

Section B

U.S. ELECTION ASSISTANCE COMMISSION



2008 Election Administration & Voting Survey

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 us to better understand the quantitative data relating to the 2008 general election that we are collecting from all U.S. states and territories.

We understand 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).

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 legal standing 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, please specify.

Please put 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

[Begin definition (a) below this line.]

Not defined.

[End definition (a) above this line.]

b. Under-vote

[Begin definition (b) below this line.]

Not defined.

[End definition (b) above this line.]

c. Blank ballot

[Begin definition (c) below this line.]

Not defined.

[End definition (c) above this line.]

d. Void/Spoiled ballot

[Begin definition (d) below this line.]

The TN Election Code does not specifically define “spoiled ballot”, but describes the process for replacing a spoiled ballot. TCA §2-6-202(f) and – TCA§ 2-7-120 define the process for handling a spoiled ballot

[End definition (d) above this line.]

e. Provisional/Challenged ballot

[Begin definition (e) below this line.]

No specific definition is given for either a provisional or challenged ballot, but the processing governing each is described in the following statutes.

Provisional – TCA§2-7-112 provides the process for provisional ballots.

Challenged - TCA§ 2-7-123 through 126 governs challenged ballots.

[End definition (e) above this line.]

f. Absentee

[Begin definition (f) below this line.]

TCA§ 2-6-201 defines absentee voting and the process for voting in TN.

[End definition (f) above this line.]

g. Early voting

[Begin definition (g) below this line.]

TCA § 2-6-101 and TCA§ 2-6-102 defines early voting and the process for early voting in TN.

[End definition (g) above this line.]

h. Active Voter

[Begin definition (h) below this line.]

Not defined.

[End definition (h) above this line.]

i. Inactive Voter

[Begin definition (i) below this line.]

TCA § 2-6-106 defines the process for making voters inactive voters and removing them from the voter files in TN.

[End definition (i) above this line.]

j. Other terms (please specify) _____

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

PC Number 1108 “TN Voter Confidence Act of 2007” which sets out the procedure for TN utilizing the precinct – based optical scanner voting type system in all 95 counties by November 2010.

[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. By “significant,” we do not mean routine or technical changes (such as changes to election district boundaries or polling place changes). However, we 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.

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

None.

[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.)

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

Tennessee's voter registration database is a bottom - up system.

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

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

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

The county election commission is required to electronically transfer the information to the Division of Elections daily.

[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?

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

A forwardable confirmation notice with a postage prepaid, pre-addressed return form on which the voter may verify or correct the address information must be mailed to a voter whenever objective evidence exists that a voter has changed his or her address. Such "objective" evidence may involve a verification card being returned as undeliverable or any election information mailed to the voter being returned as undeliverable.

Examples of when a confirmation card may be mailed to the voter are when a notice of a change in the polling place location has been returned by postal officials indicating that the voter has moved to a different address with a given forwarding address. In this situation the county election commission would mail the voter a forwardable confirmation notice to the address listed on the permanent voter registration record – not the new address

indicated by the post office. At the same time the county election commission would make the voter INACTIVE.

If the post office indicated that the person did not have a forwarding address, or the forwarding address expired or that the forwarding address is outside of the county, the county election commission would mail the voter a forwardable confirmation notice to the address listed on the permanent voter registration record – not the new address indicated by the post office. At the same time the county election commission would change the voter's status to INACTIVE.

At no time does Tennessee law permit a voter's registration record to be purged solely based upon a notice of a change of address from the post office.

Immediately upon mailing a confirmation notice to a registered voter, the status of the voter shall be changed from ACTIVE status to INACTIVE status.

Yes, a different process is used for UOCAVA voters. Because these are temporary registrations the process of sending confirmation notices does not apply. UOCAVA applicants remain on file for two federal general election cycles unless otherwise specified by the voter.

[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?

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

: Purge Process

Pursuant to TCA 2-2-109, a voter's name must be removed from the voter registration rolls upon notice of death, felony conviction

or a voter registering to vote outside of the county. A voter must also be purged if from the date the confirmation notice has been mailed to the voter, two (2) regular November elections pass and the voter has not updated his or her voter registration record.

Canceling the Purge Process - If the voter responds to the confirmation notice, appears to vote, completes a voter registration form at an NVRA agency, or otherwise updates the voter registration after the time the notice is sent and before two (2) regular November elections pass, the voter's registration status will return to ACTIVE status and the purge process ceases.

Preservation Time - T. C. A. § 2-2-124(c) provides that purged registrations shall be retained by the county election commission for two (2) years from the date of the purge.

Destruction Time - After two (2) years from the date of the purge passes, the election commission may destroy the hard paper record of physical purged registrations.

The temporary voter registration of UOCAVA voters are purged after two federal general elections have passed and the UOCAVA voter has not otherwise updated or applied to vote in additional elections.

[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.

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

For driver's license - The voter registration database is not electronically linked to share information however, the state is able to use information electronically transferred by the Department of Safety.

For other agencies - Varies by agency.

Information is extracted from various agency files. Not all agencies provide unique identifiers (such as SS# and DOB) to match our voter files.

[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 using NCOA?

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

NCOA is not used on the state level. If used it is done on a county level.

[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?)

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

Article 4, §2 of the Tennessee Constitution provides that the Tennessee legislature may deny the right to vote to persons convicted of "infamous" crimes. Pursuant to this provision in the Tennessee Constitution, the Tennessee legislature has excluded individuals convicted of various felonies from the right of suffrage.

However, the legislature has also established conditions and procedures through which individuals who have lost their voting

a lost voting right depends upon the crime committed and the year in which the conviction occurred.

Eligibility requirements are listed in the three categories listed below.

A Felony Conviction After May 18, 1981(2006 General Assembly, Public Chapter 860 AND 2-2-139)
Type of Crime That Forfeits Right to Vote
All Felonies

Conditions under Which Person May Be Eligible for Restoration of Voting Rights

- Receipt of a pardon;

- Expiration of the maximum sentence imposed for the crime;

- or

- Granted final release from incarceration or supervision by the board of paroles, the department of correction, or county correction authority; and

- Any court order restitution paid; and/or

- Current in the payment of any child support obligations

Procedures for Restoring Voting Rights

1. Court Order

Obtain a court order restoring the person's rights in either the county in which the person currently resides or the county in which the person was convicted.

OR

2. Certificate of Restoration

Print the Certificate of Restoration of Voting Rights, or obtain a certificate from the county election commission office;

- Certificate of Restoration of Voting Rights must be completed by:
 - the pardoning authority; or
 - an agent or officer of the supervising or incarcerating authority; and/or
 - the an agent of the circuit/criminal court clerk

Upon verification that the applicant does not have any outstanding child support obligations due, the person may be registered to vote.

Exceptions -Persons convicted of any of the following, cannot have his or her voting rights restored:

Between July 1, 1986, and June 30, 1996 -first degree murder, aggravated rape, treason, or voter fraud

Between July 1, 1996, and June 30, 2006 - murder, rape, treason, or voter fraud

On or after July 1, 2006 – Any of the above, or any degree of murder or rape or any felony offense under TCA Title 39, Chapter 16, parts 1, 4, or 5; or any sexual offense under TCA § 40-39-202(17) or any violent sexual offense under TCA § 4039-202(25) designated as a felony and where the victim of such offense was a minor

**B. Felony Conviction Between January 15, 1973, and
May 17, 1981**

**Public Chapter 740 § 4(70) (1972) &
Crutchfield V. Collins, 607 S.W. 2D 478 (Tenn.
Ct. App. 1980)**

Type of Crime That Forfeits Right to Vote

- None

**Condition Under Which Person May Be Eligible
for Restoration of Voting Rights**

- Because a person convicted of an infamous crime during this time period may register to vote, regardless of the nature of the conviction, there are no conditions or procedures that apply.

C. Felony Conviction Prior to January 15, 1973

(Crutchfield V. Collins, 607 S.W. 2D 478 (Tenn. Ct. App. 1980))

Type of Crime That Forfeits Right to Vote

- Abusing a female child;
- Arson and felonious burning;
- Bigamy;
- Bribery;
- Burglary; felonious breaking and entering a dwelling house; felonious breaking into a business house, outhouse other than a dwelling house; larceny; horse stealing; robbery; receiving stolen property; stealing bills of exchange or other valuable papers;
- Destroying a will;
- Incest; rape; sodomy; buggery; or
- Perjury; subornation of perjury.

Conditions Under Which Person May Be Eligible for Restoration of Voting Rights

- Proving that, at the time of conviction, the judge did not render person infamous;
- Conviction reversed on appeal;
- Receipt of a full pardon; or
- Circuit court, in either the county where person resides or in the county where person was convicted, issues judgment that restores full rights of citizenship upon the person. (Person may petition the circuit court for restoration at the expiration of the maximum sentence imposed for the infamous crime conviction.)

Procedure for Restoring Voting Rights

- Present proof of one of the above-mentioned conditions to the county election commission in the county in which the person resides;

Are voting rights automatically restored or does the individual have to apply for a pardon, certificate of eligibility or other similar certificate?

Response: *Voting rights are not automatically restored The individual applicant must apply to have their voting rights restored.*

Does an individual whose voting rights have been restored have to produce documentation of his/her status when registering to vote?)

Response: *When the individual applies to vote they must submit the information necessary (depending on the year of conviction) in order to have their voting rights restored*

[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.).

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

The State of Tennessee uses the internet to educate the public about the registration process. The state has a voter registration link on the Election Division website.

See site listed below:

<http://state.tn.us/sos/election/forms/ss-3010.pdf>

Applicants are able to complete the voter application on line and then print off the form. The voter is required to sign and send the original application to either the Division of Elections or the county election commission office for processing.

[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?

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

Absentee by – mail ballots, votes cast at vote centers, provisional ballots and early voting ballots are counted centrally within the county.

[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?

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

Absentee by – mail ballots, votes cast at vote centers, and provisional ballots are typically redirected and placed into the precinct totals from which the ballots come. However, if in a precinct there is only one absentee by-mail vote or only one provisional ballot, then the single ballot will be counted with the early vote totals to protect the secrecy of the ballot. Regarding early votes, there are many counties which report early votes as a single early voting precinct. However, just as many of the counties redirect the early votes to the appropriate precinct for the voter.

[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?

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

See response to “b” above.

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

d. How are UOCAVA ballots counted and reported?

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

**UOCAVA ballots are absentee by –mail and are counted
and reported just by precinct.**

[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.)

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

**Tennessee requires a reason for voting absentee. See TCA§
2-6-201.**

[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?

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

Tennessee allows early voting for any eligible registered voter. The voter may vote so many days before the election day at the county election commission office or any other polling place designated by the county election commission as an early voting satellite site. Early voting begins twenty days out from an election and ends the fifth day before the election. The counting of early voting ballots is done at a central location by the county election commission and is reported in the precinct totals. Tennessee does have some counties that chose to report their early voting and absentee totals separately but the preferred method is combined with election day totals.

[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?

[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.

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

TCA § 2-7-112 (3) (a) governs provisional voting.

(3) (A) A person shall be entitled to vote a provisional ballot under the procedures of this section if the voter claims to be properly registered in the county and eligible to vote at the precinct in the election, but whose eligibility cannot be determined by the computer signature list or by examination of the permanent registration records on file with the county election commission.

(i) If the election official cannot determine that the voter's name should have been placed on the precinct's computer signature list, then the voter shall complete an original voter registration application. At the time of registration and pursuant to subsection (d), the voter shall present verification of the residential address under which the person desires to vote.

[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.

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

Both the voter registration application and the application for ballot shall be deposited in the provisional ballot box. Nothing in this section shall be construed to allow election day voter registration.

Pursuant to § 2-7-114(b) and (c), the voter shall vote the provisional ballot. Any county utilizing punchcard or optiscan technology shall process their ballots pursuant to rules promulgated by the state coordinator of elections. The provisions of § 2-7-116 shall govern any voter needing assistance. If the provisional ballot was cast in the proper precinct and the voter had not voted in another precinct or otherwise voted in the election the ballot will be counted..

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

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

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

TCA§ 2-8-101 requires the county election commission to meet, compare the returns and certify the election.

TCA§2-8-104 requires the county election commission to audit as soon as possible after the election.

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

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

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

Within thirty (30) days before an election the county election commission shall meet for the purpose of instructing poll officials.

[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.

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

93 of our 95 counties use DRE's which do not allow for over voting. The two remaining counties are precinct based optical scanning systems and do not allow for over votes. Traditionally we do not have "no excuse" absentee voting and do not have that many voting by mail. We do not track over votes by absentee voters However, TCA§ 2-7-133(b) prohibits the counting of an office if it is impossible to determine the voter's choice. Under - votes are not tracked by any method of voting used in TN.

[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;

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

When registering to vote a TDL, Social Security Card, credit card bearing applicant's signature or other document bearing the applicant's signature would serve as ID. For verification of a residential address a TDL, residential lease agreement, a utility bill or other document bearing applicant's residential address would be sufficient to register to vote..

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

b. casting an in-person ballot;

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

When casting a ballot in person Tennessee voters are required to produce evidence of identification. That ID may be a valid voter registration card, TDL, Social Security Card, credit card bearing applicant's signature or other document bearing the applicant's signature.

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

c. casting a mail-in or absentee vote;

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

Voter's casting a ballot by mail must submit a request for an absentee ballot to the county election commission. This request does not require additional id. The application requires a voter signature which is compared to the permanent voter registration form.

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

d. casting a ballot under UOCAVA;

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

UOCAVA voters are not required to provided additional ID. The signature on the ballot affidavit is compared to the signature on the application for ballot.

[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).

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

None.

[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.

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

Candidates, party officials and certain organizations of citizens may appoint poll watchers to observe the election. Any additional observers may be allowed by the local jurisdiction. See TCA§2-7-104.

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

SECTION E: OTHER

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

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

Tennessee has not revised its administrative complaint procedures since first implemented.

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

E2. 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.

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

[End response to above question (E2) 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 3/31/09). 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 – 2008 Election Administration and Voting Survey, 1225 New York Avenue, Suite 1100, Washington, DC 20005.