973ff-1). Respondent's obligation to reply to this information collection is mandatory as required under NVRA (42 U.S.C. 1973gg-1 et seq.) and UOCAVA (42 U.S.C. 1973ff-1). This part of the information collection is being requested to help the EAC to better understand state laws governing federal elections. Respondents include the fifty states, the District of Columbia, and the U.S. Territories. This information will be made publicly available on the EAC website (www.eac.gov). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0006 (expires 5/31/2013). The time required to complete this information collection is estimated to average 59 hours per state response. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent the U.S. Election Assistance Commission – 2010 Election Administration and Voting Survey, 1201 New York Avenue, Suite 300, Washington, DC 20005.