U.S. ELECTION ASSISTANCE COMMISSION

2016 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 EAC to better understand the quantitative data relating to the 2016 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

As appropriate, please provide your state's legal citation for the responses to the questions beginning on the following page.

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

The Statutory Overview data collection document has two columns below each question.

- On the left, we have provided you with the answer your state provided for the 2014 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 the box labeled **No Change since 2014** at the top of the left column.

- If the response has changed since 2014 – or your state has not answered this question previously for some reason— please mark the box labeled **Changed since 2014** at the top of the right column and then provide the new answer in the text box provided. If your response is too long to fit in the box, please make a note in the text box and place your response in the "Notes" page at the end of the document. Additionally, if a law was repealed in full, please answer "repealed in full" in the box.

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

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

☒ **No Change since 2014** ☐ **Changed since 2014**

State code 1.11 - An attempt to vote for a larger number of candidates than is allowed.

b) Under-vote

☐ **No Change since 2014** ☒ **Changed since 2014**

This term has no legal definition.

State code 1.12 - An attempt to vote for a smaller number of candidates than is allowed.

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 2014** ☐ **Changed since 2014**

2014 Response:

WV Code §3-4A-9a(c)(2)(A)
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.

2016 Response:

b) Under-vote

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

WV Code §3-4A-9a(c)(2)(B)
(No code section available defining under-vote.)

2016 Response:

c) Blank ballot

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

(No code section available defining blank ballot)

2016 Response:

d) Void/Spoiled ballot

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

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.

2016 Response:

e) Provisional/Challenged ballot

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

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…

2016 Response:

f) Absentee

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

WV Code §§3-3-1 et. al

2016 Response:

g) Early voting

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

WV Code §3-3-3

2016 Response:

h) Active Voter

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

Revised definition in 2013
WV Code §3-2-18(a)(2)
Means the registration records, whether on paper or in electronic format, containing the names, addresses, birth dates and other required information for all persons within a county who are registered to vote and whose registration has not been designated as inactive or canceled pursuant to the provisions of this article.

2016 Response:

i) Inactive Voter

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

Revised definition in 2013
WV Code §3-2-27, a voter who has not responded to a confirmation notice forwarded by the voter registrar
WV Code §3-2-18(a)(3) means the registration records, whether on paper or in electronic format, containing the names, addresses, firth dates and other required information for all persons designated inactive pursuant to the provisions of section 27 of this article following the return of the prescribed notices as undeliverable at the address provided by the US Postal Service or entered on the voter registration, or for failure of the contacted voter to return a completed confirmation notice within thirty days of the mailing.

2016 Response:

j) Other terms (please specify) _____

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

Revised in 2013
WV Code §3-2-18(a)(4) means records containing all required information for all persons who have been removed from the active and inactive voter registration records and who are no longer registered to vote.

2016 Response:

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 2014** ☒ **Changed since 2014**

2014 Response:

WV Code §3-2-4a(e)(2) By participation in programs across state lines to share data specifically for voter registration to ensure that voters who have moved across state lines or become deceased in another state are removed in accordance with state law and 42 U.S.C. § 1773gg, et seq.;

WV Code §3-2-5(3) The Secretary of State is authorized to promulgate procedures to permit persons to register to vote through a secure electronic voter registration system.

WV Code§3-2-5(4) The clerk may accept the electronically transmitted signature kept on file with another approved state database for an applicant who applies to register to vote using an approved electronic voter registration system in accordance with procedures promulgated by the Secretary of State.

WV Code §3-2-7(b) Provided, that an individual may apply for voter registration using an approved electronic voter registration system if available at the office of the clerk. Such system may electronically transfer the voter's signature stored in the database of another state agency in accordance with procedures promulgated by the Secretary of State.

WV Code§3-2-11(a)….. a voter registration application as prescribed in section five of this article when the Division's regional offices are open for regular business. An individual may apply for voter registration using an approved electronic voter registration system if available at a Division of Motor Vehicles regional office.
(b) Notwithstanding any other provision of this code to the contrary, the Division of Motor Vehicles is required to release the first name, middle name, last name, premarital name, if applicable, complete residence address, and complete date of birth of an applicant, and the applicant's electronic signature, entered in the division's records for driver license or nonoperator identification purposes upon notice and written consent of the applicant. The notice and consent is a required component of an electronic voter registration application made available to the general public by the Secretary of State. The release of an applicant's signature by the Division of Motor Vehicles to the Office of the Secretary of State applies to any voter registration application approved through an electronic voter registration system approved by the Secretary of State regardless of the

2016 Response:

2016 SB 4013 changes the voter identification requirements for elections occurring on or after January 1, 2018 and provides for automatic voter registration. The following sections of code are effected:

§ 3 - 1 - 34 (Amended Code)
§ 3 - 1 - 41 (Amended Code)
§ 3 - 1 - 51 (New Code)
§ 3 - 2 - 11 (Amended Code)
§ 3 - 2 - 12 (Amended Code)
§17 B- 2 - 1 (Amended Code)

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 2014** ☐ **Changed since 2014**

2014 Response:	2016 Response:
Top-down	

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 2014** ☐ **Changed since 2014**

2014 Response:	2016 Response:

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 2014** ☐ **Changed since 2014**

2014 Response:

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) their file is then returned to active status. This is the same process for UOCAVA voters.

2016 Response:

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 2014** ☐ **Changed since 2014**

2014 Response:

W V Code 3-2-23 covers Cancellation of registration as described below.
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.

2013 changes:
§3-2-23(a)(2) Cancellation of registration of deceased or ineligible voters.
added the words…….or other writings…. to the section which for a publication which clearly identifies a deceased voter.

2016 Response:

B4. Can your state's voter registration database (or equivalent) share information electronically with your state's driver's 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 2014** ☐ **Changed since 2014**

2014 Response:

We now have code authorizing the sharing of data with other state agencies and across state lines for the purpose of voter registration and list maintenance. We are currently preparing rules and regulations to implement the system and planning the development of an electronic system.

2016 Response:

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

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

WV Code §3-2-25
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.

2016 Response:

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 2014** ☐ **Changed since 2014**

2014 Response:

W V Code §3-2-2(b)
A convicted felon cannot 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.

2016 Response:

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 2014** ☒ **Changed since 2014**

2014 Response:

2016 Response:

Voters with a DMV identification card may complete and submit their voter registration application online (implementation of code passed in 2013). Voters without a DMV ID card may choose to fill in the application online to print and mail. We also allow voters to search our database online to determine that they are currently registered and their precinct information.

2013 LEGISLATION
WV Code§3-2-5(4) The clerk may accept the electronically transmitted signature kept on file with another approved state database for an applicant who applies to register to vote using an approved electronic voter registration system in accordance with procedures promulgated by the Secretary of State.
WV Code §3-2-7(b) Provided, that an individual may apply for voter registration using an approved electronic voter registration system if available at the office of the clerk. Such system may electronically transfer the voter's signature stored in the database of another state agency in accordance with procedures promulgated by the Secretary of State.

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 2014** ☐ **Changed since 2014**

2014 Response:

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.
All provisional ballots are counted at canvass WV Code 3-6-9

2016 Response:

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

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

Yes

2016 Response:

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 2014** ☐ **Changed since 2014**

2014 Response:

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

2016 Response:

d. How are UOCAVA ballots counted and reported?

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

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

2016 Response:

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 2014** ☐ **Changed since 2014**

2014 Response:

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

2016 Response:

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 2014** ☐ **Changed since 2014**

2014 Response:

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.

WV CODE §3-3-3 was amended to change the period for early voting from 20 days before the election to 13 days before the election.

2016 Response:

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 2014** ☐ **Changed since 2014**

2014 Response:

No

2016 Response:

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

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

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 then 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.

Also 3-3-10 is regarding absentee ballots.
2012 Legislation added WV Code §3-2-6a for late registration of qualified military personnel.

2016 Response:

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.

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

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.

****Code not changed, however, this is clarification of the explanation provided.
§3-2-31. (b) A voter whose registration record lists one residence address but the voter has since moved to another residence address within the precinct shall be permitted to update the registration at the polling place and vote without challenge for that reason. (c) A voter whose registration record lists one residence address but the voter has since moved to another residence address in a different precinct in the same county shall be permitted to update the registration at the polling place serving the new precinct and shall be permitted to vote a challenged or provisional ballot at the new polling place. If the voter's registration is found on the registration records within the county during the canvass and no other challenge of eligibility was entered on election day, the challenge shall be removed and the ballot shall be counted.

2016 Response:

C7. Please describe your state's laws regarding post-election audits, if any. A post-election audit refers to hand-counting votes on paper records and comparing those counts to the corresponding vote counts originally reported, as a check on the accuracy of election results, and resolving discrepancies using accurate hand counts of the paper records as the benchmark.

If your state has post-election auditing, consider including in your response information such as the unit being audited (e.g., precincts, machines); the sampling method (e.g., fixed percentages); whether there is a specific trigger for the audit; the location of the random selection (e.g., state, county); and the races that can be audited.

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

WV Code 3-4A-28
During the canvass, in electronic voting system elections, 53% 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.

2016 Response:

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

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

WV Code §3-1-46. 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.

2016 Response:

SECTION D: ELECTION DAY ACTIVITIES

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

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

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.

2016 Response:

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

a. registering to vote;

☒ **No Change since 2014** ☒ **Changed since 2014**

2014 Response:

§3-2-7
A valid current driver's license or state-issued ID is required to register to vote in person at the clerk's office.

2016 Response:

b. casting an in-person ballot;

☐ **No Change since 2014** ☒ **Changed since 2014**

2014 Response:

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

2016 Response:

According to WV Code §3-1-34, effective January 1, 2018 voters must provide one of the following documents at the polling place:

(A) A valid West Virginia driver's license or valid West Virginia identification card issued by the West Virginia Division of Motor Vehicles;
(B) A valid driver's license issued by a state other than the State of West Virginia;
(C) A valid United States passport or passport card;
(D) A valid employee identification card with a photograph of the eligible voter issued by any branch, department, agency, or entity of the United States Government or of the State of West Virginia, or by any county, municipality, board, authority, or other political subdivision of West Virginia;
(E) A valid student identification card with a photograph of the eligible voter issued by an institution of higher education in West Virginia, or a valid high school identification card issued by a West Virginia high school;
(F) A valid military identification card issued by the United States with a photograph of the person desiring to vote;
(G) A valid concealed carry (pistol/revolver) permit issued by the sheriff of the county with a photograph of the person desiring to vote;

c. casting a mail-in or absentee vote;

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

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

2016 Response:

d. casting a ballot under UOCAVA;

☐ **No Change since 2014** ☒ **Changed since 2014**

2014 Response:	2016 Response:
No ID required unless not provided during registration, then HAVA ID with current address	Clarification: No ID required to cast a ballot under UOCAVA.

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

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:	2016 Response:
N/A	

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 2014** ☐ **Changed since 2014**

2014 Response:	2016 Response:
WV Code 3-9-6 No election observers other than full time employees of the Secretary of State's Office, the County Clerk's Office, or county prosecutorlaw enforcement are allowed in precincts in WV.	

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 2014** ☐ **Changed since 2014**

2014 Response:

WV Code §3-1-50 was amended in 2013 which allows the complaints to be segregated by those that potentially involve criminal investigations and those that are only administrative. Previously the law combined all complaints together.

2016 Response:

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.

☒ **No Change since 2014** ☐ **Changed since 2014**

2014 Response:

N/A

2016 Response:

* 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 04/30/2017). 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 – 2014 Election Administration and Voting Survey, 1335 East West Highway, Suite 4300, Silver Spring MD, 20910.

NOTES – please place longer responses below