

U.S. ELECTION ASSISTANCE COMMISSION



2010 Election Administration & Voting Survey

Texas

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.]

Voter marks the ballot for more candidates in a race than authorized to be elected.
Texas Election Code Section 65.011.

[End definition (a) above this line.]

b. Under-vote

No Change Since 2008 **Changed Since 2008**

2008 Response:

[Begin definition (b) below this line.]

Voter has voted for fewer candidates in a race than authorized to be elected. Figure 7 in booklet Qualifying Voters on Election Day.

[End definition (b) above this line.]

c. Blank ballot

No Change Since 2008 **Changed Since 2008**

2008 Response:

[Begin definition (c) below this line.]

Ballot deposited in ballot box, but no votes are cast on the ballot. No legal cite.

[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.]

Voter mismarks, damages, or otherwise spoils ballot in the process of voting. Texas Election Code Section 64.007.

[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.]

Provisional ballot is a ballot voted by a voter who does not have proper identification for voting or who does not have a voter registration certificate and is not on the list of registered voters. Voter may vote provisional ballot after signing appropriate affidavits. Texas Election Code Sections 63.008, 63.009, 63.011.

[End definition (e) above this line.]

f. Absentee

No Change Since 2008 **Changed Since 2008**

2008 Response:

[Begin definition (f) below this line.]

No longer a term used in Texas elections. Texas Election Code Section 81.001. We refer to this as early voting by mail.

[End definition (f) above this line.]

g. Early voting

No Change Since 2008 **Changed Since 2008**

2008 Response:

[Begin definition (g) below this line.]

Opportunity for registered voters to cast a ballot either by mail or in person prior to election day. Texas Election Code, Chapter 82.

[End definition (g) above this line.]

h. Active Voter

No Change Since 2008 Changed Since 2008

2008 Response:

[Begin definition (h) below this line.]

Person who has a current registration and is qualified to vote. Texas Election Code Section 15.141.

[End definition (h) above this line.]

i. Inactive Voter

No Change Since 2008 Changed Since 2008

2008 Response:

[Begin definition (i) below this line.]

Person whose voter registration has been canceled. Texas Election Code Section 15.142.

[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.]

Suspense Voter – Voter who is registered and has been mailed a 8d2 notice and has not responded. 8d2 notice is called address confirmation notice. Voter remains in suspense status until their registration address is corrected or 2 federal elections have occurred since voter was placed on suspense. Texas Election Code Section 15.081. (may be referred to as inactive in other states)

[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.]

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.)

No Change Since 2008 **Changed Since 2008**

2008 Response:

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

Hybrid

[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.]

Local jurisdictions upload once a day.

[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.]

New voting certificates mailed to all active voters every 2 years. If certificate is returned (cannot forward by state law) an address confirmation is mailed to the voter. See suspense voter above. Texas Election Code Section 14.001, 14.023. This process is not applicable to UOCAVA.

[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?

No Change Since 2008 **Changed Since 2008**

2008 Response:

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

Remove Voters, Texas Election Code Section Chapter 16

- 1) Request by voter.
- 2) Strong match duplicate in another county.
- 3) Strong match death (Records obtained by Bureau of Vital Statistics).
- 4) Challenge because of potential felon (30 days, if no response. Records received from DPS)
- 5) Challenge citizenship after person indicates on jury notice they are not a citizen (30 days)
- 6) Voter certificate returned as undeliverable, address confirmation sent, voter status changed to suspense, registration cancelled after 2 federal elections if voter does not update address.
- 7) Address confirmation mailed to voter if registrar has reason to believe voter has moved. Same procedure as #6.

These processes are not applicable to 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.

No Change Since 2008 **Changed Since 2008**

2008 Response:

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

No. We receive files, but we do not share our 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 NCOA?

No Change Since 2008 **Changed Since 2008**

2008 Response:

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

Each county can choose to use NCOA. Larger counties that do use it identify voters who have potentially moved and then send address confirmation notice and put voter on suspense.

[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?)

No Change Since 2008 **Changed Since 2008**

2008 Response:

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

Felons can register to vote as soon as they complete all of their punishment, including any term of incarceration, parole, supervision, period of probation, or the person must have received a pardon. No. These people do not have to produce documents to prove status. Texas Election Code Section 11.002.

[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.).

No Change Since 2008 **Changed Since 2008**

2008 Response:

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

Registered voters can change name and address on the Internet. Voter registration form is posted on the Internet.

[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 some counties, ballots cast at voting precincts are tabulated at the precinct; otherwise, they are tabulated at a central location.

[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. All tabulated votes regardless of the manner and the location at which they are tabulated are reported by precinct. Texas Election Code Section 87.103.

[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.]

Early votes are reported by precinct. Texas Election Code Section 87.103.

[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.]

They are included and reported with the early votes.

[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.]

Must have a reason to vote by mail. Texas Election Code Chapter 82.

[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.]

Yes, we have early voting in Texas. Defined as the opportunity for registered voters to cast a ballot either by mail or in-person prior to election day. Sometimes ballots are counted at precinct. Reported by precinct.

[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?

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.]

Texas Election Code Section 63.011

1. Voter not on list of registered voters, voter registrar could not be reached.
2. Voter not on list of registered voters and could not be verified by voter registrar.
3. Voter not on list and did not provide certificate or other form of identification.
4. Voter not on list, registered in another precinct.
5. Voter on list of registered voters, but did not provide certificate or other form of identification.
6. Voter on the list of people who voted early by mail, voter says she/he did not apply for nor return the ballot.
7. Voting after 7:00 p.m. due to court order.
8. Voter on list, but registered residence address outside the political subdivision.
9. Voted in another party's primary.
10. Other: _____ (Please explain)

[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.]

Provisional ballots are rejected if voter voted in precinct not registered in. Voter registrar verifies registration status after election, provisional ballot envelope goes to Ballot Board for final determination whether to count or not count the ballot. Texas Election Code Section 63.011, Chapter 65, Subchapter B.

[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 **Changed Since 2008**

2008 Response:

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

Manual count of not more than three races in 1% of precincts or 3 precincts, whichever is greater, and is required to begin 72 hours after polls close. Logic and accuracy test required immediately following the final count of ballots. Texas Election Code Section 127.201.

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

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

No Change Since 2008 **Changed Since 2008**

2008 Response:

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

Secretary of State provides on-line training via the internet, DVD of election procedures, handbooks of instruction, and in some cases in-person election training. No state law requirement for minimum of training. Texas Election Code Subchapter F, Chapter 32.

[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.]

If ballots are counted electronically, the tabulating equipment is programmed to capture that data. Hand-counted ballots do not report. Texas Election Code Section 127.1301.

[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.]

TDL number or last 4 digits SSN for verification (HAVA) if no TDL.

[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.]

See Texas Election Code Section 63.0101

DOCUMENTATION OF PROOF OF IDENTIFICATION.

The following documentation is acceptable as proof of identification under this chapter:

(1) a driver's license or personal identification card issued to the person by the Department of Public Safety or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired;

(2) a form of identification containing the person's photograph that establishes the person's identity;

- (3) a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity;
- (4) United States citizenship papers issued to the person;
- (5) a United States passport issued to the person,
- (6) official mail addressed to the person by name from a governmental entity;
- (7) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or
- (8) any other form of identification prescribed by the secretary of state.

[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.]

None unless TDL or SSN could not be verified at time of registration.

[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.]

None

[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.]

No

[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.

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

2008 Response:

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

Candidates and political parties may appoint watchers. Texas Election Code Subchapter A, Chapter 33. The Secretary of State also has authority to appoint election inspectors and must appoint one if a petition is received, Texas Election Code Chapter 34.

[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?

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.]

The Office of the Secretary of State adopted administrative rules to implement the MOVE Act in Texas. Here is a link to the adopted rules, which have been precleared by the U.S. Department of Justice, [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_floc=&p_ploc=&pg=1&p_tac=&ti=1&pt=4&ch=81&rl=39](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_floc=&p_ploc=&pg=1&p_tac=&ti=1&pt=4&ch=81&rl=39). A copy of the rules is also attached to this survey.

[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.]

No

[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.