

# Election Statute Navigator: Montana

The Election Law Program prepared this Election Law Navigator to highlight state election statutes particularly relevant to the 2020 cycle. The Election Law Navigator is updated as of March 1, 2021. Please contact [elect@wm.edu](mailto:elect@wm.edu) with questions or suggestions. To access COVID-specific legal information impacting this state's election process, please use this link:

<https://ebenchmark.org/montana/covid/#tracker>.

## Voter Registration

- Voter permitted to register up to and including Election Day (aka Same Day Registration) – [§ 13-2-304](#)
- Voters (other than above) register prior to Election Day
  - [See official Montana election calendar](#)
- Registration via mail available
  - [See official Montana registration website](#)
- In-Person registration available – [§ 13-2-201](#)
  - [See official Montana registration website](#)
- Preregistration allowed – [§ 13-2-205](#)
  - An individual who is not eligible to register because of residence or age requirements but who will be eligible on or before election day may apply for voter registration pursuant to [§ 13-2-110](#) and be registered subject to verification procedures established pursuant to [§ 13-2-109](#).
- Residency requirements – [§ 13-1-112](#)
- Prior conviction eligibility – [§ 13-1-111\(2\)](#)
  - A person convicted of a felony does not have the right to vote while the person is serving a sentence in a penal institution.
- Voters judged mentally incompetent for a mental disability cannot vote – [§ 13-1-111\(3\)](#)
  - A person adjudicated to be of unsound mind does not have the right to vote unless the person has been restored to capacity as provided by law.
- Voter list maintenance guidelines – [§ 13-2-220](#)
- Other:
  - [§ 13-2-207](#) – Confirmation of registration
  - [§ 13-2-221](#) – Agency-based registration
  - [§ 13-2-402](#) – Reasons for cancellation of registration

## State Absentee, Early, and Mail Voting

- Early voting allowed – [§ 13-13-211](#)
  - A qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and

before the close of polls on election day may request to vote by absentee ballot as provided in [§ 13-13-212\(2\)](#)

- An absentee ballot cast pursuant to subsection (2) must be received prior to 8 p.m. on election day pursuant to [§ 13-13-201](#)
- No-excuse absentee voting – [§ 13-13-201](#)
- Absentee ballot application is verified – [§ 13-13-213](#)
- Permanent absentee voting options – [§ 13-13-212\(4\)](#)
  - An elector who has requested to be on the absentee ballot list and who has not filed a change of address with the U.S. postal service must continue to receive an absentee ballot for each subsequent election.
- Removal from permanent absentee list – [§ 13-13-212](#)
- Absentee ballot verification details
  - [§ 13-13-241](#) – Examination of absentee ballot signature envelopes – rulemaking
  - [§ 13-13-245](#) – Notice to elector – opportunity to resolve questions
- State allows voters to correct signature discrepancies
  - [§ 13-13-245](#) – Notice to elector – opportunity to resolve questions
- Ballot collection prohibition – exceptions – [§ 13-35-703](#)
- Deadline by which election official must receive absentee/mailed ballots – [§ 13-13-232](#)
- Absentee/Mail ballot processing and counting procedures – [§ 13-15-201](#); [§ 13-13-241](#)
- Spoiling/Replacement/Correction ballot restrictions
  - [§ 13-13-117\(1\)\(b\)](#) – An elector who spoils the elector’s ballot must be provided with another ballot in place of the spoiled ballot
  - [§ 13-13-204](#) – Authority to vote in person — printing error or ballot destroyed — replacement ballot — effect of absentee elector’s death
- Other:
  - [§ 13-15-106](#) – Counting of absentee ballot for deceased candidate
  - [§ 13-19-101](#) – Certain specified elections may be conducted via mail ballot
  - [§ 13-13-603](#) – Rulemaking on provisional voting, absentee, and challenged ballots
  - [§ 13-13-212\(2\)\(a\)](#) – If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the absentee election board or by an authorized election official as provided in [§ 13-13-225](#)

## In-Person Voter ID

- ID requirements [§ 13-13-114](#)
- Options for voters without ID
  - [§ 13-13-114\(1\)\(a\)](#) – If the elector does not present photo identification, including but not limited to a valid driver’s license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to

13-2-207, government check, or other government document that shows the elector's name and current address.

- [§ 13-13-114\(3\)](#) – If the elector fails or refuses to sign the elector's name or if the elector is disabled and a fingerprint, an identifying mark, or a signature by a person authorized to sign for the elector pursuant to [§ 13-1-116](#) is not provided, the elector may cast a provisional ballot as provided in [§ 13-13-601](#)

## Provisional Voting

- Provisional ballot availability
  - [§ 13-1-101\(37\)](#) – “Provisional ballot” means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.
  - [§ 13-13-114\(3\)](#) – If the elector fails or refuses to sign the elector's name or if the elector is disabled and a fingerprint, an identifying mark, or a signature by a person authorized to sign for the elector pursuant to [§ 13-1-116](#) is not provided, the elector may cast a provisional ballot as provided in [§ 13-13-601](#)
  - [§ 13-19-314\(2\)](#) – Concerning validity of a ballot or signature must be resolved in the following manner
  - [§ 13-21-104\(2\)\(d\)](#) – a covered voter is allowed to cast a provisional ballot if there is a question about the elector's registration information or eligibility to vote.
- Time allotted to determine the status of provisional ballot – [§ 13-15-107](#)
  - Six days
- Handling and counting provisional and challenged ballots – [§ 13-15-107](#)
- Other:
  - [§ 13-13-241\(4\)](#) – If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector as provided in [§ 13-13-245](#)
  - [§ 13-13-601](#) – Provisional voting in person
  - [§ 13-13-602](#) – Fail-safe and provisional voting by mail
  - [§ 13-13-603](#) – Rulemaking on provisional voting, absentee, and challenged ballots

## Polling Place

- Polling Place availability and requirements
  - [§ 13-3-101](#) – Establishment of election precincts
  - [§ 13-3-102](#) – Change of precinct boundaries
  - [§ 13-3-103](#) – Certification of boundary changes
  - [§ 13-3-104](#) – Precincts, wards, and election districts
  - [§ 13-3-105](#) – Designation of polling place
- Electioneering must not be closer than 100 feet to the entrance of the polling place – [§ 13-35-211](#)
- Rules governing poll watchers
  - [§ 13-13-120](#) – Poll watchers - announcement of elector's name
  - [§ 13-13-121](#) – Additional poll watchers
- Police presence – [§ 13-13-122](#)

- An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, or arrest any individual obstructing the passageway to a polling place.
- Other:
  - [§ 13-3-211](#) – Emergency exceptions to polling place requirements
  - [§ 13-3-212](#) – Exemption if no accessible polling place is reasonably available
  - [§ 13-13-118](#) – Taking ballot to disabled elector
  - [§ 13-13-119](#) – Aid to disabled elector

## State Emergency Rules and How Elections are Affected

- Listed triggers for Emergency Rules
  - [§ 13-3-211\(1\)](#) – An emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster.
- Explicit remedies in election statute
  - [§ 13-3-105\(3\)](#) – An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice must be posted at both the old and new polling places, and other notice may be given by whatever means available.
  - [§ 13-3-211\(1\)](#) – The secretary of state shall exempt a polling place from the requirements of this part if an emergency occurs within 10 days prior to an election. An emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster.
  - [§ 13-3-211\(2\)](#) – If an emergency occurs, the election administrator in the county shall designate a new polling place in accordance with the procedure provided in 13-3-105. The new polling place is considered temporary and is exempt from the survey procedures established under 13-3-206. However, the polling place may not be used in a subsequent election unless it is surveyed as required in 13-3-206.
- Other:
  - [§ 13-4-207\(1\)](#) – Election judges may not leave the premises on which the polling place is located during the hours they are assigned to work unless permission to leave is given by the chief election judge for that precinct. Permission may be granted only for illness or a family emergency.
  - [§ 13-4-207\(2\)](#) – A chief election judge must obtain the permission of the election administrator to leave the polling place premises because of illness or an emergency. If the chief judge is excused, the election administrator shall appoint one of the other judges to act as chief election judge.

## Counting Rules

- Voting system requirements
  - [§ 13-17-101 to § 13-17-509](#) – use of voting systems
- Counting procedures
  - [§ 13-15-101](#) – Votes to be publicly counted – return forms

- [§ 13-15-104](#) – Absentee ballot counting board
- [§ 13-15-106](#) – Counting of absentee ballot for deceased candidate
- [§ 13-15-107](#) – Handling and counting provisional and challenged ballots
- [§ 13-15-108](#) – Rejected ballots – handling provided by rule
- [§ 13-15-201](#) – Preparation for count – absentee ballot count procedures
- [§ 13-15-206](#) – Counting votes – uniformity – rulemaking – definitions
- [§ 13-15-207](#) – Counting board procedures
- [§ 13-15-402](#) – Canvass of votes by board — procedures if all returns not received by time of canvass
- Other:
  - [§ 13-17-107](#) – Secretary of state to prescribe rules

## Contest/Protest, Recount Rules

- Voter contesting
  - [§ 13-36-104](#) – Nomination contests
- Contest filing guidelines
  - [§ 13-36-102](#) – Time for commencing contest
  - [§ 13-36-201](#) – Contents of contest petition
  - [§ 13-36-202](#) – Allegations and evidence
  - [§ 13-36-203](#) – Form of complaint
  - [§ 13-36-204](#) – Bond required
  - [§ 13-36-205](#) – Recovery of costs
  - [§ 13-36-206](#) – Notice of filing – prompt hearing
  - [§ 13-36-207](#) – Hearing of contest
- Challenging a voter – [§ 13-13-301](#)
- Automatic recount conditions – [§ 13-16-201](#); [§ 13-16-203](#)
- Contest/Protest recount
  - [§ 13-15-403\(4\)](#) – If during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts, as provided in [§ 13-16-201](#), or for an inspection of ballots, as provided in [§ 13-16-420](#).
  - [§ 13-16-301](#) – Recounts under court order
- Other:
  - [§ 13-13-603](#) – Rulemaking on provisional voting, absentee, and challenged ballots
  - [§ 13-16-201\(3\)](#) – When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the secretary of state shall immediately notify each election administrator of the filing of the petition, and a recount must be conducted in all precincts in each affected county.
  - [§ 13-16-205](#) – Expenses of recount
  - [§ 13-16-411](#) – Individuals entitled to appear at recount
  - [§ 13-16-412](#) – Procedure for recounting paper ballots
  - [§ 13-16-415](#) – Recount totals
  - [§ 13-16-416](#) – Report of recount