

# Election Statute Navigator: New York

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/new-york/covid/#tracker>.

## Voter Registration

- Voters (other than above) register prior to Election Day
  - [See official New York registration deadline website](#)
- Online registration available
  - [See official New York registration website](#)
- Registration via mail available – [§ 5-210](#)
- In-Person registration available
  - [§ 5-211](#) – Agency assisted registration
  - [§ 5-212](#) – Motor vehicle registration
- Pre-registration allowed § 5-507
- Residency requirement
  - [§ 5-102](#) – Residence
  - [§ 5-104](#) – Gaining or losing residence
- Prior conviction eligibility – [§ 5-106](#)
- Voters judged mentally incompetent cannot vote – [§ 5-106\(6\)](#)
- Voter list maintenance guidelines
  - [§ 5-208](#) – Transfer of registration and enrollment
  - [§ 5-228](#) – Certificates of local registration
  - [§ 5-230](#) – Disposition of records and supplies
  - [§ 5-600](#) through [§ 5-614](#) – Registration lists
- Other –
  - [§ 5-216](#) – Assistance to applicant
  - [§ 5-218](#) – Registration challenges
  - [§ 5-220](#) – Challenge after registered
  - [§ 5-226](#) – Voter registered in wrong district
  - [§ 5-306](#) – Correction of enrollment
  - [§ 5-402](#) – Notice to voter of cancellation of registration

## State Absentee, Early, and Mail Voting

Note – On April 24<sup>th</sup>, 2020, New York's Governor issued an executive [order](#) mandating that the State Board of Elections send every voter an absentee ballot application.

- Early voting allowed – [§ 8-600](#)
- Listed excuses to vote absentee – [§ 8-400](#)

- Absentee ballot application is verified – [§ 8-402\(1\)](#)
- Permanent absentee voting options – [§ 8-400\(4\)](#)
  - A voter who claims permanent illness or physical disability may make application for an absentee ballot and the right to receive an absentee ballot for each election thereafter as provided herein without further application, by filing with the board of elections an application which shall contain a statement to be executed by the voter.
- Absentee ballot verification details – [§ 9-209](#)
- Deadline by which election official must receive absentee/mailed ballots – [§ 8-412\(1\)](#)
- State accepts postmarked ballots that arrive after election day and ballots that lack a dated postmark if delivered on or before the day after the election – [§ 8-412\(1\)](#)
- State is required to provide secrecy sleeve for absentee/mail ballot – [§ 7-122](#)
- Absentee/Mail ballot processing and counting procedures – [§ 9-209](#)
- Spoiling/Replacement/Correction ballot restrictions
  - [§ 8-316](#) – Mutilated or spoiled

## In-Person Voter ID

- No document required to vote
- First-time Voter ID requirements
  - [§ 5-210\(5\)\(k\)\(vii\)](#) until Nov. 25, 2020
  - [§ 5-210\(5\)\(k\)\(viii\)](#) after Nov. 25, 2020
- Other:
  - [§ 5-214](#) – A board of elections may provide identification cards for use in any city or town in such county in which the board deems it necessary to facilitate voting. However, the failure of a voter to present such card shall not deprive such voter of the right to exercise the franchise, or any other right provided under this chapter.
  - [§ 8-304\(2\)](#) – Voter inability to sign his or her name
  - [§ 8-306](#) – Assistance to voters

## Affidavit Voting

- Affidavit ballot availability
  - [§ 5-208](#) – New address
  - [§ 5-712\(3\)](#) – Address discrepancy
  - [§ 8-302\(2-a\)\(c\)](#) – Voter does not produce an identification document
  - [§ 8-302\(3\)](#) – Applicant is challenged
  - [§ 8-303](#) – Does not meet identification requirements
- Time allotted to determine the status of affidavit ballot – [§ 9-209](#)
- Affidavit ballot rejection reasons – [§ 5-403](#); [§ 9-209](#)
- Method for informing voters whether affidavit vote was counted – [§ 9-212\(4\)](#)
  - The appropriate state or local election official shall establish a free access system (such as a toll-free telephone number or an internet website) that any individual who casts an

affidavit ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

- Other:
  - [§ 5-304\(4\)](#) – If a voter has cast a ballot in an affidavit ballot envelope on which such voter claims a party enrollment different from the enrollment in the records of the board of elections, such affidavit shall be treated as an application for change of enrollment.

## Polling Place

- Polling Place availability and requirements
  - [§ 4-104](#) – Registration and polling places; designation of
  - [§ 4-132](#) – Polling places; equipment for
  - [§ 8-102](#) – Polls; opening of
  - [§ 8-104](#) – Polls
  - [§ 8-600\(2\)\(a\)](#) – Early voting polling places
- Electioneering or campaigning must not be closer than 100 feet to the entrance of the polling place – [§ 8-104\(1\)](#)
- Poll watcher qualifications – [§ 5-206](#)
- Police presence
  - [§ 3-402\(3\)](#) – The board of inspectors, or any member thereof, by order in writing may direct the arrest of any person who refuses to obey the lawful commands of the inspectors or who is guilty of disorderly conduct disturbing their proceedings or violating or attempting to violate any of the provisions of this chapter. Any peace officer, acting pursuant to his special duties, or police officer shall, when requested by the board or a member thereof, execute such order forthwith.

## State Emergency Rules and How Elections are Affected

- The supreme court is vested with jurisdiction to summarily determine any question of law or fact arising as to any subject set forth in this article, which shall be construed liberally – [§ 16-100\(1\)](#)
- The county court is vested with jurisdiction to summarily determine any question of law or fact except proceedings as to a nomination or election at a primary election or a nomination at a judicial convention, proceedings as to the casting and canvass of ballots, proceedings for examination or preservation of ballots and proceedings to enforce the provisions of article fourteen of this chapter – [§ 16-100\(2\)](#)
- Explicit remedies in election statute
  - [§ 3-108](#) – Additional day for voting
  - [§ 7-120](#) – Ballot, machine emergencies
- Other:
  - [§ 11-300](#) – Special ballots on account of religious scruples
  - [§ 11-302](#) – Special ballots for board of election employees
  - [§ 11-306](#) – Special ballots; victims of domestic violence

## Counting Rules

- Voting system requirements
  - [§ 7-200](#) – Adoption and use of voting machine or system
  - [§ 7-201](#) – Examination of voting machines and systems
  - [§ 7-202](#) – Requirements of voting machines or systems
  - [§ 7-203](#) – Requirement of use
- Counting procedures **Article 9 – Canvass of Results**

## Contest/Protest, Recount Rules

- Challenging a voter
  - [§ 5-218](#) – Registration challenges
  - [§ 5-220](#) – Challenge after registered
  - [§ 8-502](#) – Generally
  - [§ 8-504](#) – At the polling place
  - [§ 8-506](#) – Absentee, military, special federal and special presidential ballots
- Automatic recount
  - [§ 9-208\(4\)](#) will be effective Jan. 1, 2021. (full manual recount requirement)
- Contest/Protest recount
  - [§ 9-208](#) – Provisions for recanvass of vote in every election district in the state; procedure in case of discrepancy
- Other:
  - [§ 8-508](#) and [§ 8-510](#) – Challenge report