

# **2018 Election Administrator's Manual**



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Indiana Election Division  
302 West Washington Street  
Indiana Government Center South, Room E-204  
Indianapolis, IN 46204-2743

(317) 232-3939 \* (800) 622-4941 in Indiana

FAX: (317) 233-6793

[www.in.gov/sos/elections](http://www.in.gov/sos/elections)



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This manual is designed to serve as a comprehensive overview of election procedures. Although the Election Division takes every effort to ensure the accuracy of the information in this publication, where your legal rights are involved, do not rely on this manual. Instead, review the law yourself or consult with your attorney.

The Indiana Election Division produces other manuals that may also aid administrators, including the Indiana Campaign Finance manual, Indiana Election Calendar, Indiana Candidate Guide, and Indiana Voter Registration Guidebook. Additional resources are also available at <http://www.in.gov/sos/elections/index.htm> as well as on conference forms disks distributed at the Election Administrators annual conference.

# KEY PLAYERS

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On the national level, the *United States Election Assistance Commission* and the *Federal Election Commission* are the primary agencies responsible for administering election law. *The United States Department of Justice* also acts to enforce voting rights and election crime laws. *The United States Department of Defense* assists military and overseas voters. *The Federal Communications Commission* enforces certain campaign advertising rules for television and radio stations. The *Office of the Special Counsel* of the U.S. Merit Systems Protection Board administers the Hatch Act, which governs political activity by Federal and certain state and local government employees. These federal agencies can serve as valuable resources for those individuals needing answers to questions. See the next page for relevant contact information.

On the state level, *The Secretary of State* is the chief election official of Indiana and has several responsibilities related to the implementation of the Help America Vote Act of 2002. *The Election Division of the Indiana Secretary of State* is responsible for the administration of various routine election functions and is a bipartisan agency. The Election Division performs many election related tasks to assist the Secretary of State and the Indiana Election Commission, including campaign finance, candidate filings and certification of election results. Remember: When you read an Indiana Election Division publication such as this 2018 Election Administrator's manual, it is the product of bipartisan drafting and editing of language that reflects a clear consensus of the agency. On occasion, the Co-Directors of the Election Division encounter a disagreement between themselves regarding the law applicable to a particular situation, or the procedures to be followed. When this occurs, the disagreement may be noted in these publications. *The Indiana Election Commission* is a four member bipartisan body appointed by the governor, responsible for establishing election policies and enforcing certain parts of the state election laws, such as determining whether a challenged candidate should appear on a ballot, and whether a civil penalty should be assessed for a campaign finance violation. The Commission also approves, through a bipartisan process, all certified voting equipment for sale and use in Indiana elections.

On the county level, the bipartisan *county election board*, *circuit court clerk* and, in some counties, a bipartisan *board of voter registration* is responsible for administering different areas of election law. In some smaller towns, a town election board may be responsible for conducting town elections. The county commissioners are responsible for performing certain functions such as selecting the polling locations in the county and changing precinct boundary lines, subject to approval by the Election Division (or by the Commission if the precinct boundary change is contested). Some counties vote at precinct polling locations while others have adopted the voter center procedure allowed by Indiana law.

On Election Day, thousands of precinct inspectors, judges, clerks, assistant clerks, and poll sheriffs are responsible for administering elections in Indiana's polling locations. On this special day, these crucial workers make the election a reality for Hoosier voters. The 2018 Indiana Election day Handbook is a key resource for helping them in their duty.

Political parties and partisan committees are active at all levels of government and are responsible in Indiana for filling vacancies on the ballot and in certain elected offices. The political parties are also called upon to muster an army of dedicated individuals who volunteer their services for staffing precinct election boards and performing other election day tasks. Without these volunteers, a successful election would not be possible. Indiana's officials have chosen a system in which election administration has bipartisan support to carry out its functions and safeguard the integrity of the ballot box.

## Federal Offices with Election Duties

### The U.S. Election Assistance Commission

The U.S. Election Assistance Commission (EAC), a bipartisan body, was established by the Help America Vote Act of 2002 and is primarily responsible for administering programs created by that statute at the federal level, including developing Voluntary Voting System Guidelines. The EAC can be reached at:

1335 East West Highway, Suite 4300  
Silver Spring, MD 20910  
Telephone(s): 301-563-3919 or Toll-Free (866) 747-1471  
Fax: 301-734-3108  
Website: [www.eac.gov](http://www.eac.gov)

### The Federal Election Commission

The Federal Election Commission (FEC), a bipartisan body, administers federal campaign finance laws, maintains the campaign finance reports filed by candidates to federal offices, and administers disclaimer requirements concerning web sites and email distribution lists. The Federal Election Commission also compiles official voting results from all of the states for federal offices.

Campaign finance reports filed with the FEC are accessible on the FEC's website at [www.fec.gov](http://www.fec.gov). A public terminal permitting access to this website is available in the offices of the Election Division.

999 E Street, NW  
Washington, DC 20463  
Telephone(s): 202-694-1000 or Toll-Free (800) 424-9530  
Website: [www.fec.gov](http://www.fec.gov)

### United States Department of Justice

On occasion, a voter or a candidate may believe that a person has violated a federal election law, and wishes to contact a federal law enforcement officer. These persons can be referred to:

Department of Justice, Criminal Division, Public Integrity Section  
Ms. AnnaLou Tirol, Acting Chief  
Website: [www.justice.gov/criminal/pin/](http://www.justice.gov/criminal/pin/)  
Telephone: (202) 514-1412

Department of Justice, Voting Section, Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Voting Section: Room 7254 - NWB  
Washington, DC 20530  
Website: [www.justice.gov/crt/voting-section](http://www.justice.gov/crt/voting-section)  
Telephone: (800) 253-3931; (202) 307-2767  
Fax Number: (202) 307-3961  
Email: [voting.section@usdoj.gov](mailto:voting.section@usdoj.gov)

### Federal Communications Commission

The Federal Communications Commission administers the federal regulations regarding political advertisements on radio, television and cable. Questions and concerns regarding broadcast political advertisements can be referred to the Federal Communications Commission at:

Federal Communications Commission  
Martha Heller, Policy Division, Media Bureau Chief  
445 12<sup>th</sup> Street S.W.  
Washington, DC 20554  
Website: [www.fec.gov/media/policy/policy-division](http://www.fec.gov/media/policy/policy-division)  
Telephone: (202) 418-2120  
FAX: 866-418-0232  
E-mail Address: [campaignlaw@fcc.gov](mailto:campaignlaw@fcc.gov)

### United States Department of Defense

The Federal Voting Assistance Program (FVAP) assists military voters and civilian overseas voters by: (1) providing information about state election procedures and deadlines; and (2) furnishing federal absentee registration forms and federal write-in absentee ballots to these voters. For information or assistance, contact:

Mr. David Beirne, Director  
Federal Voting Assistance Program  
Department of Defense  
4800 Mark Center Drive, Suite 03J25-02  
Arlington, VA 22350-5000  
Telephone: (800) 438-8683 (VOTE)  
FAX: 1-800-368-8683  
Internet Address: [www.fvap.gov](http://www.fvap.gov)  
E-Mail: [vote@fvap.gov](mailto:vote@fvap.gov)

### Office of the Special Counsel

The Office of the Special Counsel of the U.S. Merit Systems Protection Board can provide information about the application of the "Hatch Act", which restricts political activity by federal employees and about the "Little Hatch Act", which restricts political activity by certain state or local employees whose agencies are federally funded. For information, contact:

Hatch Act Unit, U.S. Office of Special Counsel  
1730 M Street NW, Suite # 218  
Washington, DC 20036-4505  
Toll free: (800) 85HATCH; (800) 854-2824; (202) 254-3650  
FAX: (202) 254-3700  
Internet Address: [www.osc.gov](http://www.osc.gov)  
E-Mail: [hatchact@osc.gov](mailto:hatchact@osc.gov)

## State Offices with Election Duties

### The Secretary of State of Indiana

The Secretary of State is the chief election official of Indiana, except for the coordination of Indiana's responsibilities under the National Voter Registration Act (NVRA), which is a duty for the bipartisan co-directors of the Indiana Election Division. The Secretary of State is a statewide elected official, who is chosen by the voters of Indiana to serve a four-year term.

The Secretary of State has several election-related responsibilities under the federal Help America Vote Act of 2002 (HAVA) and Indiana law, including the following:

- (1) Encouraging students at colleges and universities to serve as poll workers or assistants.
- (2) Encouraging high school and home-schooled students to serve as poll workers or assistants.
- (3) Developing and implementing the Help America Vote Act (HAVA) Indiana State Plan, including the statewide voter registration system, in cooperation with the Co-Directors of the Division.
- (4) Performing the duties of the chief state election official under HAVA.

The Secretary of State works with the Co-Directors of the Indiana Election Division in maintaining a statewide voter registration system.

The Secretary of State approves applications for certification of electronic poll book models for use in Indiana elections. The Secretary may certify an electronic poll book following an examination of the poll book and receipt of a report prepared by the Voting System Technical Oversight Program (VSTOP), which is currently administered by the Bowen Center at Ball State University.

### Indiana Election Commission

The Indiana Election Commission (IEC) is a bipartisan four-member appointed commission responsible for administering and interpreting certain Indiana election laws. The four members of the Commission are appointed by the Governor upon recommendation by the state chair of each of the two major political parties. The Commission enforces certain campaign finance laws; determines whether the names of challenged candidates may appear on the ballot; and conducts hearings regarding complaints under the Help America Vote Act of 2002 (HAVA). The Commission also certifies voting systems that are marketed or used in Indiana following review of the application for system certification and recommendation concerning the application from VSTOP. Before a voting system can be marketed, sold, leased, installed, implemented or used in an election, or modified after sale to a county, the vendor must demonstrate that the system will meet minimum standards set by state law.

### The Indiana Election Division

The Election Division of the Office of the Indiana Secretary of State assists the Indiana Election Commission and the Secretary of State in the administration of Indiana election laws, including the following:

- 1) Overseeing and implementing the National Voter Registration Act ("Motor Voter") for Indiana.
- 2) Implementing the Help America Vote Act of 2002 (HAVA) in Indiana.
- 3) Maintaining maps and legal descriptions of all precincts in Indiana.
- 4) Approving proposed precinct boundary changes for conformity with state law, subject to any challenge being filed with the IEC.
- 5) Maintaining campaign finance reports filed by candidates for state legislative and statewide offices and by political action committees and regular party committees that contribute to candidates for these offices.
- 6) Approving uniform election and registration forms.
- 7) Advising and instructing local election officials on election administration.
- 8) Publishing brochures and manuals to assist candidates, political parties, the media, and the general

- public in understanding election administration issues.
- 9) Accepting candidate filings for federal, statewide, state legislative, and judicial offices, including prosecuting attorneys.
  - 10) Publishing election returns on the Division's web site.
  - 11) Providing information regarding voter registration and absentee ballot procedures to military and overseas voters.

State law requires that the Election Division staff consist of an equal number of employees from the Democratic and Republican parties (Indiana's two major political parties). The staff is divided into legal, voter registration and precinct mapping, and campaign finance departments. The Division is headed by two co-directors of opposite political affiliation, appointed by the Governor, following nomination by the major political party state chairs.

If a local election administrator, candidate, party official, or member of the public is unclear concerning the application of Indiana campaign finance requirements or general election law provisions, the Election Division can be used as an interpretive resource.

The Election Division requests that any person who wishes to obtain information in writing from the Election Division concerning election law submit a written request to the Division for that information.

The Indiana Election Division may issue advisory opinions regarding election administration issues. However, where important legal rights are concerned, individuals must consult with their own attorney to be fully and properly advised. The Election Division does not serve as a judge or jury to determine the facts in a dispute. Inquirers are sometimes advised that they must decide if they should go to court as the proper forum to establish or protect their legal rights.

## Local Offices with Election Duties

### County Election Board

#### Membership & General Requirements

Each county, with the exception of Lake County and Tippecanoe County, has a bipartisan county election board. The county election board is composed of three members.

*In Lake and Tippecanoe Counties, separate state statutes govern the organization of the county board of elections and registration. Reference those specific citations for Lake and Tippecanoe Counties rather than referring to the information provided in this manual. See IC 3-6-5.2 (Lake County) and IC 3-6-5.4 (Tippecanoe County).*

In most counties, the circuit court clerk is automatically a member and serves as secretary of the county election board by virtue of being elected as clerk. The circuit court clerk in the county appoints the other two members of the county election board. (IC 3-6-5-5) The county chairperson of each major political party nominates, in writing, an individual to serve on the county election board. The term of county election board member is not specified by state law. The circuit court clerk is required to appoint whomever the county chairperson nominates. (Form CEB-6) The appointing county chairperson may remove a person appointed to serve on a county election board at any time. Before a county election board member assumes the duties of this office, the individual must take and file an oath of office. (Form CEB-6 is available at back of this manual.)

If a vacancy occurs on a county election board for a reason other than removal by a county chairperson, the circuit court clerk **must** notify the county chairperson within five (5) days of the vacancy. The county chairperson then has five (5) days in which to nominate a successor. The circuit court clerk must appoint

whomever the county chairperson nominates. If the county chairperson fails to make the appropriate nomination by the deadline, then the circuit court clerk may proceed to select a person of the clerk's own choosing to serve on the county election board. The person the clerk selects, however, must be of the same major political party in which the vacancy occurred. The circuit court clerk has an additional five (5) days to make an appointment to the county election board if the county chairperson fails to nominate a successor to fill a vacancy.

Each member of the county election board is entitled to receive compensation for serving on the board. The amount of the compensation is established by the county fiscal body, which is the county council or, in Marion County, the city-county council. Since state statute does not prescribe a specific amount of compensation for the county election board members, the county council may pay county election board members whatever amount they determine to be appropriate in their county. Indiana Code 3-6-5-9 states:

**The primary job of the county election board is to administer the election process within the county.** The county election board supervises and oversees the conduct of the General Election year primaries, the General Election in November, city primaries and elections, and in some cases, town primaries and elections. The county election board may also be called upon to conduct a special election in accordance with state law.

In conducting an election, the county election board is responsible for preparing and distributing ballots or ballot pages depending on the county's type of voting system. The circuit court clerk may exercise these powers and duties with assistance of the appointed members of the county election board. Some statutes specifically require the circuit court clerk to perform some election duties (such as affixing the clerk's seal to absentee ballots). In Lake County, the director of the board of elections and registration performs the election related duties of the circuit court clerk.

**A county election board member may appoint a proxy to serve in the member's place on the county election board.** As an election draws near, situations arise that may require members to meet on short notice. A county election board member unable to attend a meeting may appoint both a proxy of record and an alternate proxy by filing a written statement with the circuit court clerk naming the proxy. (IC 3-6-5-4.5) The CEB proxy has the same authority to act and vote on all matters, as does the CEB member.

The county election board member may revoke the authority of the proxy at any time. The proxy's authority may be either general or limited with regard to duration or subject matter. The member making the appointment must define the authority of the proxy in the written statement.

**A candidate for elected office, an elected official, or a member of a candidate's campaign finance committee may not serve as an appointed member of the board, a proxy for an appointed member of the board, or be employed by a county election board.** The circuit court clerk may not serve as a member of a candidate's campaign finance committee other than the clerk's own candidate's campaign finance committee. (IC 3-6-5-3; IC 3-6-5.2-4.5; IC 3-6-5.4-4.5) "Elected office" does not include political party offices, including county chairman, state convention delegate, or precinct committeeman.

These state laws do not define which individuals are considered a "member" of a committee. However, the Court of Appeals has ruled that the individual serving as chairman and the individual serving as treasurer are automatically considered campaign finance committee members, and may be held personally liable for unpaid committee debts.

If an appointed member or an employee of a county election board becomes a candidate for elected office, an elected official, or a member of a candidate's campaign finance committee, the person must immediately resign from the board. It is expected that a county election board may engage in other political activity other than the specific activities disallowed above.

The county election board may also, by unanimous resolution (including the approval of the circuit court clerk), authorize an employee of the county election board to perform the election duties of the circuit court clerk. The resolution must specify the duties and responsibilities and expires 60 days after the clerk leaves office. (IC 3-6-5-14.5) The county election board may hire clerks and other employees necessary for the execution of its powers. The county election board may determine the duties, rank, and salaries of its employees. (IC 3-6-5-23)

A circuit court clerk, with the approval of the county election board, shall exercise the powers and perform the duties of the board whenever the facilities of the clerk's office makes it more reasonable and efficient for the clerk to do so. (IC 3-6-5-19)

County commissioners must provide the county election board with office space in (or conveniently located near) the county courthouse. The chairman of the county election board must call meetings whenever the chairman considers it necessary for the performance of the board's duties. If the chairman fails to call meetings, then the other two members may meet and perform the powers and duties of the county election board. (IC 3-6-5-12)

#### Compensation of members

Each county fiscal body shall determine, in the manner provided by law, the compensation of:

- 1) The appointed members of the county election board; and
- 2) The clerk for the clerk's services as secretary of the county election board.

#### CEB Meetings, Investigations, Complaints & Challenges

Unless specifically authorized to conduct an "executive session" under the Indiana Open Door Law, all meetings of the county election board are open to the public to observe, although the board is not required to provide the opportunity for public comment. This consists of all official action that a county election board may take under Indiana election code including candidate challenge hearings, campaign finance enforcement or disposition of complaints regarding election code violations.

In most cases, forty-eight (48) hours' notice must be given (not including Saturdays, Sundays, and legal holidays) by posting a written agenda (if any) and notice of the meeting at the principal office of the board and by mailing or delivering a notice to all news media requesting such notice. In general, the county election board is not required to publish a legal notice of the meeting in a newspaper unless it wishes to do so. (IC 5-14-1.5-5)

As secretary, the circuit court clerk must maintain minutes of all meetings, including the "yes" and "no" votes of each member on all questions. (IC 3-6-5-13) The minutes should also indicate which members are present and if the board provides a sign-in sheet, which members of the public were present or gave comments or testimony before the board. Particularly in meetings on controversial matters, which could lead to later legal action, it may be useful to tape record the board's proceedings as a transcript may be later called upon.

A county election board may also investigate and rule on questions concerning reported election law violations. If the county election board has substantial reason to believe that an election violation has or will occur, the board may conduct a hearing to resolve the issue. The county election board has the power to subpoena witnesses, and question those witnesses under oath. If, after affording due notice and an opportunity for a hearing, the county election board believes that an act constitutes or will constitute an election violation, the board may take whatever action it deems proper under the circumstances. This includes referring the matter to the attorney general for civil action or the county prosecuting attorney for criminal prosecution. (IC 3-6-5-31; 3-14-5-3)

Indiana election law provides that the following offenses are Level 6 felonies, which subject a person to up to two and one-half years of imprisonment, a \$10,000 fine, or both, upon conviction. The laws cited below should be studied carefully, since they may contain requirements or exemptions that are not set forth in detail in this summary.

- 1) Paying a person to apply for an absentee ballot, to cast an absentee ballot, to register to vote, or voting. (IC 3-14-2-1)
- 2) Signing the name of another person to an absentee ballot application or voter registration application, knowing that the application contains a false statement or subscribing the name of another person to an absentee ballot application or voter registration application without writing the person's own name and address as an attesting witness. (IC 3-14-2-3)
- 3) Knowingly making a false statement concerning the name, address, or voter identification number of a person by signing a person's signature on a poll list to affirm false information concerning a voter printed on the poll list, or making a written or oral affirmation to the poll clerks providing false information in addition to the information concerning the voter printed on the poll list. (IC 3-14-2-11).
- 4) Allowing a person to vote who is not entitled to vote, or by use of an unauthorized procedure, if a precinct election officer or a public official. (IC 3-14-2-14)
- 5) Unauthorized delivery of ballots by a member of a county election board. (IC 3-14-2-15)
- 6) Applying for or receiving a ballot in a precinct other than the precinct in which a person may vote. (IC 3-14-2-16)
- 7) Showing a marked ballot to another person in a way to reveal the contents of the ballot, except when a voter is receiving assistance in marking the ballot in a manner authorized by law. (IC 3-14-2-16)
- 8) Examining a ballot that a voter has prepared for marking or soliciting the voter to show the ballot, except when a voter is receiving assistance in marking the ballot in a manner authorized by law. (IC 3-14-2-16)
- 9) Receiving from a voter a ballot prepared for voting, except by an inspector, county election board member, absentee voter board member, or a member of the voter's household, an individual designated as the attorney in fact for the voter, the U.S. mail, or a bonded courier company when delivering an envelope containing an absentee ballot. (IC 3-14-2-16)
- 10) Delivering an absentee ballot to an election official that is not the ballot cast by the voter. (IC 3-14-2-16)
- 11) Making a distinguishing mark on the ballot to indicate to another person how the voter voted, or doing anything to enable another person to see how a person has cast a ballot on a voting system. (IC 3-14-2-17; 3-14-2-18)
- 12) Destroying or defacing a ballot, or delivering a package of ballots to an unauthorized person, if the person has been entrusted with custody of the ballots. (IC 3-14-2-23; 3-14-2-24; 3-14-2-25; 3-14-3-14)
- 13) Tampering with or destroying a ballot box, poll list, tally sheet, voting system, or voting supplies. (IC 3-14-2-26; 3-14-2-28; 3-14-3-5; 3-14-3-6; 3-14-3-8; 3-14-3-10; 3-14-3-11)
- 14) Fraudulently causing a vote total to be taken down incorrectly or making a false statement or return of the votes. (IC 3-14-2-27)
- 15) Procuring or submitting a voter registration application or casting and tabulating a ballot known by the person to be materially false, fictitious, or fraudulent. (IC 3-14-3-1.1)
- 16) Interfering with a watcher. (IC 3-14-3-3)
- 17) Obstructing or interfering with an election officer or a voter within the chute. (IC 3-14-3-4)
- 18) Knowingly injuring an election officer or voter. (IC 3-14-3-4)
- 19) Failing to receive the vote of a legal voter. (IC 3-14-3-9)
- 20) Interfering with the secrecy of voting. (IC 3-14-3-11)
- 21) Inducing or persuading a voter to vote for a candidate, while acting as a precinct election officer or absentee voter board member. (IC 3-14-3-17)
- 22) Inducing or procuring a person to apply for or cast an absentee ballot, or to vote or refrain from voting

- for or against a candidate by giving, offering, or promising money or other property. (IC 3-14-3-19)
- 23) Receiving, accepting, or soliciting money or other property to apply for or cast an absentee ballot, or to vote or refrain from voting for or against a candidate. (IC 3-14-3-20)
- 24) Intimidating, threatening, or coercing an individual for voting or attempting to vote or urging another person to vote.(IC 3-14-3-21.5)
- 25) Serving as an inspector or judge in violation of state law. (IC 3-14-4-1)
- 26) Omitting to perform a duty required under election laws, if a precinct election officer or public official. (IC 3-14-4-3)
- 27) Disclosing how a voter voted, if an inspector, judge, or other election officer. (IC 3-14-4-7)
- 28) Disclosing absentee vote totals before the closing of the polls. (IC 3-14-4-10)

The following offenses are Class A misdemeanors, which subject a person up to one year of imprisonment, a fine of not more than \$5,000, or both:

- 1) Filing a declaration of candidacy or other similar document to place or remove a candidate from the ballot, knowing that any part of the document is falsely made. (IC 3-14-1-1)
- 2) Refusing to receive and record a declaration of candidacy or other similar document when presented in accordance with the election laws, or suppressing such a document that has been duly filed.(IC 3-14-1-1)
- 3) "Electioneering" in the presence of a person known to possess an absentee ballot, unless the electioneering is by the person's spouse, member of their household, or guardian of an incapacitated person. (IC 3-14-3-16) "Electioneering" does not include material mailed to a voter, or a telephone or an electronic communication to a voter expressing support or opposition to a candidate or a political party or expressing approval or disapproval of a public question. (IC 3-14-3-16)

The following offense is a Class A misdemeanor, but becomes a Class Level 6 felony if a government employee has a prior unrelated offense under this statute:

Knowingly or intentionally using the money, equipment, goods, and materials (including mail and messaging systems) of the employee's government employer to solicit a contribution or advocate the election or defeat of a candidate or public question or knowingly or intentionally distributing campaign materials advocating the election or defeat of a public question on real property belonging to the person's employer during normal business hours (IC 3-14-1-17)

See the current edition of the *Indiana Campaign Finance Manual*, published by the Indiana Election Division, for information regarding criminal violations of the campaign finance laws, and the county election board's authority to impose civil penalties for campaign finance related violations. See the current edition of the *Voter Registration Guidebook*, published by the Indiana Election Division, for information regarding criminal violations of the voter registration law.

Under the Help America Vote Act of 2002 (HAVA), as implemented by Indiana law (IC 3-6-5.1), a voter may choose to file a complaint with the county election board that the requirements of HAVA have not been met. These complaints could include the lack of voting systems at a polling place to permit a blind or visually impaired voter to cast a ballot privately and independently. If a voter files a complaint under this procedure, the clerk and county election board must conduct an investigation and issue a written report containing their findings. (IC 3-6-5.1)

A county election board may also investigate and rule on questions concerning the validity of a declaration of candidacy or other petitions or certifications to place the name of a candidate on the ballot. A filing that is made after the deadline set by state law "may not be received for filing" by a county or state election office after the applicable deadline. This would apply to a declaration of candidacy, a recount

petition and a candidate vacancy filing after the primary, and to all other election document filings, except when state law explicitly permits late filings. (IC 3-5-4-1.9)

**PLEASE NOTE: This law does not apply to campaign finance reports or voter registration applications.** Campaign finance reports are to be accepted after the reporting deadline, but are subject to fines. Please see the current version of the *Indiana Campaign Finance Manual* for more information.

A voter registration application received after the close of registration is to be accepted, and for voter registration forms sent by mail, a registration application is considered timely and is to be processed:

- If the envelope containing the registration was postmarked on or before the date of the close of registration, then county voter registration officials must enter the registration into SVRS (the Indiana Statewide Voter Registration System) and send an acknowledgement card. (IC 3-7-33-4(b))
- If the envelope containing the registration has an illegible or missing postmark, then county voter registration officials must receive the registration application no later than the Monday after the close of registration. (IC 3-7-33-4(c))

Voter registration forms that are hand-delivered after the close of registration may be entered into SVRS, but the acknowledgment card cannot be mailed to the voter until the next voter registration period begins.

In addition, Indiana voter registration forms (VRG-7, VRG-11) contain 1) a certified statement of acceptance to be completed by a person who accepts custody of the completed application before filing with a county voter registration office or Indiana Election Division and 2) a receipt to be detached and given to the applicant. The receipt and certified statement of acceptance do not apply to the federal mail-in voter registration form or the Federal Post Card Application (FPCA).

An individual who initially accepts a completed federal or state registration application from another person must submit the registration application to the county voter registration office or Indiana Election Division by noon, ten (10) days after receipt or the registration deadline, whichever occurs first. If an individual fails to submit the application by this deadline, it does not make the applicant ineligible to register to vote, provided that all other registration requirements are met. Instead, the information on the individual accepting the completed application will be provided to the county election board for consideration of possible appropriate action under IC 3-6-5-31.

For more information about processing voter registration forms, please consult the current version of the *Indiana Voter Registration Guidebook*.

Generally, a circuit court clerk may not refuse to accept a declaration of candidacy filed on the proper form, and is NOT responsible for bringing a question or dispute regarding a declaration of candidacy to the attention of the county election board when the declaration is filed with the clerk. (IC 3-5-4-8(c); 3-14-1-1(4))

Instead, under Indiana's "Put Up or Shut Up Law," before the board can act concerning a declaration of candidacy, a voter of the election district or a major political party chair of a county in which any part of the election district is located must file a sworn statement with the board questioning the eligibility of the candidate and setting forth the facts known to the voter. (Form CAN-1) (IC 3-8-1-2)

There are seven (7) exceptions to this requirement:

(1) A circuit court clerk must determine whether a sufficient number of signatures have been obtained to meet the requirements to nominate a minor party or independent candidate, or a school board candidate, by petition. If the clerk determines, based on the certification of the signatures by the county voter registration

office, that the petition does not have enough signatures to nominate the candidate(s) on the petition, the clerk must deny certification to the petitioner(s). A challenge to this denial can then be brought before the county election board by a registered voter in the election district by filing. (Form CAN-1) (IC 3-8-1-2; 3-8-6-12; IC 3-8-2.5-6)

(2) A county voter registration office must determine whether petition carrier laws have been complied with before certifying petitions. A law that applies to all candidate petitions, as well as petitions to place a public question on the ballot, requires that the petition carrier must also complete a signed affirmation, under penalties of perjury, that the individual has no reason to believe that any signer on the page is ineligible to sign the petition; and below the affirmation include printed information that identifies the petition carrier (name, address, and date of birth) (IC 3-8-2-7). A signature page that does not comply with these requirements must be received for filing and retained as other election materials are retained and the county voter registration office shall not make a determination regarding the validity of the signatures on the signature page.

The county voter registration office shall also notify the petition carrier and allow the petition carrier to make certain additions and corrections to the information to be provided by the petition carrier on the signature page. If the final date and hour for filing a petition with the county voter registration office has not passed, a petition carrier may sign the affirmation or add identification information required to be provided by the petition carrier. However, if the final date and hour for filing a petition with the county voter registration office has passed, a petition carrier may not sign the affirmation or add identification information required to be provided by the petition carrier or add or correct information supplied by or requested from a person who signs the petition as a petitioner. Please see the current version of the *Indiana Voter Registration Guidebook* for more information.

Candidate or public question petitions that do not comply with the petition carrier affirmation and information requirements, may be challenged after the final date and hour for filing the petition with the county voter registration office. A challenge may be filed with the county election board or the Indiana election division as otherwise provided by law.

(3) A clerk must reject a candidate filing that is required to be filed with the Secretary of State or Election Division to be effective (such as a CAN-2 declaration of candidacy for circuit, superior, probate, and small claims court judge or prosecuting attorney).

(4) A clerk must reject candidate documents offered after the filing deadline.

(5) A clerk must reject a declaration of candidacy, petition of nomination, declaration of intent to be a write-in candidate, or certificate of candidate selection that does not also include a statement of economic interests (CAN-12).

(6) Filings tendered on a candidate form not currently approved for use by the Indiana Election Division must be rejected.

(7) The clerk may not receive a Certificate of Candidate Selection (CAN-29) to fill a ballot vacancy if the related Call of Caucus or Meeting (CAN-30) or Declaration of Candidacy to fill Ballot Vacancy (CAN-31) was not filed at all, or not timely filed, with the clerk.

A question regarding a declaration of candidacy or petition of nomination must be filed with the county election board not later than noon:

- 1) 81 days before the primary and resolved no later than noon, 68 days before the primary (for candidates to be nominated by a major party at a primary election), IC 3-8-2-14;
- 2) 74 days before the general or municipal election and resolved by 60 days before the date on which the

general or municipal election will be held for candidates nominated by petition (independent and third party candidates), IC 3-8-6-14;

- 3) 74 days before the general or municipal election and resolved by noon, 60 days before the election for candidates selected to fill a vacancy (frequently due to no candidate running on the primary ballot), IC 3-13-1-16.5;
- 4) 67 days before the general election and resolved no later than noon, 54 days before the general election (for school board candidates), IC 3-8-2.5-7;
- 5) 14 days before the general or municipal election and resolved no later than noon, seven (7) days before Election day for candidates selected to fill a vacancy occurring less than thirty (30) days before Election day, IC 3-13-2-11; and
- 6) 88 days before the general or municipal election and resolved no later than noon, 81 days before Election day for write-in candidates, IC 3-8-2-14.

**To resolve the challenge, the bipartisan county election board must conduct a public meeting.** The Board must give notice under the Open Door Law. The Board should also provide a copy of the challenge to the challenged candidate, along with written notice of the meeting. Although it is preferable to send these documents to the candidate by certified mail, return receipt requested, or via FedEx or USPS services with tracking, it may be necessary to contact the candidate by telephone, email, by regular mail or any combination of these methods due to the short period of time during which the Board must conduct this meeting. The important point is to give as much notice to the challenged candidate as possible regarding the content of the complaint and the time and location of the Board's meeting. If either the challenger or candidate will be represented by an attorney, the Board may request that the attorney enter an appearance with the Clerk before the meeting so that communications from the Board will be sent directly to the attorney.

At the meeting itself, the chairman of the Board may wish to begin by setting some rules of procedure, and explaining the rules to those present as the first item of business. It may be a good idea, although optional, to limit the amount of time for each side to present information. For example, the Board may provide that the person filing the challenge has 15 minutes to present information, that the challenged candidate has 15 minutes to respond, and that the challenger and the candidate each have an additional 5 minutes to rebut what the other side has presented. It may also be useful to remind audience members that all remarks or questions should be addressed to the chair, and that discussions (or arguments!) between audience members will not be allowed. If you think that emotions will be heated at the meeting, and that it will be difficult to keep order, you may wish to contact the Sheriff's office to request that a uniformed deputy be present. Usually this is enough to prevent any serious breach of order.

The Board may then ask each person who plans to testify for one side or the other to stand and take an oath that they will testify truthfully before the Board. The Board can then recognize the challenger. The challenger, or individuals called by the challenger, should be asked to begin by stating their name and address for the minutes. The Chairman of the Board should be recognized if any Board member wishes to question an individual who is testifying. As a courtesy, the time taken by Board member questions should not be deducted from the time that is to be made available to the challenger or the candidate.

After both sides have presented their evidence, Board members must consider this information and reach a decision. **This discussion must take place in public.** A private (or "executive") session for this purpose is not allowed under the Open Door Law. When the Board members have finished their discussion, any member of the Board (including the Chairman) can make a motion to uphold or deny the challenge. If the motion is seconded, then the Chairman should call for a vote. The minutes of the meeting must show how each Board member voted on each motion.

After the meeting, the Clerk should send a short letter to both the candidate and the challenger given written notice of the Board's decision. This letter can be very straightforward, and can simply state that at the Board's

meeting on a specific date, the Board voted to uphold (or deny) the challenge, and that as a result, the candidate will (or will not) appear on the ballot.

A person who files a declaration of candidacy or other document to place a candidate on the ballot, knowing that any part of the document is falsely made, or a person who refuses to receive and record the document when presented in accordance with the election laws, commits a Level 6 felony. (IC 3-14-1-1)

#### Election Reporting Requirements, Generally

No later than fourteen (14) days *after* a primary, general, municipal or special election, the county election board must submit a report to the Election Division. The Election Division provides the county with an appropriate form for this report. (Form CEB-9; included in the back of this manual) The report must describe the county election board's activities in administering the election and include a statement of election expenses for administering elections and a copy of the canvass sheets for the election. The Election Division may require additional information in this report as well.

A county is no longer required to use any *paper* version of the CEB-23, CEB-24, or CEB-25 forms or CEB-9 election report form to certify primary or public question election results to the Election Division. The former requirement that these reports be signed and sealed by the circuit court clerk has been repealed so long as the county uses the SVRS to provide these reports to the State.

There may be some additional information requested on the CEB-9 election report form which require a county to send paper versions of these attachments to the Election Division later, but there is no requirement for a county to send the state (or any other county) a paper copy of any CEB-23 or CEB-24 report. (IC 3-10-1-33)

The same rule applies to the certification of general election results to the Election Division. A county is no longer required to use any *paper* version of the CEB-10, CEB-11, CEB-12, CEB-13, or CEB-25 forms or the CEB-9 election report form to certify general election results to the Election Division. The former requirement that these reports be signed and sealed by the circuit court clerk has been repealed so long as the county uses the SVRS to provide these reports to the State. See IC 3-12-5-1.5.

Indiana law also requires that a county election board forward challenge affidavits returned by precinct election officers following the close of the polls to the foreman of the grand jury when the jury is next in session. The grand jury is required to inquire into the truth or falsity of the affidavits, and file a report of the results of its inquiry with the court. (IC 3-14-5-2) This procedure does not apply when the only reason that an affidavit was executed was that an individual was required to provide "additional documentation" as a first time voter who registered by mail, and has now complied with that requirement. State law also requires that the county election board open sealed bags and envelopes returned by the precinct inspector and judge, and forward a copy of each challenge affidavit to the Secretary of State of Indiana. (IC 3-14-5-2)



# CANDIDATE & OFFICE HOLDER INFORMATION

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## Candidate Qualifications, Generally

All candidates, regardless of party affiliation (major party, minor party, independent, write-in), must meet the same qualifications before the candidate may run for a particular office or fill an elected office vacancy. Qualifications by office are detailed in the *Indiana Candidate Guide*, published by the Indiana Election Division. Specific references to candidate qualifications can be found in Indiana Code 3-8-1 and the Indiana State Constitution. Election administrators may find it helpful to distribute relevant parts of the current version of the *Indiana Candidate Guide* to interested office seekers.

### REGISTERED VOTER REQUIREMENT

Except for certain city and town judges, a person is not qualified to run for a state office; a state legislative office; a local office; or a school board office unless the person is a registered voter **IN THE ELECTION DISTRICT** the person seeks to represent not later than the deadline set by statute for filing a declaration of candidacy, petition of nomination or certificate of nomination. (IC 3-8-1-1) This includes candidates seeking a pro tempore appointment to fill an office vacancy, which is covered later in this chapter. A candidate for U.S. Senate or U.S. Representative is not required to be a registered voter in the state of Indiana; rather, they must be an inhabitant of the state when elected. (Article 1, Section 2, Clause 2 and Article 1, Section 3, Clause 3 of the Constitution of the United States; IC 3-8-1-7; 3-8-1-8)

If a voter registration application form is received by county voter registration officials and the person is registering to vote for the first time or needs to update a residence address, the application is considered “pending” for a period of seven (7) days. In other words, a voter whose application is in “pending” status is not considered a registered voter at the new residence address for at least seven days. A person considering a run for office who needs to update their registration or register to vote for the first time should take care to submit documents in a timely fashion to avoid issues relating to “pending” status.

### RESIDENCY REQUIREMENTS

Indiana law requires many candidates, but not all, seeking state and local office to have resided in their election district for a specific period of time, such as one (1) year, or six (6) months prior to the general election. See the *Indiana Candidate Guide*, published by the Indiana Election Division, for more specific information for each office. Candidates seeking federal office are not required to reside in their election district; rather, Article 1 of the U.S. Constitution requires the persons elected to serve a U.S. Representative or U.S. Senate to be an inhabitant of Indiana when elected.

One of the most common candidate disputes that county election boards deal with concerns whether (or for how long) a candidate has resided in the election district. Until recently, candidates and election boards had only a few, and sometimes contradictory, state laws to guide them on this issue. A long-time favorite was IC 3-7-1-9, which stated: “The residence of an unmarried man (changed to “person” in 1987 and repealed in 1995), is where the man usually sleeps.” This language is now found in IC 3-5-5 (along with other state laws for determining residence).

Under IC 3-5-2-42.5, “residence” means the place where a person has the person’s true, fixed, permanent home and principal establishment, and to which place the person has, whenever absent, the intention of returning. Under IC 3-5-5-2, a person’s residence may be established by...origin or birth [or] intent and conduct taken to implement the intent.

Although Indiana residency laws still include presumptions that a candidate must overcome to establish a different residence, a county election board will have to determine the facts of each particular situation to resolve questions regarding any candidate's residence.

The county election board will need to determine the actual facts in each residency dispute and decide what, if anything, the candidate did to establish the candidate's residency, if it is called into question. The same process is utilized when a county voter registration office must determine if a voter resides at the location stated in a voter registration application.

## Prohibition on Government Employment for Some Officeholders

An individual may not be employed by the same unit of government in which the individual holds elected office. (Example: a County Council member could not also work as an employee for the county but could work for the state, city, town, township, or school district. (IC 3-5-9-6; IC 3-5-9-7))

While this law does not add qualifications to run for office, it does limit the employment options of locally elected officials. If an employee of a local unit of government takes office within the same unit, the employee's employment is terminated. A full-time paid firefighter may not assume or hold a position at any level of government that receives fire protection services from the department in which the firefighter serves. Some exemptions may apply. (IC 3-5-9-4; IC 3-5-9-7)

## Holding More Than One Lucrative "Office"

The Indiana State Constitution (Article 2, Section 9) provides that no person is eligible to hold more than one lucrative office at the same time. This restriction applies to any office, whether appointed or elected, but does not apply to a person who is merely an "employee" and not an "officer."

The Attorney General's office has opined that elected or appointed offices are "created by law instead of contract." Duties of someone holding an office, *as opposed to employment*, include performance of some sovereign power for the public's benefit.

The Supreme Court has defined "lucrative office" as any office to which there is attached compensation, regardless of whether or not the compensation is paid directly to the individual. The definition of "lucrative office" does not depend upon the *amount* of compensation affixed to it or whether the office holder *accepts* any compensation. (Refer to Attorney General Opinion #91-14.)

Not all persons who work for a government are considered officeholders. Instead, they may be considered employees. For example, a county commissioner is an officeholder. The receptionist at the county highway garage office is an employee. Sometimes, whether an individual is an officeholder or an employee is not as clear cut.

State statutes and Attorney General Opinions can shed light on this question in some cases. Indiana Code 5-4-1-1(c) and IC 5-6-4-3 provide that the position of an appointed deputy of an officer of a political subdivision or of a judicial circuit (a deputy county auditor, a deputy mayor, or a deputy circuit court clerk, for example) is not considered to be a "lucrative office." Likewise, a county attorney is not considered a lucrative officeholder. (IC 36-2-2-30 and 36-2-3-10) In addition, a precinct election officer is not considered a lucrative officeholder (IC 3-6-6-37(c)). The General Assembly has also provided that a notary public is not a "lucrative office". (IC 33-42-2-7)

\*A person who assumes a second lucrative office is considered to have resigned from the first office

automatically when the person begins serving in the second office. \*

As of the date of publication of this manual, the Indiana Attorney General posted the “Dual Office Holding Guide” online: [http://www.in.gov/attorneygeneral/files/DOH\\_Guide\\_2015\\_Update\\_\(3\).pdf](http://www.in.gov/attorneygeneral/files/DOH_Guide_2015_Update_(3).pdf). This resource may be helpful to local election administrators.

### “Sore Loser” Law

A person who is defeated at a primary election, state convention or town convention is not eligible to become a candidate for the same office in the next general or municipal election. This “*sore loser*” provision does not apply to a person who is selected to fill a ballot or office vacancy by the political party that the person affiliated with by voting in the most recent primary election held by that party (or who did not vote in that primary, but is certified as a member of the party by the county chair of the party in which the person resides).

The “sore loser law” also applies to a defeated candidate who wants to be a write-in candidate for that office. (IC 3-8-1-5.5; 3-13-1-19)

### Statement of Economic Interests

Candidates for statewide office, state legislative office, judicial office, prosecuting attorney, and local office are required to complete and file a statement of economic interests with the appropriate agency before filing a declaration of candidacy. A file-stamped copy of the statement of economic interests or a receipt or photocopy of the receipt must be attached to the declaration at the time of filing. The Indiana Election Division and the county clerk may not accept a declaration of candidacy without attached proof the statement of economic interests has been filed. (IC 3-8-1-33; 3-8-2-11)

The chart below identifies where a candidate may obtain the appropriate statement of economic interests form for the office sought by the candidate. The Indiana Election Division does not prescribe the form for statewide, state legislative, and judicial candidates; rather, the identified offices in the right-hand column make the required forms available. The CAN-12 Statement of Economic Interests form is used by candidates seeking local office or serving on a school board.

Type of Candidate	Where to File Statement of Economic Interests
Statewide	Office of Inspector General of Indiana
Indiana House of Representatives	Principal Clerk of the House
Indiana State Senate	Secretary of the Senate
Judicial Officers, including Prosecuting Attorney	Indiana Commission on Judicial Qualifications
Local (county, city, town, township, school board)	County Clerk

Please note: candidates for federal office (U.S. House, U.S. Senate) have separate rules for filing a statement of economic interests with the Principal Clerk of the U.S. House or the Secretary of the U.S. Senate. The Federal Election Commission (FEC) is the best resource for questions by these candidates.

Filing a statement of economic interests applies to a candidate seeking to fill a ballot vacancy and may apply to a candidate seeking a pro tempore appointment to fill an elected office vacancy. Please consult the “Elected Office Vacancies” section below for more details.

### Major Party Candidates

A political party obtaining the highest or second-highest number of votes cast for its candidate for Indiana

secretary of state at the last election held for the secretary of state's office is considered a "major party." (IC 3-5-2-30) Thus, the Democratic Party and Republican Party are considered "major parties" based on the results of the 2014 election for Indiana Secretary of State.

The two major political parties conduct a primary election to nominate most of their candidates for November's general election and elect individuals to political party office (for example, precinct committeeman and state convention delegate). For this reason, Indiana voters are permitted to only vote in one party's primary election and are asked their ballot preference: Democratic or Republican. Further, candidates seeking to run as a Democratic or Republican Party candidate must have either 1) selected the ballot of the political party they claim affiliation with in the last Indiana primary they participated in, or 2) be certified as a member of that party by the county chair of the county where the candidate resides. This certification takes the form of a written certified statement attached to the declaration of candidacy. There is no state prescribed form for the county chair's certification of a candidate, though the Election Division has sample document available to county election administrators on the annual forms disc.

Most Democratic and Republican party candidates seeking their party's nomination in the May primary election are required to file a declaration of candidacy and statement of economic interests for their name to appear on the ballot. In addition, candidates for U.S. Senate must collect at least 500 signatures of registered voters in each of Indiana's nine (9) Congressional districts, for a minimum total of 4,500 signatures. (Please consult the *2018 Indiana Candidate Guide* and the *2018 Indiana Election Calendar* for specific details, including filing deadlines).

In the May 2018 primary election, the Democratic Party will elect precinct committeepersons and state convention delegates, while the Republican Party will elect only state convention delegates. (Elections for Republican precinct committeemen will be held in 2020.) Candidates seeking to run for these political party offices must file a CAN-37 declaration of candidacy for each party office sought. In other words, a person would file one CAN-37 to run for Democratic Party precinct committeeman and one CAN-37 to run for state convention delegate.

Democratic and Republican candidates who are certified winners of their party's primary election qualify for November's general election ballot. Additionally, some statewide offices are nominated at the party's convention and others will be nominated to fill a ballot vacancy, and these Democratic and Republican party candidates are placed on November's ballot.

**NOTE:** Local candidates must attach the CAN-12 statement of economic interests to the CAN-2 declaration of candidacy form. The clerk must reject a CAN-2 declaration of candidacy filing where the statement of economic interests is missing. (IC 3-8-1-33) The CAN-12 requirement does not apply to party offices (for example, precinct committeeperson and state convention delegate). Candidates for federal, statewide, state legislative, and judicial office, including candidates for prosecuting attorney, use statement of economic interest forms specific to their office. See "Statement of Economic Interests" section of this Guide for details.

## **Libertarian, Minor Party and Independent Candidates**

A person is considered a minor party candidate if the person is affiliated with an organized party that did not obtain the highest or second-highest number of votes cast for Indiana secretary of state at the last election held for the secretary of state's office. (IC 3-5-2-30)

If a minor party received at least two percent (2%), but less than ten percent (10%) of the vote cast for Indiana's Secretary of State at the last election held for that office, the party may nominate candidates for the general election by conducting a state, county or municipal convention. (IC 3-8-4-10, 3-8-5-17, 3-10-2-15, and 3-10-6-12) The Libertarian Party falls into this category of "minor party" based on the results of 2014 secretary of

state election.

A person is considered an independent candidate if the candidate is a person who is not affiliated with any political party. (IC 3-5-2-26.6) Although other minor parties and independents may hold conventions to nominate candidates, these nominations are not recognized in Indiana for purposes of winning a place on the general election ballot. A minor party (other than the Libertarian Party), or independent candidate in Indiana is nominated for placement on the general election ballot by **petition of nomination**.

To be nominated by this method, the candidate circulates a petition of nomination, acquiring a number of signatures that is equal to two percent (2%) of the total vote cast in the last election for secretary of state in the election district that candidate seeks to represent. (IC 3-8-6-3) The current version of the *Indiana Candidate Guide* has a tab noting the results of the 2014 Secretary of State's race by county and the calculation of the number of signatures an independent or minor party candidate would need to gather in a countywide contest. Most election districts are not county-wide; therefore, an independent or minor party candidate exploring a run for a state legislative office should consult with the Indiana Election Division or if exploring a run for local office, consult with the county election board.

For local election districts that are not countywide, local election officials must first identify which precincts are contained within the election district the independent or minor party candidate desires to run. Next, cross-reference the identified precincts in the election district against the 2014 precinct level results for the county, specifically the total number of votes cast for all candidates for Secretary of State in the precincts that are part of the requested election district. This total number is then multiplied by 2% to reach the minimum number of signatures required for an independent or minor party to qualify for the general or municipal election ballot. Should the total number of signatures required end in a decimal (e.g. 101.5), then local election administrators should always round down. (IC 3-8-6-3(b))

The Indiana Election Division prescribes a petition of nomination form used by independent or minor party candidates. (CAN-19 for general elections and CAN-44 for city and most town elections) The most recent approved version of this form must be used by these candidates. (IC 3-5-4-8)

A candidate's name cannot be placed on the ballot if the petition does not meet the following statutory requirements under IC 3-8-6-5. The petition of nomination (form CAN-19) must include the following:

- 1) The name of the candidate (as permitted by IC 3-5-7), and address, including the mailing address if different from the residence address of the candidate.
- 2) The office the candidate is seeking.
- 3) The information required under IC 3-10-4-5, if the petition nominates candidates for presidential electors.
- 4) The statement that the people signing the petition are registered voters, qualified to vote for the candidate.

The CAN-19 or CAN-44 form may also designate a brief name, symbol or principle that the candidate represents.

The candidate then files the petition of nomination with the county voter registration office (usually the clerk or board of voter registration), along with a CAN-12 Statement of Economic Interests. However, if the board of voter registration office is separate from the office of the circuit court clerk, then the CAN-12 form need not be filed with the board of registration, but instead must be included with the certified petitions filed with the clerk. (IC 3-8-6-12(b)(8)) The clerk or board of voter registration then certifies how many individuals who have signed the petition are registered voters of the election district. An individual who signs a petition of nomination **must** be a registered voter and able to vote for the candidate submitting the petition when the petition is processed by the county voter registration office. (See the current version of the *Indiana Voter Registration Guidebook* for

processing details.)

The petition must be filed with the appropriate county voter registration office for verification of petition signatures by the candidate between **January 10, 2018 and noon, July 2, 2018** before the election. (IC 3-8-6-10) (Because the June 30 statutory deadline falls on a weekend in 2018, IC 3-5-4-1.5 moves the deadline to the next business day.) A candidate may withdraw a petition of nomination not later than **noon, July 16, 2018** before the General Election. (IC 3-8-6-13.5) (Because the July 15 statutory deadline falls on a weekend in 2018, IC 3-5-4-1.5 moves the deadline to the next business day.) Candidate petitions may also be challenged for failure of petition carriers to follow IC 3-6-12.

After verification by the county voter registration office, the petition of nomination is filed with the same office in which a declaration of candidacy is filed under IC 3-8-2. The petition of nomination must be accompanied by the candidate's written consent to become a candidate (CAN-20 or CAN-45 in city and town elections), which includes the following on the form:

- 1) A separately initialed statement that the candidate has attached a copy, receipt, or photocopy of a statement of economic interests. (CAN-12)
- 2) A separately initialed statement that the candidate understands that if the candidate is elected to office, the candidate may be required to obtain and file an individual surety bond.
- 3) A separately initialed statement that the candidate understands that if the candidate is elected to office, the candidate may be required to successfully complete training or have attained certification required to serve in the office.
- 4) A separately initialed statement that the candidate is aware of the provisions regarding IC 3-9 and the reporting of contributions and expenditures and agrees to comply with IC 3-9.
- 5) A statement that the candidate, if subject to Indiana's campaign finance filing requirements, has filed a statement of organization (CFA-1) as required by law (or is aware of the requirement to do so not more than 7 days after the petition filing deadline).

## Write-In Candidates

A person may run as a write-in candidate. A write-in candidate for any elected office may not, on the candidate's declaration to be a write-in candidate, claim affiliation with a political party in the state whose nominee for Secretary of State received at least 2% of the total votes cast in the most recent election for the office of Secretary of State (currently the Democratic, Libertarian, or Republican parties). (IC 3-8-2-2.5)

Votes for write-in candidates are only counted if the write-in candidate filed a declaration of intent to be a write-in candidate before the election no later than the deadline to do so set by state law. The declaration must be filed with the same person authorized to place names on the ballot [Form CAN-3 or other specialized CAN form for the particular office] along with a CAN-12 Statement of Economic Interests, available in the office of the circuit court clerk. The declaration and statement of economic interests is filed with the secretary of state or circuit court clerk. A declaration of intent may be filed not earlier than **January 10, 2018** and no later than **noon July 3, 2018** before the general election. (IC 3-8-2-4(b)) A write-in candidate must meet the same qualifications as any other candidate and must follow Indiana campaign finance laws.

A person may not be a write-in candidate during a primary or for a political office, such as precinct committeeman or state convention delegate. (IC 3-8-2-2.5) A write-in candidate may withdraw no later than **noon, July 15** (transferred to **Monday, July 16, 2018** since the statutory deadline date occurs on a weekend) before the general election. (IC 3-8-2-2.7(a))

The Election Division certifies the names of declared write-in candidates (and political party affiliation, if any) to the circuit court clerks for those candidates that file with the Election Division. Except in counties where optical scan ballot cards are tabulated at a central location, the circuit court clerk must provide each inspector with a list of declared write-in candidates for state and local offices so that the precinct election officials (boards) will

know which persons are officially declared write-in candidates. (IC 3-8-7-30(b))

## ***The write-in candidate's name is NEVER printed on the election ballot!!!***

In tabulating write-in votes, the county election board may encounter numerous variations in how the name of a candidate is written in by voters. While certain legal requirements must be met, the intent of the voter must be the primary factor in determining the validity of any write-in vote. In addition to voter intent, the following guidelines must be applied when counting write-in votes (IC 3-12-1-1.7):

- 1) Only votes cast for declared write-in candidates may be counted and certified. EXCEPTION: If a write-in vote is cast for a candidate who IS on the ballot FOR THE SAME OFFICE, then the write-in vote is counted. For example, if a write-in vote for Secretary of State cast for one of the parties' candidates for Secretary of State already on the ballot in 2018 must be counted for the candidate the voter indicated as a write in.
- 2) A write-in vote cast in the appropriate place on the ballot is not a distinguishing mark that invalidates the ballot.
- 3) A write-in vote may be printed in ink OR lead pencil. The use of stickers, labels, or rubber stamps, etc., is not permitted.
- 4) Abbreviations, misspellings or other minor variations do not invalidate a write-in vote, if the intent of the voter can be ascertained.
- 5) For military and overseas Federal Write-in Absentee Ballots (FWAB), if a person writes in the name of a political party in a general election, the vote is counted for a declared write-in candidate of that party. EXAMPLE: The declared write-in candidate list shows "John Doe, Garden Party candidate for Mayor." A military or overseas voter writes in "GARDEN PARTY" under the office of Mayor. The ballot is counted as a vote for John Doe, even though the voter did not write in John Doe's name on the ballot.

### Where and When to File a Declaration of Candidacy to Run for Office

The following outline summarizes where major political party candidates (Democratic and Republican) file their declarations of candidacy. (Form CAN-2 for candidates to be nominated in a primary, or CAN-42 in a city or town primary in a municipal election year) Current law requires that all candidates affiliated with one of the two major political parties file a declaration of candidacy with the appropriate authority between one hundred eighteen (118) days and noon, local time, eighty-eight (88) days before the primary election. (IC 3-8-2-4, 3-8-2-5 and 3-8-2-6) Different deadlines apply in certain small towns, (IC 3-8-5-10.5; IC 3-8-5-13).

OFFICE	WHERE TO FILE DECLARATION
Federal, state or legislative office (U.S. Senate or U.S. Representative), state offices, state senator, and state representative	Indiana Election Division
Judge of a circuit, superior, probate, or small claims court; prosecuting attorneys	Indiana Election Division
All other county offices	county election board
All township offices	county election board

All city offices (including city judges)	county election board
Town offices (including town judges) in towns over 3,500 population, in Marion County, or which have an agreement with the county election board under IC 3-10-7-4	county election board
Town officers (including town judges) in towns under 3,500 population (without an agreement under IC 3-10-7-4)	county election board
Party offices (precinct committeemen and state convention delegates only)	county election board

Note: The deadline to withdraw a declaration of candidacy is noon, 85 days before the primary election. (IC 3-8-2-20) Once nominated, the deadline to withdraw as a candidate is noon, July 16, 2018 (in 2018, the statutory July 15 deadline is transferred to July 16, 2018, due to deadline occurring on the weekend). (IC 3-8-7-28) The deadline for a candidate nominated by petition or for a write-in candidate to withdraw is also noon, July 16, 2018 (in 2018, the statutory July 15 deadline is transferred to July 16, 2018, due to deadline occurring on the weekend). (IC 3-8-2-2.7; 3-8-6-13.5) There are procedures for a disqualified candidate to be removed from the ballot after July 16, 2018 (in 2018, the statutory July 15 deadline is transferred to July 16, 2018, due to deadline occurring on the weekend). (IC 3-8-1-5; 3-8-7-29; IC 3-8-8) A primary candidate who dies before the primary election may be removed from the ballot, depending on whether the ballots have been printed or programmed with the death occurs. (IC 3-11-3-29.4) Please refer to the “Candidate (Ballot) Vacancies” section of this Guide for more information.

Nearly all candidates for elected office are responsible for the establishment of a principal candidate’s committee and periodic financial disclosure reports throughout an election year. Indiana Code 3-9 pertains to the administration of the campaign finance laws, and IC 3-9-1-1 states that the campaign finance laws apply to all candidates’ committees, regular party committees, political action committees and legislative caucus committees. Please refer to the “Campaign Finance Issues” section for more detail. The *2018 Indiana Campaign Finance Manual* is another good resource, particularly for candidates or members of a campaign finance committee.

### Withdrawal of Nominee

A candidate nominated at the primary (May) election may withdraw from the general election (November) ballot. The nominee must file a notice of withdrawal (CAN-24), and file it with the same person with whom a declaration of candidacy is filed. The nominee’s notice of withdrawal must be filed not later than noon, prevailing local time, July 15 before a general or municipal election (in 2018, the statutory July 15 deadline is transferred to July 16, 2018, due to deadline occurring on the weekend); or forty-five (45) days before a special election. (IC 3-8-7-28)

A candidate nominated by petition may withdraw no later than noon, July 15 (in 2018, the statutory July 15 deadline is transferred to July 16, 2018, due to deadline occurring on the weekend) before a general election. (IC 3-8-6-13.5) A write-in candidate may withdraw no later than noon, July 15 (in 2018, the statutory July 15 deadline is transferred to July 16, 2018, due to deadline occurring on the weekend) before a general election. (IC 3-8-2-2.7)

Special procedures and restrictions apply to a candidate for legislative office or statewide office (other than a justice or judge) who attempts to withdraw after noon, prevailing local time, sixty (60) days before the general election. (IC 3-8-8)

A notice of withdrawal (CAN-24) must be filed by a candidate who has been disqualified by operation of law (IC 3-8-1-5), or who moves from the election district (IC 3-8-7-28). The withdrawal deadlines do not apply to a candidate who has been automatically disqualified or who has moved from the election district. (IC 3-8-7-28)

If a candidate does not file a notice of withdrawal but has been disqualified, or has moved and is no longer an active candidate, it is still possible to remove the candidate from the ballot. To do so, the county chairman of the political party with a candidate on the ballot in the election district or another candidate for the same office may file an action in county court. The action must: (1) state that this provision applies to the candidate; and (2) name the affected candidate and public official responsible for placing names on the ballot as defendants.

After a complaint is filed, the court must conduct a hearing within ten (10) days. A candidate vacancy occurs if the court finds in favor of the plaintiff. (IC 3-8-7-29) The resulting vacancy is filled in the same manner as any other early or late ballot vacancy. (IC 3-13-1; IC 3-13-2)

Please see the “Ballot (Candidate) & Elected Office Vacancies” section of this *Guide* for details on how the ballot (candidate) vacancies may be filled.

### Qualifications for Assuming Office & Term of Office

In addition to qualifications found in the Indiana Election Code (title 3) that candidates for a particular elected office must meet, there may be other qualifications a candidate must meet should a candidate be elected to an office. For instance, Title 36 of the Indiana Election Code concerns local government and provides additional instruction to candidates and office holders.

There are also requirements effecting running for, assuming, and holding office found in the Indiana Constitution including:

1. A prohibition against dual office holding (Article 2, Section 9, Indiana State Constitution).
2. Terms of office for certain statewide, state legislative, judicial and county officer holders (Article 4, Section 3; Article 5, Section 1; Article 6, Section 1 and 2; Article 7, Section 7, 15, and 16, Indiana State Constitution).
3. Term limits for certain statewide and county office holders (Article 5, Section 1; Article 6, Section 1 and 2, Indiana State Constitution).
4. An oath of office requirement (Article 15, Section 4, Indiana State Constitution).

State Constitutional office holders cannot serve more than eight years during any period of twelve years. (Article 6, Section 1, Indiana Constitution) At the local level, clerk of the circuit court, county sheriff, county treasurer, county auditor, county recorder, county coroner, and county surveyor are constitutional office holders. At the state level, the constitutional office holders are governor and lieutenant governor, secretary of state, auditor of state, and treasurer of state. Time spent filling a vacancy does not count against the Constitutional time limit. (Article 2, Section 11, Indiana State Constitution)

U.S. Senator, U.S. Representative, Lieutenant Governor, Attorney General, Superintendent of Public Instruction, members of the Indiana House and Senate, and other local elected offices not articulated above are not subject to any term limits. However, the U.S. Constitution does limit the U.S. president from serving more than two terms in office, with certain time spent filling a vacancy in that office not counting against the constitutional time limit.



# BALLOT (CANDIDATE) AND ELECTED OFFICE VACANCIES

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## Ballot (Candidate) Vacancies

Please note: This section does not apply to an elected office vacancy. Please refer to the “Elected Office Vacancies” section of this *Guide* for more details. The *2018 Indiana Candidate Guide* is also a helpful reference.

If a major party did not field a candidate for an office in the May primary election or a candidate has withdrawn from the general, municipal or special election ballot, there are procedures in state law that permit the party to replace the candidate. The rules governing how a ballot vacancy is filled depend on the timing and the reason for the ballot vacancy:

- 1) **Primary ballot vacancy.** No candidate filed to run in the primary election. A caucus must be held or, if authorized by the county party, a county chair or central committee may make an appointment to fill a local candidate vacancy no later than noon prevailing local time, June 30 before a municipal, special, or general election.
- 2) **Early ballot vacancy up to noon (prevailing local time), July 15** (in 2018, the statutory July 15 deadline is transferred to July 16, 2018, due to deadline occurring on the weekend). A candidate nominated in the primary election or at a party’s convention may withdraw for any reason up to noon (prevailing local time), July 15 before a municipal, special, or general election. (IC 3-13-1) A caucus must be held or, if authorized by the county party, a county chair or central committee may make an appointment to fill a local candidacy vacancy no later than thirty (30) days after the occurrence of the vacancy.
- 3) **Early ballot vacancy after noon prevailing local time, July 15** (in 2018, the statutory July 15 deadline is transferred to July 16, 2018, due to deadline occurring on the weekend) but before the thirtieth day before a municipal, special, or general election. A candidate may withdraw, but only for specific reasons outlined in the section below. (IC 3-13-1-7(b)) A caucus must be held no later than thirty (30) days after the occurrence of the vacancy.
- 4) **Late ballot vacancy.** For specific reasons outlined below, a late ballot vacancy occurs after the thirty-first day before a municipal, general, or special election. In most cases, the chair shall make an appointment to fill, though the county election board may or may not make changes to the ballot.

## Early Ballot (Candidate) Vacancies

Generally, an early candidate vacancy occurs before the thirtieth day before a general, special, or municipal election. (IC 3-13-1-1) State law dictates how these early ballot vacancies are to be filled:

- U.S. Senate early candidate vacancies are filled by the state central committee (IC 3-13-1-3)
- U.S. Representative early candidate vacancies are filled by a caucus of eligible precinct committeepersons (IC 3-13-1-4)
- State Legislative early candidate vacancies are filled by a caucus of eligible precinct committeepersons (IC 3-13-1-5)
- Early ballot vacancies for local office (county, city, township, and town) and circuit court judge or prosecuting attorney candidate representing only a circuit contained entirely in one county may be filled by a caucus of eligible precinct committeepersons or may be filled by direct appointment by the county chair or county central committee if authorized by the county party membership. (IC 3-13-1-6)
- Early ballot vacancies for circuit court judge and prosecuting attorney in a circuit containing more than one county must be filled by a caucus of eligible precinct committeepersons. (IC 3-13-1-6(c))

As noted above, timing is an important consideration as to how a candidate vacancy may be filled. Should no major party candidate run for an office in a primary election, then the vacancy must be filled no later than noon (prevailing local time), June 30, before a municipal, special, or general election. If a major party candidate nominated at the primary election or a major party or Libertarian candidate nominated at convention no longer wishes to run in the November election, then noon (prevailing local time), July 15 before the election is a critical date (in 2018, the statutory July 15 deadline is transferred to July 16, 2018, due to deadline occurring on the weekend).

A candidate nominated at the primary election or at the noted convention may withdraw for any reason up to noon (prevailing local time), July 15 (in 2018, the statutory July 15 deadline is transferred to July 16, 2018, due to deadline occurring on the weekend). The early ballot vacancy must then be filled no later than thirty days after the vacancy occurred. After noon (prevailing local time), July 15 (in 2018, the statutory July 15 deadline is transferred to July 16, 2018, due to deadline occurring on the weekend), and up to the thirty-first day before the special, municipal, or general election, a candidate nominated at the primary election or at convention may withdraw for only these reasons (IC 3-13-1-9(b)):

- 1) Death of the candidate
- 2) Candidate moves out of the election district
- 3) Disqualification of a candidate under IC 3-8-1-5 (covered in a section below)
- 4) Court order issued under IC 3-8-7-29(d)

If one of the above circumstances apply to a candidate, then the early ballot vacancy may be filled within thirty (30) days of the vacancy occurring.

To withdraw, a candidate must complete the general election candidate withdrawal form (CAN-24). Candidates for local office except some judicial candidates, including prosecuting attorneys, file the document with the county clerk; federal, statewide, state legislative candidates and certain judicial candidates, including prosecuting attorneys, file with the Indiana Election Division. It is recommend the county clerk or election division notify the county or state party chair about the candidate withdrawal.

Late ballot vacancies are covered later in this Guide. The Libertarian Party and other minor parties can also fill candidate vacancies. (IC 3-8-6-17, 3-13-1-20 and 3-13-2-12)

### Caucus Procedures for an Early Ballot (Candidate) Vacancy

Different caucus procedures are used to fill an early ballot vacancy *versus* a late ballot vacancy *versus* an elected office vacancy. Please take time to review this *Guide* and Indiana law to understand those differences. Late ballot vacancies and elected office vacancies are covered later in this Guide.

### NOTICE OF CAUCUS:

For caucuses conducted to fill an early ballot vacancy, the chair of the caucus has a responsibility to send written notice (CAN-30) by first-class mail to eligible precinct committeepersons at least ten (10) days before the date of the caucus. When filling an early ballot vacancy for local offices (except for circuit, superior, probate, and small claims court judge and prosecuting attorneys), a copy of the caucus notice (CAN-30) must also be filed with the clerk by noon (prevailing local time), ten (10) days before the date of the caucus. For state legislative candidates, circuit, superior, probate, and small claims court judicial candidates, and prosecuting attorney candidates, the notice is to be filed by noon (Indianapolis time), ten (10) days before the date of the caucus with the Indiana Election Division.

### CANDIDATE FILING REQUIREMENTS FOR CAUCUS:

For caucuses to fill a local candidate ballot vacancy, the candidate has a responsibility to file with the chair of the caucus AND the county clerk a declaration of candidacy (CAN-31) no later than 72-hours before the date of

the caucus. If the individual is selected to fill the local candidate ballot vacancy, the statement of economic interest (CAN-12) must be filed with the certificate of candidate selection (CAN-29). (IC 3-8-9-5(1)(F)) However, it may prevent problems for a candidate if the CAN-12 is filed along with the declaration of candidacy.

For state legislative candidates, circuit, superior, probate, and small claims court judicial candidates, and prosecuting attorney candidates, a receipt showing that a statement of economic interests was filed with the appropriate agency and the declaration of candidacy (CAN-31) must be filed with the Indiana Election Division no later than 72-hours before the caucus. The paperwork must be filed in both places for the individual to be a qualified candidate for the caucus to consider.

#### CAUCUS PROCEDURES:

The chair of the caucus will determine if a precinct committeeperson is eligible to vote in the caucus based on the standards outlined in state law. Essentially, if a precinct committeeperson was elected and the precinct they represent is part of the election district, then the elected precinct committeeperson is eligible to vote in the caucus. If the precinct committeeperson was appointed, then the appointed precinct committeeperson is eligible to vote in the caucus if the precinct they represent is in the election district and the individual was appointed at least thirty (30) days before the vacancy occurred.

Generally, a vice precinct committeeperson is not eligible to vote in a caucus to fill an early ballot vacancy, late ballot vacancy, or elected office vacancy. However, the precinct committeeperson may appoint their vice precinct committeeperson to serve as their proxy for the caucus if certain conditions are met. It's important to note that the vice precinct committeeperson serving with an elected precinct committeeperson must have been appointed to the position at least five (5) days before the caucus. The vice precinct committeeperson of an appointed precinct committeeperson must have been appointed to the position at least thirty (30) days before the vacancy occurred.

State law does specify members of the caucus must establish caucus rules, and with few exceptions, caucus rules are not governed by state law. Exceptions include:

- Chair may break tie; and
- Secret ballot is required unless there is only one candidate.

After the caucus, the chair must file the selected candidate's declaration of candidacy, statement of economic interests, and the certificate of the selection (CAN-28 for state legislative office; CAN-29 for local office) no later than noon (prevailing local time), Tuesday July 3, 2018, for early ballot vacancies because no candidate ran in the primary, or noon three days (excluding Saturday and Sunday) after the caucus is held or appointment is made for other early ballot vacancies. (IC 3-13-1-15) Paperwork to fill early local candidate vacancies are filed with the county clerk; paperwork to fill state legislative candidates and circuit, superior, probate, and small claims court judge or prosecuting attorney ballot vacancies are filed with the Indiana Election Division.

#### Direct Appointment of Early Ballot (Candidate) Vacancies

This section only applies to early ballot vacancies for local offices; it does not apply to state legislative early ballot vacancies. The county chairman or county party central committee may be authorized to appoint a person to fill a local candidate ballot vacancy (that is, countywide, city, town, or township local offices). (IC 3-13-1-6) To fill a ballot vacancy by direct appointment, the county committee (meaning a majority of the precinct committeemen and vice-committeemen of the county) must pass a resolution to give the county chair or central committee this authority.

If direct appointment authority is given, then a declaration of candidacy or statement of economic interests does not need to be filed with the county clerk or party chair before the appointment is made. The chair also does not need to notify eligible precinct committeepersons or file notice of the caucus with the county clerk. However, the appointment must be made on or before the deadline date for the type of vacancy.

After making the appointment, the chair must file with the county clerk the candidate's declaration of candidacy (CAN-31), statement of economic interests (CAN-12), notice of selection (CAN-29), and a copy of the party's meeting minutes noting the direct appointment authority or resolution passed by the county party.

Vacancies in state legislative and judicial offices, including prosecuting attorney, in a circuit that contains more than one county must be filled through a caucus; state law does not authorize a county party or state party chair to fill these vacancies by direct appointment.

### Late Ballot Vacancies

A late ballot vacancy (IC 3-13-2-1) occurs after the thirty-first before a general, municipal or special election for a candidate vacancy that exists due to the:

- Death of the political party's candidate; or
- Withdrawal of a candidate who has moved from the election district; or
- Disqualification of a candidate under IC 3-8-1-5 ( that is, a state or local candidate convicted of a felony); or
- Issuance of a court order under IC 3-8-7-29(d).

For local office candidate vacancies and most judicial officer and prosecuting attorney vacancies, the county chair shall appoint a person to fill a late ballot vacancy. (IC 3-13-2-5) Statewide, state legislative, and federal offices follow slightly different procedures. (IC 3-13-2-2, IC 3-13-2-3, IC 3-13-2-4)

After the vacancy is filled, a declaration of candidacy (CAN-31), a certification of selection (CAN-35), and statement of economic interest must be immediately filed with the county clerk, if person is filling a local office vacancy, or election division, if filling a federal, state, state legislative, or judicial office vacancy. (IC 3-13-2-8)

A candidate filling a late ballot vacancy may not always have their name printed on the ballot. Please refer to the "Ballot Information" of this Guide.

## Elected Office Vacancies

This section does not apply to a vacancy created when no major party candidate filed to run for office in a primary election or when a candidate withdrew their name from consideration before a special, general, or municipal election. Please see "Early Ballot (Candidate) Vacancies" or "Late Ballot (Candidate) Vacancies" for more information.

Should an elected officeholder resign, die, or be disqualified, state law allows a vacancy in an elected office to be filled. An "elected office" is a federal office, state office, legislative office, school board office, or local office, but not a political party office (such as precinct committeeman and state convention delegate). (IC 3-5-2-17) State political parties are responsible for adopting rules to address vacancies in political party offices and those questions are best directed to their offices.

Please note: elected office vacancies in federal, statewide, state legislative, and judicial offices, including prosecuting attorney, may be handled differently than elected office vacancies for local office. See IC 3-13-3 (vacancies in federal office); IC 3-13-4 (vacancies in state offices); IC 3-13-5 (vacancies in state legislative offices); and IC 3-13-6 (vacancies in county judicial and circuit offices, including prosecuting attorney and county clerk) for more detail.

### Elected Officeholder Resignation

An office holder may resign from office by filing a written letter of resignation with the appropriate officer listed below. (IC 5-8-3.5-1) In some cases, it may be necessary for a person to file a copy of the resignation with MORE THAN ONE OFFICE OR PERSON. Political party chairpersons should also be notified in writing by the resigning official as courtesy.

OFFICE	WHERE TO FILE RESIGNATION
Governor, Lieutenant Governor	Principal Clerk of the House of Representatives and the Principal Secretary of the Senate
State Senate	President Pro Tempore of the Senate
State Representative	Speaker of the House of Representatives
All officers commissioned by the governor (state officers, judges, prosecuting attorneys, circuit court clerk, county auditor, county coroner, county recorder, county sheriff, county surveyor, county treasurer)	Governor
All other officers of a political subdivision (This includes all county, city, town, township, school board members, other local elected officials)	Circuit Court Clerk of the county in which the largest percentage of population of the political subdivision resides

A person or an entity that receives notice of a resignation and does not have the power to fill the vacancy must, within 72 hours after receiving the resignation, give notice of the vacancy to the person or entity that has the power to fill the vacancy or call a caucus. See “Procedures to Fill an Elected Office Vacancy” below.

Unless the resignation specifies a different time or date, the resignation takes effect when filed with the first office or person required to receive the resignation. (IC 5-8-4-4; 5-8-4-5; 5-8-4-6) A person submitting a letter of resignation may not withdraw, rescind, annul or amend the resignation without the consent of the officer or person(s) having the power to fill a vacancy for the office being resigned. (IC 5-8-4-1)

If a resignation has been filed with the appropriate person or office by a person elected or selected as a major party candidate, the political party can begin the process of filling the vacant office EVEN IF THE RESIGNATION has not taken effect yet. (IC 3-13-5-1 and 3-13-11-3) If the party fills the vacancy before the resignation takes effect, the individual selected fills the office without a “gap” following the effective date of the resignation.

### Death of an Officeholder

State law (IC 5-8-6) sets forth specific procedures requiring written notice of the death of an officeholder to be given to the authority that has the power to fill the resulting vacancy. The person who certifies the death of an officeholder shall state the information that causes the person to believe the officeholder has died; and certify, under the penalties for perjury, that to the best of the person’s knowledge and belief, the information stated is true. (IC 5-8-6-3)

The certification must be filed with the following:

- The governor in the case of the death of a person who holds state office or a person who is a judge of a circuit, superior, probate, or city court and the governor shall, if reasonably satisfied that the information is true, fill the vacancy as provided by law.
- The secretary of state in case of the death of a person who holds a legislative office and the secretary of state shall, if reasonably satisfied that the information is true, give notice of the death to the state chairman of the political party that elected or selected the deceased individual within 72 hours after the secretary of state determines that he or she is reasonably satisfied that the information is true.
- The circuit court clerk of the county in which the officeholder resided in the case of the person who holds a county, city, town, township, or school corporation office. The circuit court clerk shall, if reasonably satisfied that the information is true, give the notice to either:
  - the person who must give notice of any meeting or caucus required to fill the vacancy caused by the death; or
  - the person or entity who has the power to fill the vacancy if no political party caucus is required.

The circuit court clerk must give the required notice within 72 hours after the clerk is reasonably satisfied that the information is true. For major party candidates, notice is sent to the county chairman. For independent or minor party candidates, notice is sent to the body required to fill the vacancy. (See IC 3-13-3 through IC 3-13-10, generally) For example, if the entity with the power to fill the vacancy is the county commissioners or county council, then the circuit court clerk shall forward the notice to the county auditor.

**An elected office vacancy resulting from death of the office holder may not be filled until the notice is filed with the person who has the power to fill the vacancy or the person who must give notice of the caucus to fill the vacancy. The period in which to fill a vacancy by caucus does not begin until the person who must give notice of the caucus or notice of the meeting receives the notice of death.**

If an officeholder is removed by operation of law for conviction of a felony, a procedure to document that removal and to begin the vacancy filling process is established. The court hearing the case must file a certified copy of the sentencing order with the person who would be entitled to receive a notice of death as described above. The person receiving a copy of the sentencing order must give notice of the vacancy in the same manner as if the person had received a notice of death, and this notice will trigger the vacancy filling provisions. If the person's conviction is reversed, vacated or set aside, and the officer's term has not expired, the court must file a certified copy of the order reversing, vacating or setting aside the conviction with the person who would be entitled to receive a notice of death as described above. The person receiving a copy of the court's order must also give notice to the person who was selected to fill the vacancy before the court order was issued.

A court may include in a sentencing order for the conviction of certain misdemeanors described in IC 35-44-1 (bribery, conflict of interest and official misconduct) that the convicted person is incapable of holding a public office of trust or profit (IC 35-50-5-1.1). If the court includes such a provision in a sentencing order and it results in a vacancy in office, the court must file a certified copy of the sentencing order with the person who would be entitled to receive a notice of death as described above. The person receiving a copy of the sentencing order must give notice of the vacancy in the same manner as if the person had received a notice of death, and this notice will trigger the vacancy filling provisions.

Whenever a court enters a judgment removing an individual from public office the court must file a certified copy of its judgment with the person who would be entitled to receive a notice of death as described above. The person receiving a copy of the sentencing order must give notice of the vacancy in the same manner as if the person had received a notice of death, and this notice will trigger the vacancy filling provisions. (Citations: IC 3-

13-4-3, 3-13-5-1, 3-13-5-2, 3-13-6-1, 3-13-7-2, 3-13-7-3, 3-13-8-3, 3-13-8-4, 3-13-8-5, 3-13-8-6, 3-13-8-7, 3-13-8-8, 3-13-8-9, 3-13-8-10, 3-13-9-2, 3-13-9-3, 3-13-9-4, 3-13-10-2, 3-13-10-3, 3-13-10-4, 3-13-10-5, 3-13-11-3, 3-13-11-3.5, 5-8-1-37, 5-8-5-1, 5-8-5-3, 5-8-5-4, 5-8-6, 20-3-11-3.1, 20-5-3-3.5, 20-25-3-4, 20-26-4-4.5, 34-17-3-2, and 35-50-5-1.1)

#### Disqualification as a Candidate or Officeholder

An individual can be disqualified as a candidate or removed from office if the individual becomes ineligible to become a candidate or hold an office because of failing to comply with a specific requirement under state law. For example, IC 3-8-1-5 disqualifies a person from assuming or being a candidate for elected office (other than a federal office) if the person:

- 1) gave or offered a bribe, threat, or reward to procure the person's election;
- 2) entered a plea of guilty or nolo contendere to a felony;
- 3) was convicted of a felony under IC 35-50-2-1;
- 4) has been removed as a judge or prosecuting attorney by the Indiana Supreme Court and seeks to be a candidate for the same office; or
- 5) is subject to the Hatch Act or Little Hatch Act, and would violate these federal statutes by being a candidate for federal office.

If a person is a voter of the election district a candidate seeks to represent, or a county chair of a major political party where the election district is located, and believes that a candidate is not eligible to be on the ballot, then the voter may file a sworn statement (CAN-1), with the Indiana Election Division (for federal, statewide, state legislative, judicial candidates and candidates for prosecuting attorney) or with the county election board (for all other candidates for local and school board office). The sworn statement must set forth the facts known to the voter as to why the candidate is ineligible. The Indiana Election Commission or the county election board must then conduct a hearing to determine if the candidate is ineligible.

With regard to officeholders, IC 5-8-3-1 prohibits anyone from serving as a public officer in Indiana (not a federal office) who has been *convicted* of:

- 1) evading the Selective Service Act of the United States;
- 2) engaging in any conspiracy or attempt to defraud the United States government;
- 3) any seditious utterances in violation of any of the laws of the United States; and
- 4) any other crime against the laws of the United States where the sentence imposed exceeds six (6) months.

Other statutes disqualify a person from holding office if the individual has been convicted of a felony (IC 5-8-1-38), is habitually intoxicated (IC 5-8-2-1), or fails to reside in the election district that the person represents. (IC 36-2-3-5, for example)

A public officer convicted of a felony while in office is removed from office by operation of law when the conviction of the person for the felony is publicly announced by a jury or the court. (IC 5-8-1-38) In other cases, if an elected official does not meet these requirements, then an interested person can file a lawsuit in court to have the official removed. The court must decide whether the complaints made by the interested person are true, and whether or not the official should be removed from office. A county council, city council and town council can also remove a county commissioner or city or town council member from office in certain cases. (IC 5-8-5; IC 36-2-2-5; IC 36-4-6-6)

A court may expunge records concerning minor Level 6 (formerly Class D) felony convictions, and some more serious felony convictions, under certain circumstances. If an expungement petition is granted, the civil rights of a person whose conviction has been expunged are restored, including the right to hold public office.

## Procedures to Fill an Elected Office Vacancy of a Democratic or Republican Officeholder

To determine which statutes apply to filling a vacated office, the first determination to be made is whether the elected officeholder vacating the office was elected as a Democrat or Republican. If a local elected office holder was elected as a member of either the Democratic or Republican Party, or was selected by the Democratic or Republican Party to fill an earlier vacancy in the office, then Indiana Code 3-13-11 applies. IC 3-13-11 outlines the procedures for calling a caucus of precinct committeemen to fill a vacant elected office.

The chair of the caucus must send a notice to all eligible people who can participate in the caucus at least ten (10) days before the caucus. There is no state-prescribed form for the notice of caucus to fill an elected office vacancy. However, the written notice must be sent via first class mail and state the name of the chair of the caucus, the purpose of the meeting, and the date, time, and location of the caucus. (IC 3-13-11-4)

An *elected* precinct committeeman is eligible to participate in the caucus regardless of when the vacancy occurred. An *appointed* precinct committeeman is eligible to participate in a caucus to fill an elected office if the appointed precinct committeeman had served as a committeeman thirty (30) days before the vacancy occurred. (IC 3-13-11-5)

Generally, a vice-committeeman is not eligible to vote in a caucus unless serving as proxy for their committeeperson. In order to qualify to be a proxy for an appointed precinct committeeperson, a vice committeeman must be appointed to the position at least thirty (30) days before the vacancy occurred. A vice committeeman of an elected committeeman is eligible to serve as proxy if vice committeeman was appointed at least five (5) days before the caucus. (IC 3-13-11-9)

Candidates must submit a declaration of candidacy (CEB-5) not later than 72 hours before the caucus is to be held. At the caucus, members must adopt rules of the caucus. State law does not provide much direction for these rules other than the following:

- 1) The chair of the caucus may break all ties;
- 2) A majority vote of those voting for a candidate is required to select a candidate; and
- 3) Voting for a candidate shall be done by secret ballot if there is more than one candidate.

After the caucus has filled the vacancy for a local office (that is, county, city, town, or township office), the chair must file with the county clerk a "certificate of appointment to fill a local elected office by precinct committeeman caucus" (CEB-4) no later than noon (prevailing local time), five (5) days after the caucus is held. While a statement of economic interests (CAN-12) does not need to be filed with the CEB-4 certificate, new office holders should be reminded the CAN-12 document must be filed no later than 60-days after assuming office.

**Caucus Exception:** If only one (1) precinct committeeman is eligible to participate in the caucus to fill a local office vacancy (IC 3-13-11-5(c)) or if the members attending a caucus do not constitute a quorum (IC 3-13-11-8(b)), a chairman may make a direct appointment to fill an elected office vacancy. The chair must file a "certificate of appointment to fill a local elected office by a county chairman of a major political party" (CEB-3) no later than noon (prevailing local time), five (5) days after the appointment is made.

## Procedures to Fill an Elected Office Vacancy of a Libertarian, Independent, or Minor Party Candidate

If the elected officeholder was not elected as a Democrat or Republican, refer to the appropriate chapter in IC 3-13. IC 3-13-7 pertains to county office vacancies where the vacating officeholder was not elected as either a Democrat or Republican. IC 3-13-8 applies to city office vacancies where the vacating officeholder was not elected as either a Democrat or Republican. IC 3-13-9 applies to town office vacancies where the vacating officeholder was not elected as either a Democrat or Republican. IC 3-13-10 applies to township office

vacancies where the vacating officeholder was not elected as either a Democrat or Republican. These chapters also apply if the vacating officer was not “selected” to fill an earlier vacancy by a party caucus.

### **Procedures to Fill an Elected Office Vacancy of a School Board Member**

In Indiana, state law defines two kinds of school corporations: metropolitan school district or community school corporation. A community school corporation is the more common configuration, though it's best to confirm as the way a vacancy is filled differs. Should an elected or appointed school board member resign or die, the resignation or notice of death should be sent to the county clerk, who will then notify the school board of the vacancy. (IC 5-8-3.5-1; IC 5-8-6)

School Board Vacancy in a Metropolitan School District: If a vacancy on a school board occurs for any reason, including an insufficient number of petitions for candidates being filed, and regardless of whether the vacating member was elected or appointed, the remaining members of the board, whether or not a majority of the board, shall by a majority vote fill the vacancy by:

- 1) Appointing a person from the board member district from which the person who vacated the board was elected; or
- 2) If the person was appointed, appointing a person from the board member district from which the last elected predecessor of the person was elected.

If a majority of the remaining members of the board are unable to agree or the board fails to act within thirty (30) days after a vacancy occurs, the judge of the circuit court in the county where the majority of registered voters of the metropolitan school district reside shall make the appointment. (IC 20-23-7-8.1(h))

Further, at a general election held on the earlier of:

- 1) More than sixty (60) days after an elected board member vacates membership on the board; or
- 2) Immediately before the end of the term for which the vacating member was elected;

a successor to a board member appointed under IC 20-23-7-8.1(h) shall be elected. Unless the successor takes office at the end of the term of the vacating member, the member shall serve only for the balance of the vacating member's term.

In an election for a successor board member to fill a vacancy for a two (2) year balance of a term, candidates for board membership need not file for or with reference to the vacancy. However, as required by IC 3-11-2, candidates for at-large seats must be distinguished on the ballot from candidates for district seats. If there is more than one (1) at-large seat on the ballot due to this vacancy, the elected candidate who receives the fewest votes at the election at which the successor is elected shall serve for a two (2) year term. (IC 20-23-7-8.1(i))

School Board Vacancy in a Community School Corporation: A vacancy on the governing body shall be filled by the governing body as soon as practicable after the vacancy occurs. A member chosen by the governing body to fill a vacancy holds office for the remainder of the term. (IC 20-23-4-35(d))

### **Acting Officeholder During Vacancy**

State law specifies who serves as the acting officeholder until the vacancy is filled using these procedures. If a circuit, county, city, town, or township office (other than judge or township board member) has a chief deputy employee, that employee temporarily assumes the duties of the office after taking the required oath. (IC 3-13-11-12; IC 5-4-1-1) If there is no chief deputy employee in a local government office (or that person declines or is ineligible to serve), then the office is temporarily filled by another officer designated by state law, or individual appointed to fill that office on a temporary basis. See IC 3-13-11-13 through 3-13-11-17 for details depending on the type of office vacancy involved.

## Recall and Impeachment

A “recall” refers to a special election held to decide if an elected official should be removed from office before the date that the official’s term is scheduled to end. Indiana does not allow for recall elections. Although some other states do permit recall elections, the Indiana General Assembly has not enacted legislation to permit recall elections.

“Impeachment” is the removal of a person from office by the state legislature or a circuit court for committing a crime. (IC 5-8-1) An official cannot be impeached for making an unpopular or an unwise decision according to popular opinion.

## Oaths of Office

The Indiana Constitution provides that every person elected or appointed to an office under the Constitution must take an oath before assuming his or her duties. A written oath of office is to be filed with the appropriate agency (IC 5-4-1-2), and certain offices must file the oath no later than thirty (30) days after assuming office. (IC 5-4-1-1.2) Oaths for local office are to be filed with the county election board; oaths for judicial office, prosecuting attorney, and statewide office holders file with the Indiana Election Division. Members of the Indiana General Assembly are sworn-in on Organization Day, and the oath is recorded in the journals of the respective Houses for that day’s session. Federal officeholders take an oath of office as established by federal law.

IC 33-42-4-1 states that any of the following officials can administer an oath:

The Secretary of State of Indiana, Clerk of the Supreme Court, Notaries Public, Official Court Reporters, Justices and Judges of a court, (in the court’s jurisdiction), County Auditors, Mayors, City Clerks, City or Town Clerk-Treasurers, township trustees, Circuit Court Clerks and Master Commissioners, (in their respective counties, cities, towns and townships), State Senators and State Representatives (anywhere within Indiana), and the adjutant general of the Indiana National Guard, specific active duty members, reserve duty members, or civilian employees of the Indiana National Guard, for any purpose related to the service of an active or reserve duty member of the Indiana National Guard.

A member of the Indiana Election Commission, a co-director of the election division, or an employee of the election division may also administer oaths. (IC 33-42-4-1(11)) Prosecuting attorneys and their deputies can also administer oaths. (IC 33-39-2-1)





# CAMPAIGN FINANCE ISSUES

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Nearly all candidates for elected office are responsible for the establishment of a principal candidate's committee and periodic financial disclosure reports throughout an election year. Indiana Code 3-9 pertains to the administration of the campaign finance laws, and IC 3-9-1-1 states that the campaign finance laws apply to all candidates' committees, regular party committees, political action committees and legislative caucus committees.

There are a few entities that ARE NOT required to organize a campaign finance committee and file reports with either the Indiana Election Division or individual county election boards. Those exceptions are:

- Candidates for local offices for which the annual compensation is less than \$5,000, and who do not receive more than \$500 in contributions or spend more than \$500 campaigning for the office;
- Candidates for school board offices, unless the candidate receives more than \$500 in contributions or spends more than \$500 campaigning for the office;
- Candidates for election for precinct committeeman or delegate to a state convention;
- Auxiliary party organizations as defined by IC 3-5-2-2.5; and
- Candidates for federal office (U.S. Senate, U.S. House of Representatives), who are subject to federal law and file with the Federal Election Commission (FEC).

This Guide broadly covers campaign finance issues. For more detailed analysis, please review the Indiana Campaign Finance Manual or the Indiana Campaign Finance Act (IC 3-9).

## Committee Types

In Indiana, there are three types of campaign finance committees: candidate, regular party, and political action. A candidate's committee files the (CFA-1) statement of organization; a regular party committee files the (CFA-3) statement of organization; and a political action committee (PAC) files the (CFA-2) statement of organization to establish their campaign finance committee. The location – county clerk's office or election division – where the forms and campaign finance reports are to be filed are noted below.

### Candidate's Committee

Announcements that a person is running for a specific state or local office do not automatically make the individual a candidate for the purposes of the Indiana Campaign Finance Act! Rather, an individual becomes a "candidate" when the individual, the candidate's committee, or a person acting with the consent of the individual raises or spends money toward campaigning for the office or, in most cases, files a declaration of candidacy for their name to appear on the ballot. The salary for the elected office also is a factor in determining when a candidate's committee must be established.

In a year where the office is not on the ballot, a candidate running for an office paying more than \$5,000 is required to file a (CFA-1) and open their campaign committee when the committee receives more than \$100 in contributions or makes more than \$100 in expenditures.

In a year where the office is on the ballot, the candidate running for an office paying more than \$5,000 must file a (CFA-1) by noon (prevailing local time), ten (10) days after the committee receives more than \$100 in contributions or makes more than \$100 in expenditures, or noon (prevailing local time), seven (7) days after the

candidate filing deadline, whichever occurs first. This requirement applies even if the candidate does not intend to raise or spend \$100 toward running for office! Should a candidate running for an office paying at least a \$5,000 salary fail to open a campaign finance committee, the county election board must administratively open a candidate committee naming the candidate the chair and treasurer of the committee. A candidate's committee opened by administrative action is still subject to the campaign finance deadlines and any enforcement action taken by the county election board for delinquent or defective reports.

A candidate running for an office paying less than \$5,000 or school board must open a candidate's committee when the committee receives more than \$500 in contributions or makes more than \$500 in expenditures. These two categories of candidates are not required to open a committee after filing a declaration of candidacy; rather, the \$500 threshold amount serves as the trigger to open a committee regardless if the office is on the ballot or not.

Please do not confuse opening a campaign finance committee with filing a declaration of candidacy! Opening a candidate's committee means an individual is planning to raise or spend money toward running for an office or has already met the threshold dollar amount to open a committee. Filing a statement of organization (CFA-1) does not place a person's name on the ballot; instead, a declaration of candidacy must be filed when candidate filing opens. See "Candidates & Office Holders" section of this Guide for more information.

As noted above, a candidate who raises or spends more than the threshold amount is required to open a campaign finance committee. This is true even if the office the person desires to be a candidate is not on the ballot during that calendar year. For example, Sally raises \$150 toward running for county dogcatcher in 2017, but the office isn't on the ballot until 2018. Sally must file a (CFA-1) with the county election board to open her campaign finance committee by noon, ten days after receiving the contribution. She'll need to follow the (CFA-4) schedule and file a 2017 Annual Report in January 2018, and also file her (CAN-2) declaration of candidacy so that her name is printed on the ballot should she be eligible.

Sometimes a candidate who has not decided whether to become a candidate for a specific office may "explore" a run for office and decide to raise or spend money toward the effort. When completing the (CFA-1) the candidate would mark "exploratory" and provide an explanation in the appropriate field on the form. Once the candidate files a declaration of candidacy, the (CFA-1) must be amended from "exploratory" to "principal" committee.

**After a primary or general election, a defeated candidate may choose to disband a committee, but the candidate is not required to do so.** However, if a candidate keeps a committee open then the committee is required to continue filing reports (at least on an annual basis every January). A candidate should carefully weigh the decision of keeping a committee open and continuing with reporting requirements or closing the committee.

Candidates on the ballot will file (CFA-4) report of receipts and expenditures at certain times throughout the year. The Indiana Campaign Finance Manual outlines those deadlines in great detail, and should be referenced for more information. Candidate committees must file their campaign finance documents with the appropriate office, as noted below. Deadlines are always at noon (prevailing local time), and the office must physically be in possession of the document for filing. In other words, a postmark noting a campaign finance report was mailed on or before the deadline and received after is not considered timely, and must be considered delinquent. (See the "Enforcement" section later in this Guide.)

## Candidate Committees: Where to File Campaign Finance Documents

Federal Office	Federal Election Commission
Statewide, state legislative	Indiana Election Division
Judicial office, including prosecuting attorney	County Election Board
Local Office (county, city, town, township) & School Board	County Election Board

Note: Candidates for judicial office file a declaration of candidacy, (CAN-2, generally), with the Indiana Election Division or Secretary of State. Circuit, Superior, or Probate court judges and prosecuting attorneys file their campaign finance documents (CFA-1, CFA-4, CFA-11) with the county election board. For the few judicial circuits where more than one county is represented, a candidate for circuit court judge or prosecuting attorney files with each of the counties that make up the circuit.

These rules generally apply to all candidate committees: statewide, state legislative, judicial, including prosecuting attorney and local offices and school board. Precinct committeeman and state convention delegates are political party offices, and not subject to the Indiana Campaign Finance Act (IC 3-9). Statewide candidates follow slightly different rules, and are advised to review the *Indiana Campaign Finance Manual* or contact the Indiana Election Division.

Candidates for judicial office, including prosecuting attorney, may be subject to additional rules as outlined in the Code of Judicial of Conduct. Please contact the Indiana Office of Judicial Qualifications at (317) 232-4706 or visit their website – <http://www.in.gov/judiciary/jud-qual/> for more information. Campaign finance rules for federal candidates are administered by the Federal Election Commission (FEC).

### Regular Party Committees

Political parties may be required to open a campaign finance committee if they raise or spend \$200 to advocate for the support or defeat of a candidate or public question. Regular party committees use the (CFA-3) statement of organization, and files with the county election board or election division. A county party committee that intends to support a state legislative or statewide candidate is required to open a committee with the election division. If the county party only wants to focus on local races, then the committee should file with the county election board. County party committees that want to support federal candidates should reach out to the Federal Election Commission (FEC) to understand their rules or regulations.

Political parties may have district committees, and if so, district committees would file campaign finance documents with the election division. State party committees file with the election division.

Regular party committees will file (CFA-4) report of receipts and expenditures at certain times throughout the year. The Indiana Campaign Finance Manual outlines those deadlines in great detail, and should be referenced for more information. Candidate committees must file their campaign finance documents with the appropriate office, as noted below. Deadlines are always at noon (prevailing local time), and the office must physically be in possession of the document for filing. In other words, a postmark noting a campaign finance report was mailed on or before the deadline and received after is not considered timely, and must be considered delinquent. (See the “Enforcement” section later in this Guide.)

### Political Action Committees

Political action committees may be required to open a campaign finance committee if they raise or spend \$100 to advocate for the support or defeat of a candidate or public question. PACs use the (CFA-2) statement of organization, and it is filed with the county election board or election division. A PAC that intends to support a state legislative or statewide candidate or statewide public question is required to open a committee with the election division. If the PAC only wants to focus on local races, then the committee must file with the county election board. Political action committees that want to support federal candidates should reach out to the Federal Election Commission (FEC) to understand their rules or regulations.

PACs file (CFA-4) report of receipts and expenditures at certain times throughout the year. The Indiana Campaign Finance Manual outlines those deadlines in great detail, and should be referenced for more information. Candidate committees must file their campaign finance documents with the appropriate office, as noted below. Deadlines are always at noon (prevailing local time), and the office must physically be in possession of the document for filing. In other words, a postmark noting a campaign finance report was mailed on or before the deadline and received after is not considered timely, and must be considered delinquent. (See the “Enforcement” section later in this Guide.)

## Campaign Finance Administration

Each county election board or board of elections and registration must compile and maintain a listing of all campaign finance statements and reports pertaining to each candidate, committee and local public question. These statements and reports must be available to the public for inspection and copying no later than the end of the second business day following the day during which the county election officials received the filings. (IC 3-9-4-5)

The election division or county election board is required to conduct audits and field investigations from time to time with respect to reports and statements filed under the Campaign Finance Act, and with respect to an alleged failure to file a report or statement. (IC 3-6-4.2-10; IC 3-9-4-13)

County election boards are required to send notice to campaign finance committees that are delinquent (late) in filing required reports, and assess the fine required by state law. A hearing is to be conducted to allow the delinquent filer to provide facts and evidence to the election board to dispute the assessment of the fines. If it is alleged a campaign finance committee has filed a defective report, then the county election board must send notice to the committee and allow a 5-day period for an amended report to be filed. Please see the “Enforcement” section later in this guide or the Indiana Campaign Finance Manual for more details.

County election boards are often asked how a Report of Receipts and Expenditures (CFA-4) is to be completed by the committee. Please refer to the Indiana Campaign Finance Manual, which provides information for completing the report in detail for each type of committee (candidate, regular party, PAC). Instructions for each schedule of the CFA-4 report are found on the back of each form, too.

Campaign finance reports may be delivered by hand, mail, or email. However, to receive reports via email, the appropriate office must have the capacity to do all of the following: receive email; electronically record the data and time that electronic mail is received by the office; and print out a hard copy of the report after the receipt of the email by the office. (IC 3-9-5-7) The Indiana Election Commission and each county election board must have an adopted policy to accept and receive campaign finance reports and statements by fax. (IC 3-9-5-7(d))

## Campaign Finance Enforcement

Particular attention should be directed to IC 3-8-1-1.6 and IC 3-9-4-14, which details the specific duties the county election board must perform to enforce the campaign finance laws.

### Civil & Criminal Penalties

The Election Commission or a county election board is required to impose a civil penalty for certain violations of the Campaign Finance Act, including delinquent reports and statements of organization, unless the Commission or county election board members agree unanimously to reduce or waive the civil penalty because imposing the penalty would be “unjust under the circumstances.” (IC 3-9-4-19)

The Commission or county election board may impose a civil penalty upon a person for the following:

- 1) Failing to file a report required under the Act with the Election Division or county election board. (IC 3-9-4-16(c) & IC 3-9-4-17(c))
- 2) Failing to file a statement of organization required under the Act. (IC 3-9-4-16(c) & IC 3-9-4-17(c))
- 3) If a committee or a member of the committee disburses or expends money or other property for any political purpose before the money or other property has passed through the hands of the treasurer of the committee. (IC 3-9-1-20)
- 4) Making a contribution other than to a committee subject to the Act, or to a person authorized by law or to a committee to receive contributions on the committee's behalf. (IC 3-9-4-16(a)(4) & IC 3-9-4-17(a)(4))
- 5) Against a corporation or labor organization, for exceeding the limits on contributions under the Act. (IC 3-9-4-16(e) & IC 3-9-4-17(e))
- 6) Against a corporation or labor organization that fails to designate a contribution to a political action committee to go to one or more of the subcategories under IC 3-9-2-4. (IC 3-9-4-16(g) & IC 3-9-4-17(f))
- 7) Making a contribution in the name of another person. (IC 3-9-4-16(a)(6) & IC 3-9-4-17(a)(6))
- 8) Accepting a contribution made by one person in the name of another person. (IC 3-9-4-16(a)(7) & IC 3-9-4-17(a)(7))
- 9) When not the treasurer of a committee subject to the Act, paying any expenses of an election or a caucus unless authorized to do so by the Act. (IC 3-9-4-16(a)(8) & IC 3-9-4-17(a)(8))
- 10) Commingling committee funds with personal funds of an officer, a member, or an associate of the committee. (IC 3-9-4-16(a)(9) & IC 3-9-4-17(a)(9))
- 11) Wrongfully using campaign contributions in violation of the Act. (IC 3-9-4-16(a)(10) & IC 3-9-4-17(a)(10))
- 12) Against a state legislative candidate or committee, for engaging in fundraising activities during a prohibited period. (IC 3-9-4-16(a)(11))
- 13) Against a person who falsely represents in paid political advertising or campaign material that a candidate is or has been an officeholder. (IC 3-9-4-16(a)(13); IC 3-9-4-17(a)(12)).
- 14) Against a person who serves as treasurer of a committee in violation of a requirement set forth in any of the following state laws (IC 3-9-1-13(1) – a treasurer must be a US citizen; IC 3-9-1-13(2) – a treasurer may not be the chairman of a committee, except when authorized as a candidate under IC 3-9-1-7; IC 3-9-1-18 – a treasurer who is a candidate and serves as treasurer of another committee) (IC 3-9-4-16(a)(14); IC 3-9-4-17(a)(13)).
- 15) Against a statewide candidate or certain political action committees which fail to comply with a requirement to file a campaign finance report or statement with the Election Division electronically. (IC 3-9-4-16(a)(15))

In addition to the penalties of delinquent or defective reports, the Commission or county election board may assess civil penalties in the following instances:

- 1) A corporation or labor organization that exceeds the maximum contributions permitted under the Act is subject to a civil penalty of not more than three times the amount of the contribution in excess of the limit prescribed by IC 3-9-2-4, plus any investigative costs incurred and documented by the Election Division or county election board. (IC 3-9-4-16(e) & IC 3-9-4-17(e))
- 2) A corporation or labor organization that fails to designate a contribution to a political action committee to go to one or more of the subcategories under IC 3-9-2-4 is subject to a civil penalty of up to two times the amount of the undesignated contributions or \$1,000, whichever is greater. All the investigative costs incurred and documented by the Election Division or a county election board may be added to the total. (IC 3-9-4-16(g) and IC 3-9-4-17(f))
- 3) A state legislative candidate or the candidate's committee that engages in fundraising activity during a prohibited period is subject to a civil penalty of \$1,000 or two times the amount of any contribution received, whichever is greater. (IC 3-9-4-16(f))
- 4) A person who falsely represents in paid political advertising or campaign material that a candidate is or has been an officeholder is subject to a civil penalty of not more than \$500 upon unanimous vote of the entire membership of the Election Division or a county election board. All the investigative costs incurred and documented by the Election Division or a county election board may be added to the total. (IC 3-9-4-16(h) & IC 3-9-4-17(g))
- 5) A person who serves as treasurer of a committee in violation of a requirement set forth in the state laws discussed above is subject to a civil penalty of not more than \$500 upon unanimous vote of the entire membership of the Election Commission or a county election board. All the investigative costs incurred and documented by the Election Division or a county election board may be added to the total. (IC 3-9-4-16(i) & IC 3-9-4-17(h))
- 6) A statewide candidate's committee or political action committee subject to the electronic filing requirement with the Election Division is subject to a civil penalty equal to the costs incurred by the Election Division for the manual entry of data contained in the report or statement. All the investigative costs incurred and documented by the Election Division may be added to the total. (IC 3-9-4-16(j))

All other violations listed above are subject to a civil penalty of not more than one thousand dollars (\$1,000), plus any investigative costs incurred and documented by the Election Division or county election board. Certain officeholders who have not satisfied previous civil penalties may also be subject to additional penalties under the Act. (IC 3-9-4-18)

All civil penalties collected are deposited in the state or county campaign finance enforcement account. The funds in these accounts may be available to supplement funds otherwise appropriated to administer the Campaign Finance Act. The funds in this account are also available, with the approval of the county council, to supplement the funds appropriated for the administration of elections in the county.

Criminal penalties relating to the Campaign Finance Act can be found in IC 3-14-1, and noted in the Indiana Campaign Finance Manual. If the Indiana Election Commission or county election board determines that a felony or misdemeanor violation of the Campaign Finance Act may have occurred, the violation may be reported to the appropriate prosecuting attorney. The Commission or board may have the report transmitted to the grand jury of the county in which the violation was committed and present evidence concerning the violation to the grand jury. (IC 3-14-5-3) A prosecuting attorney is responsible for prosecuting criminal violations of the

Act, and may file criminal charges following referral by a county election board. (IC 3-14-5-4 and IC 3-6-5-32) The attorney general is authorized to bring a civil action such as a permanent or temporary injunction to prevent or stop violations of the Act. (IC 3-6-4.1-22 & 3-6-5-32)

### Delinquent & Defective Campaign Finance Filings

State law establishes the frequency by which certain candidates, regular party committees, and political action committees with an active statement of organization on file are to file a report of receipts and expenditures (CFA-4). A committee is considered active until the committee meets specific criteria to file a “final/disbands” report or is disbanded administratively. See “Disbanding a Campaign Finance Committee” section below or refer to the *Indiana Campaign Finance Manual* for details.

The deadline for campaign finance filings is noon (prevailing local time) on the specified date, and reports must be filed with the county election board or election division by the noon deadline to be considered on time. A report received after the noon deadline is considered late and must be assessed the \$50 per day fine. While a report may be sent by mail, postmarks have no bearing on the determination if a report is considered timely. An envelope containing a report that is postmarked on or before the deadline is not considered on time if the county election board or election division receives it after the deadline.

The county election board and election division must notify delinquent filers of their duty to file a campaign finance report. A delinquency notice for a report must be given not later than thirty (30) days after the date the report was required to be filed. (IC 3-9-4-14) Should a county election board fail to send a notice of delinquency, the delinquent filer remains liable for a civil penalty in the full amount permitted by the Campaign Finance Act. (Please note, a county election board is not required by law to provide proactive notice of an impending campaign finance filing deadline, though a county election board may adopt such a policy to do so.)

In addition to providing notice to the delinquent filers, the county election board must also post a listing of delinquent filers in a public place or near the entrance to the county election board’s office(s). The county election board MUST then assess civil penalties against *delinquent* filers in the amount of fifty dollars (\$50) for each day that the statement or report is late, with the afternoon of the final date for filing the statement or report being calculated as the first day of the penalty. (IC 3-9-4-17(c)) Penalties accrue each calendar day with day one starting after 12:00 P.M. (noon) on deadline day; no exception is to be given for weekends or holidays. The civil penalty cannot exceed \$1,000, plus other costs incurred by the county election board, such as certified mailing costs.

For a committee or organization that files a defective report, the county election board must send a notice stating that the statement or report is defective and allow the committee or organization five (5) days to correct any deficiencies. The civil penalty is \$10 for each day that the report is not corrected after the expiration of the 5-day period, not to exceed a total of \$100. (IC 3-9-4-19)

County election boards are allowed some discretion under Indiana law to waive or reduce the civil penalties established in Indiana law if the board finds by unanimous vote that imposition of the required penalty would be unjust under the circumstances. The suspension or waiving of all or any of the civil penalties will be made based upon evidence provided at a public meeting to which all interested parties have received adequate notification. Unless the board waives or reduces a required penalty, the board must be assess the penalty prescribed by Indiana law as noted above.

### Campaign Finance Hearings

Pursuant to IC 3-9-4-17(l), proceedings of the county election board to enforce the campaign finance laws are governed by the Administrative Orders and Procedures Act. (IC 4-21.5) The county election board should provide at least five (5) days’ notice to a committee of any hearing before the board. (IC 4-21.5-3-20) The notice should include a description of the time, place, and nature of the hearing. After the hearing, the county election

board should issue an order reflecting the action taken by the board, including written findings that support the order. (IC 4-21.5-3-27)

The appendix of this Guide includes a toolkit, which has been shared at past annual Election Administrator's conferences. The kit includes samples of the following: delinquency notice, public notice, notice of hearing, administration of oath, "Finding of Fact" order, and an appointment of proxy. These forms are not prescribed by the election division, and county election boards may modify the text to best suit their needs.

## Disbanding a Campaign Finance Committee

A campaign finance committee must take certain steps to close a committee, namely a zero cash-on-hand balance and have no outstanding debts or loans. A committee may disband (close) by submitting a final report of receipts and expenditures (CFA-4) with the election division or county election board. It is imperative the "Final/Disbands" box be checked on the summary page of the report. If the box is not marked, then the committee remains open, even if the committee filed a report with a zero cash on-hand balance. An open committee will be required to file (CFA-4) reports, as required by the type of committee that was opened, until the committee is officially disbanded.

A special "final" report isn't always warranted. Committees may mark the "Final/Disbands" box on the CFA-4 summary sheet and also mark "Annual Report," for example. By marking both boxes, the committee is communicating to election officials that it is filing its annual report, which also serves as the final report.

If there are surplus funds, the committee may transfer the funds before disbanding to one or any combination of the following:

- 1) one or more regular party committees;
- 2) one or more candidate's committees;
- 3) the Election Division;
- 4) an organization exempt from Federal income taxation under section 501 of the Internal Revenue Code; and/or
- 5) contributors to the committee (on a pro rata basis). (IC 3-9-1-12)

The funds may also be used to:

- defray any expense reasonably related to the candidate or committee's campaign for office;
- continuing political activity, or activity related to service in an elected office; and/or
- to make an expenditure to any political party committee or another candidate's committee. (IC 3-9-3-4)

A dissolution and transfer of funds does not relieve the committee or its members from civil or criminal liability. (IC 3-9-1-12(g)). On occasion, a candidate's committee or political action committee will cease to exist without filing the required final report. If this occurs, the county election board can act to administratively disband the committee (rather than continue to send delinquency notices and assess fines without any hope of collecting them).

Under IC 3-9-1-12, no later than the last Friday in January of each year, the county election board is to review the list of open committees that file campaign finance reports with that office. If the board notes that a committee has not filed reports during the previous three years and that the committee had less than \$1,000 of cash on hand, according to the last report filed, the board can begin a proceeding to formally dissolve this committee.

The board must send a notice by certified mail to the chairman and treasurer of the committee at their last known addresses. The notice must state that the board will conduct a hearing on a specific date to dissolve the committee. If the board conducts the hearing, and finds that the committee should be dissolved, then the board issues an order disbanding the committee. The board then arranges for the publication of a legal notice stating the name of the committee and the date that the committee was disbanded. The entire text of the order is not required to be published in the legal notice.

The process of administratively disbanding a committee takes some time, but can be worthwhile as a way to clean up campaign finance records maintained by the county.



# VOTER REGISTRATION

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This *Guide* broadly covers voter registration issues. For more detailed analysis, please *review the Indiana Voter Registration Guide* or the Indiana Voter Registration statutes found in IC 3-7, generally.

## Registering To Vote

In Indiana, a person cannot vote on election day unless the person is registered to vote. To register to vote in Indiana a person must be: (1) at least eighteen (18) years of age on or before the date of the general, municipal, or special election; (2) a United States citizen; and (3) a resident of the precinct for at least thirty (30) days prior to the election. (IC 3-7-13-1)

A person is only required to register once, so long as they remain a resident of the precinct and are not convicted and subsequently imprisoned for a crime in accordance with federal or state law. While voter registration is closed immediately before and after an election, the following registration deadlines are observed in Indiana: (IC 3-7-13-8)

- 1) Beginning December 1 (or the first Monday in December if December 1 falls on a Saturday or Sunday) after a municipal or general election.
- 2) Registration in the county voter registration office ends on the twenty-ninth (29) day before the primary election.
- 3) Registration reopens two weeks after the primary.
- 4) Registration in the county voter registration office ends on the twenty-ninth (29) day before the general, municipal, or special election.

If a county voter registration office receives a registration application during the “closed” registration period, the application will be retained and may be entered into SVRS. However, the application will be identified as “incomplete” in the statewide voter registration system until the application is processed after voter registration reopens, and the applicant’s name will not appear on the poll list until the next election.

**NOTE:** There are special exceptions in the law for military and overseas voters using the Federal Post Card Application (FPCA). A county voter registration office shall process a registration application received from an absent uniformed services (military) voter or overseas voter during the regular registration period AND until the *eighth* day before the election (IC 3-7-36-10) Some military voters and their family members may also register until noon on Election day. (IC 3-7-36-14) See the *Indiana Voter Registration Guidebook* or *Military & Overseas Voters’ Guide* for additional information.

When registering to vote in Indiana, a person does not declare any party affiliation, unlike in some other states. Registering to vote is a non-partisan function of government. Instead, a poll worker records the partisan ballot selected by the voter in the primary election (that is, Democratic or Republican), and this information becomes part of the person’s voting history.

### Age Requirement

A general election is held on the first Tuesday after the first Monday of November in even-numbered years; a municipal election is held on the first Tuesday after the first Monday of November in odd-numbered years. Therefore, a 17-year-old who will be 18 on or before the date general or municipal election may register and vote for candidates nominated in a primary election.

Should a special election for a local public question be held on the same date as the May primary election, then a special ballot must be created for the 17-year-old "underage" voter. While a 17-year old voter is eligible by state law to vote in the primary to nominate their preferred party candidates and elect party officials such as precinct committeeman or state convention delegate (IC 3-7-13-3), they are not eligible to vote in a special election because they do not meet the age requirement. Therefore, the county's election board must print and distribute ballots or program a touch-screen voting system remove a public question from a 17-year old voter's primary election ballot.

### Residency Requirement

Residence means the place: 1) where a person has the person's true, fixed, and permanent home and principal establishment; and 2) to which the person has, whenever absent, the intention of returning. (IC 3-5-2-42.5) In addition, the election code contains standards used to determine the residency of a voter, candidate or a person holding office. (IC 3-5-5) While this definition and these standards are helpful, there are some recurring issues raised with regard to providing information about a registration applicant's residence for those who are homeless, mobile, in college, or overseas.

For college students, they may only register at one of two places:

- 1) The address where they live while attending school
- 2) The address where they live while not attending school

NOTE: the intent of where students plan to return after attending college, or during summer and winter breaks, is not to be factored into the decision to approve their registration. They may register at school, if they so choose. It is a violation of election law to challenge a voter solely on the basis that: 1) the voter is enrolled in an educational institution or; 2) the voter's address on the registration record is at an address which is housing provided for students by an educational institution. (IC 3-5-5-7, IC 3-5-4.5-2)

Certain fail-safe measures may apply to voters who no longer reside at the address on their voter registration record, depending on when and where the person moved. The fail-safe measures are explained in detail in the *Indiana Voter Registration Guide* and the *Indiana Election day Handbook*. An individual meeting the requirements under the fail-safe statutes is entitled to vote a regular ballot on election day.

### Disfranchisement Due to Imprisonment

In Indiana, a registered voter who has been convicted of a crime **AND** imprisoned following conviction is ineligible to vote and removed from the registration rolls. An individual may not register to vote while imprisoned after being convicted of a crime. However, once an individual has been released from prison, even if on probation, parole, or home detention, they may register to vote and vote in elections. This law varies from state-to-state, which is why there is often confusion on its application. See "Disfranchisement While Imprisoned" later in this section for more details.

### Voter Identification Number

Each individual applying to register to vote is *required* to provide a "voter identification number." This number must be the Indiana driver's license number (or, as indicated on the state voter registration form, an Indiana ID Card number) issued by the Bureau of Motor Vehicles (BMV). If an individual does not have a BMV-issued driver's license, the individual must provide the last four digits of the individual's social security number as a voter identification number. If the individual does not have a BMV license number or a social security number, the individual will be assigned a voter identification number by the statewide voter registration system.

During an election, a precinct election clerk must explain the voter identification number to each voter and request that each voter provide (or update) the voter's identification number on the poll book. However, the clerk must also explain that a voter is *not required* to provide a voter identification number at the polls in order to vote. If a voter does give a voter's identification number, then the county voter registration office updates the voter's registration to include that information. (IC 3-5-2-50.1; 3-7; 3-7-13-13; IC 3-10; IC 3-11)

## Address Confidentiality Program

Indiana law establishes an address confidentiality program for persons who are victims of domestic abuse, stalking or sexual assault. A person who applies to the Indiana Attorney General and qualifies under this program may designate an address provided by the Attorney General as his or her address for service of process and receipt of mail. This confidentiality program does not apply automatically to every person who is granted a protective order by a court.

Like an absent uniformed services voter, a participant in this program is entitled to an absentee ballot in any election that is conducted during the year in which the applicant applied for an absentee ballot (ABS-Attorney General). The absentee ballot application allows the program participant to provide the address designated by the Attorney General as the mailing address for receipt of the absentee ballot. The name, address, telephone number, and any other identifying information relating to a program participant, as contained in a voting registration record, is confidential for purposes of Indiana's public records law. The county voter registration office may not disclose for public inspection or copying a name, an address, a telephone number, or any other information described in this subsection, as contained in a voting registration record except (1) To a law enforcement agency, upon request and (2) As directed by a court order. (IC 3-11-4-6; IC 5-26.5; IC 5-14-3-4(a)(1))

## How to Register To Vote in Indiana

In Indiana, a person meeting the requirements register to vote by submitting a mail-in (paper) state or federal voter registration form, by securing a driver's license or state ID card at the Bureau of Motor Vehicles, interacting with another full-service agency where the individual may be receiving services, or using the online voter registration system or mobile app.

The voter registration deadline in Indiana is 29-days before a primary, municipal, general, or special election, except for certain military and overseas voters who may meet special eligibility requirements. Please read the sections below and consult the *Indiana Voter Registration Guide* for more details.

### Registering to Vote with Mail-In (Paper) Form

In Indiana, individuals may register to vote using the mail-in, or paper, state or federal voter registration form. Both forms are available for download through the Election Division's website (<https://www.in.gov/sos/elections/>), and are to be made available at local county clerk's offices and other government offices as required by the National Voter Registration Act of 1993 (NVRA). Please note: The state law that required that voter registration forms be printed on durable card stock was repealed in 2001. Therefore, voter registration forms no longer have to be printed on card stock. (Statute repealed IC 3-7-31-6)

It's important that an individual using a paper registration form must use the current version of the application, and the Election Division's web site will have the most recent version of the form on its website. An individual may also call the Election Division's office to confirm if the version number of the application is current. In addition, county election officials are provided a list of state forms at the annual Election Administrator's conference noting the proper version numbers, and if a state form is updated, a new order signed by the co-directors of the Election Division is distributed to each county clerk. Federal registration forms are managed by the Election Assistance Commission ([www.eac.gov](http://www.eac.gov)).

A paper registration form should be executed in ink or indelible pencil. (IC 3-7-32-2) An original signed form may be mailed or hand-delivered to the county voter registration official or the Election Division. Faxed or emailed registration forms may not be accepted as a “wet” signature is required. (IC 3-7-32-4; IC 3-5-4-1.7)

It is imperative all of the required fields be completed on the form; those marked optional are not necessary to provide but including a phone number is helpful to election administrators. While overlooking some required fields will result in an incomplete registration, failing to mark “Will you be 18 before Election Day?” and “Are you a U.S. citizen?” results in a rejected application. Incomplete registration forms will be rejected before election day if the voter does not cure the defect on the registration. However, voter registration officials must make at least one effort to contact a voter with an incomplete registration so that the missing information can be provided. The *Indiana Voter Registration Guidebook* discusses incomplete registration processes in more detail, and election administrators can access training manuals and standard operating procedures through statewide voter registration system training portal.

Paper voter registration forms that are mailed and have a legible postmark date on or before the voter registration deadline must be processed by county voter registration officials. (IC 3-7-33-4(b)) This is true even if the registration form is received the day before the election! Paper voter registration forms that are mailed and have a missing or an illegible postmark date may be processed if received no later than seven (7) days after the voter registration deadline. (IC 3-7-33-4(c))

On occasion, the Indiana Election Division receives voter registration forms. Forms are forwarded to the proper county voter registration official, and should be processed, even if received after the registration deadline, unless documentation is attached to note the form was not timely received. County voter registration officials who need to forward applications are encouraged to attach the envelope the form was mailed so the voter’s proper county registration official can decide if a “late-arriving” form should be processed.

Finally, first-time voters in Indiana that mail-in their voter registration form who do not provide proof of residency (for example, a copy of a driver’s license or utility bill with the residence address) will be asked by poll workers or other election officials for proof of residency at the time the individual votes, whether on Election day at a polling site or when applying to vote by absentee ballot. This rule does not apply if the voter registration form is hand-delivered.

### **Special Procedures for Paper Forms When Conducting Voter Registration Drives or Similar Efforts**

Often groups and organizations hold voter registration drives or political campaigns will go door-to-door to register voters. Indiana does not have special “registrar” requirements, so an individual or group does not need special permission to conduct voter registration drives.

However, if the registrar uses the state registration form (VRG-7, VRG-11) and takes custody of the application to turn in to a voter registration office, then a receipt must be given to the registrant. The state form includes a receipt on the top-half. The registrar must provide their name and home address (not a business or organization address). In addition, the registrar’s affidavit found on the lower right corner of the state form must be completed.

If the registrar does not complete the affidavit on the state form, then voter registration officials are to first process the registration form but afterward, forward the application to the county election board for investigation. The receipt requirement does not apply to federal voter registration forms or when a member of the voter’s household delivers the form on behalf of the voter.

However, when taking custody of another person’s registration state or federal form, it’s important to submit the registration form to registration officials no later than noon, ten days after taking the form. (IC 3-7-32-8(b)) If a

form is not timely submitted under this statute, county officials are to process the form but afterward, forward the application to the county election board for investigation.

A person with a disability that is unable to sign the registration form may ask another person to complete and sign the form on their behalf. Should this assistance be provided, the person assisting the voter must provide their name and address on the form underneath the voter's signature block.

### Registering to Vote at the BMV

The National Voter Registration Act of 1993 (NVRA), also known as the "motor-voter bill," requires BMV officials to offer an applicant attempting to secure an Indiana driver's license or state ID card the opportunity to register to vote. If a person registers to vote at the BMV, the information is captured at the time of the credential transaction and then forwarded electronically to the proper county voter registration official.

A county voter registration office shall process a voter registration application transmitted in electronic format from a license branch to the statewide voter registration system and is not required to receive the paper copy of the application from the license branch before approving or denying the application and mailing a notice of approval or denial to the applicant (IC 9-24-2.5-6). Refer to the current edition of the *Voter Registration Guidebook*, published by Indiana Election Division, for detailed information regarding this process.

In 2017, the Indiana General Assembly passed a law requiring BMV staff to ask all customers if they would like to register to vote. With the exception of credential transactions, a customer who desires to register will be handed a paper registration form to complete and submit to their county voter registration official. **BMV officials do not accept paper voter registration forms;** customers will be directed to the county voter registration office.

### Registering to Vote at other Full Service Agencies

The NVRA requires Indiana to designate state offices that provide public assistance and services to persons with disabilities as full service voter registration agencies. If a person applies for services at any of these state agencies, the application is also considered a voter registration application, unless the person declines to register to vote or is ineligible to register. If a person registers to vote at a full service agency, then the application is forwarded to the proper county voter registration official for processing and approval.

### Registering to Vote Online

An individual who is eligible to vote and possesses a current and valid Indiana driver's license or Indiana identification card may submit a voter registration application to a county voter registration office by following procedures for online voter registration.

The secretary of state, with the consent of the election division co-directors, established a secure internet website at [www.Indianavoters.com](http://www.Indianavoters.com) that permits individuals to submit voter registration applications, or an application for a change of name, change of address, or change of other information in the voter's existing voter registration record, along with information to establish that the individual is eligible to register online.

When an individual submits an application by using the website, the bureau of motor vehicles must compare the information submitted by the applicant with the information in the bureau's database listing the individuals who have a current and valid Indiana driver's license or identification card.

If the bureau confirms that the applicant does possess the license or identification card, the completed application and digital signature of the applicant shall be submitted by the bureau to the county voter registration office where the applicant resides, according to the information in the statewide voter registration system.

If the Bureau is unable to confirm the number entered by the applicant, the applicant will receive a warning message stating "Please review and correct all errors. There was an error validating the driver's license or state ID number you entered." An applicant will NOT be permitted to continue unless the Bureau is able to confirm the number entered belongs to the applicant.

If an individual requires assistance using the online voter registration system, the person providing the assistance should mark the "check if providing assistance to the voter" box and provide their contact information as requested.

An online voter registration application must be "signed" with an electronic signature in the manner prescribed by IC 3-7-26.7. After "signing" the online voter registration form, the applicant will see a confirmation screen that includes the time the application was submitted and a submission identification number. If the applicant provides an email address, confirmation the form was submitted will be emailed to the provide address.

An eligible individual must submit a complete application online no later than midnight, local prevailing time, 29-days before an election to be registered to vote in that election. Successfully submitting an online registration application does not mean an individual is yet registered to vote. The county voter registration office must process an online registration application in the same manner as any other voter registration application unless state law specifies otherwise.

A mobile voter registration app designed to allow Hoosiers to register to vote or confirm their voter registration, look up their polling place, get driving directions to their polling location, find out which candidates and public questions are on their ballot, track their absentee ballot application or provisional ballot information and contact local election officials is available. Apple users can access the application via iTunes from a mobile device or tablet by searching "Indiana Voters." Android users can access the application via their mobile app store by searching "Indiana Voters".

## Voter Registration Deadlines

Except as provided in IC 3-7-36 for absent uniformed services voters and overseas voters, a person desiring to register or transfer a registration may do so at the office of the circuit court clerk or board of registration through the close of business on the twenty-ninth day before the election is schedule to occur. (IC 3-7-13-11) However, there are a few exceptions:

- 1) the online voter registration system permits a voter to register no later than midnight, twenty-days before the election;
- 2) mailed registration forms with a legible postmark dated on or before the statewide deadline are to be processed by county voter registration officials immediately and the voter be permitted to vote in the election (IC 3-7-33-4(b)); and
- 3) mailed registration forms with a missing or illegible postmark and received no later than the Monday after the statewide registration deadline are to be processed. (IC 3-7-33-4(c))

Sometimes a county voter registration official receives a registration form for a voter residing in another Indiana county. State law requires the form to be sent on an expedited basis, and it permits forwarding an optical scanned image of the voter registration form to the proper county, though the original paper form must be subsequently forwarded. The county voter registration office of the county in which the voter resides shall process the registration form and register the voter if the registration was timely received by the other county voter registration office or accepted by the bureau of motor vehicles or a voter registration agency during the registration period defined in IC 3-7-13-10, or is a registration by mail form received under IC 3-7-33-4. (IC 3-7-34-9)

Counties with registration forms timely received but processed in the period up to the election should consult IC 3-7-34-13, which describes the process to create a certificate of error if a paper poll book has already been printed or electronic poll book has been uploaded with the names of registered voters. Generating a certificate of error may be necessary depending on the timing of entry in to the statewide voter registration, the ending of the seven-day pending period, and the printing or uploading data to the pollbook.

After a general or municipal (November) election, voter registration officials may begin processing registration forms on December 1 (or the first Monday in December if December 1 falls on a Saturday or Sunday). After a primary (May) election, voter registration resumes fourteen (14) days after the primary election day and continues until the twenty-ninth day before the general or municipal election. In the precincts where a special election is to be conducted, voter registration ceases the twenty-ninth day before the election and resumes the fourteenth day after the special election occurs. (IC 3-7-13-10) Special exceptions are made for certain absent uniformed services voters and overseas voters pursuant to IC 3-7-36.

## Statewide Voter Registration System

The Secretary of State and the Co-Directors of the Election Division maintain a statewide voter registration system (SVRS) to implement the requirements of the Help America Vote Act of 2002 (HAVA) and Indiana law.

In Indiana, voter registration is conducted pursuant to the National Voter Registration Act (NVRA). All voter registration applications (whether on federal or state forms and applications) must be processed at the county level and approved or rejected by the county voter registration office. County officials use the SVRS to maintain local voter records, though paper records and correspondence are to be retained pursuant to a records retention schedule.

The SVRS manages several data sets to aid county voter registration officials maintain and update voter information. The Indiana Department of Health and the Indiana Department of Correction make information concerning deceased voters and incarcerated individuals available to the Election Division electronically, and this information is shared with counties via SVRS hoppers. (IC 3-7-45-8; 3-7-46-4.1)

Further, the system allows county officials to track a voter's registration record status – active, inactive, or cancelled. A registration record remains in active status if the person responds to periodic mailings from state or county voter registration officials. If a voter does not respond to a voter list maintenance mailing, the voter's record is placed in inactive status. "Inactive" does not mean the individual cannot vote; instead, it's an indication to county registration officials that the person's registration record may be placed in cancelled status if the person does not vote at their registration address in any election over a two-year general election cycle. A cancelled voter may be able to vote at their registration address if certain fail-safe provisions apply. Please consult the *Indiana Voter Registration Guide* or *Indiana Election day Handbook* for those details.

In addition to voter record management, the SVRS permits counties to run operational reports, manage candidate filings, file required reports to the state, and access training materials and guides.

## Disfranchisement While Imprisoned

A person who has been convicted of a crime AND imprisoned following conviction is ineligible to vote while in prison and is removed from the registration rolls. IC 3-7-46-2 specifies:

"A person imprisoned following conviction of a crime is disfranchised during the person's imprisonment."

This law prevents a person from voting or qualifying as a candidate while imprisoned after conviction of any crime. However, a person who is imprisoned but has not been convicted (meaning a person who is imprisoned

awaiting trial) is still eligible to vote or to continue serving or run for office.

In addition, while a person may be subject to an order issued by a court, some orders are not considered “imprisonment” for purposes of this statute. More specifically, a person who is:

- 1) on probation;
- 2) on parole;
- 3) subject to home detention under IC 35-38-2.5; or
- 4) placed in a community corrections program under IC 35-38-2.6;

is eligible to register and to vote. (IC 3-7-13-5; IC 3-7-13-6)

Through the statewide voter registration system, the Election Division forwards to the county voter registration offices lists of disfranchised individuals provided from the Indiana Department of Correction. Each county sheriff is also required to provide the county voter registration office with quarterly lists of disfranchised persons in the county jail. (IC 3-7-46-6; Form VRG-1) The county voter registration office must notify the person of disfranchisement by sending a notice (Form VRG-17) to the person’s last known address. (IC 3-7-46-8; 3-7-46-9) After a person is released from prison, the person may apply to register to vote, even if the person is on probation, parole or performing community service. (IC 3-7-13-6)

Many of these issues are discussed in more detail in the 2018 *Voter Registration Guidebook*.

## Voter Registration Documents as Public Records

In general, voter registration records are public records and are subject to examination and copying by the public pursuant to IC 5-14-3. Documents that are confidential and not subject to examination and/or copying by the public include: 1) records concerning declinations to register; 2) records that indicate the identity of a voter registration agency where a person registered; and 3) voter registration records of participants in the attorney general’s confidentiality program for abused persons. (IC 3-7-27-6) In addition, though voter registration applications do not request a full social security number, to the extent a voter registration application or record contains a full social security number the number must be redacted except for the last four digits. (IC 5-14-3-4(a)(12))

A county voter registration office shall, with regard to voter registration information concerning voters of the county in SVRS, act in accordance with the non-discriminatory uniform policy adopted by the county election board regarding providing duplicate copies of a computer disc or other similar record that contains voter registration information. The policy must either permit a person to obtain a duplicate copy in electronic form or not. If the policy does allow duplicate electronic copies then it must do so according to the non-discriminatory uniform policy. (IC 3-7-27-6(c); 5-14-3-3(g)) The policy should be in written form in the minutes of the county election board.

**A person requesting any information out of SVRS from a county voter registration office must submit the request on State Form VRG-24.** This form requires the requesting person to agree that the information will not be used to solicit merchandise, goods, services or subscriptions. The person must also agree not to sell, loan, give away or otherwise deliver the information to any other person for a purpose other than political activities or political fund-raising activities. In addition, if there is a cost for providing copies for records, the charge must be uniform to all purchasers (IC 5-14-3-8(d)).

A county voter registration office is not required to create and provide a list, report, or record that has not otherwise been created unless state statute imposes a duty on the county voter registration office to create the list, report, or record. However, if a list, report, or record has been created, whether required by statute or not, it is a public record and must be provided unless it is subject to some exception under the Public Records Act. (IC 5-14-3-4)

Please see the *Indiana Voter Registration Guidebook* for more information.

### Record Retention

A county voter registration office receives many documents in the performance of its duties. These records must be retained for a period of time specified by the NVRA and Indiana statute. Also, a county commission on public records may have adopted a retention schedule pursuant to IC 5-15-6 that may apply to the retention and destruction of public records. However, this retention schedule could not provide for the destruction of records earlier than dates specified by federal or state statute applicable to the records in question.

*It is critically important to always keep the voter registration application for any voter whose record is "active" or "inactive" until the registration is cancelled.* Once cancelled for any reason (death, request for cancellation, voter list maintenance programs, imprisonment following conviction), the cancelled registration must be kept for two (2) years after the cancellation.

More information is found in the *Indiana Voter Registration Guidebook* and later in this manual under "Retention of Election Records."

### Certain Voter Registration Reports to be Provided to County Party Chairmen

The county voter registration shall provide the following voter registration information to certain county chairmen and candidates as provided by state law:

- 1) A report containing information regarding all registration applications, excluding any confidential information, executed from the beginning of the registration period and ending sixty-five (65) days before a primary, general, or municipal election is to be forwarded not later than sixty (60) days before the election, upon request, to the Democratic, Libertarian, or Republican (bona fide political parties) party chairmen, if the party has at least one (1) candidate on the ballot in the election, and an independent candidate's committee if the candidate is on the ballot in the election. (IC 3-7-28-2)
- 2) A report containing information regarding all registration applications, excluding any confidential information, executed from the period beginning sixty-five (65) days before a primary, general, or municipal election and ending twenty-nine (29) days before the election is to be forwarded daily and within forty-eight (48) hours of the data on which the report was created, upon request, to the Democratic, Libertarian, or Republican (bona fide political parties) party chairmen, if the party has at least one (1) candidate on the ballot in the election, and an independent candidate's committee if the candidate is on the ballot in the election. (IC 3-7-28-3)
- 3) One (1) copy of the registered voter list prepared for the inspector of each precinct under IC 3-7-29-1 shall be furnished to the Democratic and Republican county chairmen, after the county election board receives a written request from the chairman. The copy shall be furnished to the county chairman as soon as the lists are prepared. (IC 3-7-28-4)
  - a. As soon as the registered voter list is prepared, a copy shall be furnished upon written request to the county chairman of any political party that has at least one (1) candidate on the ballot in the next election; the committee of a candidate whose name will appear on the ballot in the next election; and the county chairman of any other bona fide political party. (IC 3-7-28-5)
    - i. To qualify as a bona fide political party under IC 3-7-28-5, a political party must file a certification with the clerk of the circuit court of the county that the political party is a bona fide political party together with verifiable factual representations to support the certification. (IC 3-7-28-6)

- b. NOTE: Notwithstanding IC 5-14-3-3(f), additional copies of the registration lists for the inspectors of each precinct shall be kept open to the public for inspection and copying in the same manner as other public records under IC 5-14-3 at the office of the circuit court clerk or board of registration as soon as the registration lists are completed. (IC 3-7-28-7)
- 4) A list of voters who are mailed voter list maintenance notices under IC 3-7 to the following upon request: 1) Democratic and Republican county party chairmen, and the chairmen of a bona fide political party of the county or an independent candidate's committee, if the independent candidate is on the ballot for the next election to be conducted in the county. (IC 3-7-28-8)
  - 5) Following the mailing of voter list maintenance notices and the cancellation of a voter's registration under IC 3-7, a master list of precincts showing all persons whose registrations have been cancelled is to be provided to the following upon request: 1) Democratic and Republican county party chairmen, and the chairmen of a bona fide political party of the county or an independent candidate's committee, if the independent candidate is on the ballot for the next general election to be conducted in the county. (IC 3-7-28-9; IC 3-7-28-10) The master list of copies shall be prepared and furnished not later than fifteen (15) days after a voter's registration has been canceled under the voter list maintenance program. (IC 3-7-28-11)
  - 6) A list of deceased persons whose registrations have been canceled to the following upon request: 1) Democratic and Republican county party chairmen, and the chairmen of a bona fide political party of the county or an independent candidate's committee, if the independent candidate is on the ballot for the next election to be conducted in the county. A request filed for this report may state that the list is to include only cancellations made by the county voter registration office within a period specified in the request. (IC 3-7-28-12)
  - 7) A list of disfranchised voters (that is, individuals who were cancelled following imprisonment after conviction of a crime) whose registrations have been canceled to the following upon request: 1) Democratic and Republican county party chairmen, and the chairmen of a bona fide political party of the county or an independent candidate's committee, if the independent candidate is on the ballot for the next general election to be conducted in the county. A request filed for this report may state that the list is to include only cancellations made by the county voter registration office within a period specified in the request. (IC 3-7-28-13)
  - 8) A list of the names and addresses of all voters whose registrations have been canceled under IC 3-7 to the following upon request: 1) Democratic and Republican county party chairmen, and the chairmen of a bona fide political party of the county or an independent candidate's committee participating in a primary, general, or municipal election. Upon request, the county voter registration office shall report cancellations daily and within forty-eight (48) hours after the day the cancellations were made, until election day. A request filed for this report may state that the list is to include only cancellations made by the county voter registration office within a period specified in the request. (IC 3-7-28-14)

## **County Board of Voter Registration**

In most counties, the circuit court clerk is the chief voter registration official. However, state law does permit the establishment of a separate board of registration at the county level. Lake and Tippecanoe counties have specific statutes requiring the use of a blended board of elections and voter registration (IC 3-6-5.2; IC 3-6-5.4); Marion County is required to have a separate board of registration, as it is the only county in Indiana with a consolidated city. (IC 3-7-12.5)

Except in Lake, Marion, and Tippecanoe counties, the county executive may adopt an order by the unanimous vote of the entire membership of the county executive to establish a board of registration or rescind a previously adopted order establishing a board of registration. (IC 3-7-12-4) An adopted order takes effect immediately, unless the order is adopted during the final sixty (60) days before an election, and then the order becomes effective on the day following the election. (IC 3-7-12-5)

A board of voter registration is made up of two persons, who are appointed by the chairmen of the two major political parties and serve at their pleasure. The members must be registered voters of the county, and serve a term of two (2) years beginning January 1 of each odd-numbered year and until the person's successor is appointed and qualifies. (IC 3-7-12-8; IC 3-7-12-9; IC 3-7-12-10) Additional information county administration of voter registration can be found in IC 3-7-12, generally.



# BALLOT INFORMATION

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## Ballot Printing Requirements, Generally

The Election Division does not prepare *any* primary election or general election ballots. This responsibility is left to county election officials, though state law provides the framework by which the offices and public questions must be ordered on the ballot, the type of voting equipment to be used, and the method by which to tabulate election results.

Indiana law permits three types of voting systems: optical scan ballot card, direct record electronic voting system, and hand-counted paper ballots. (The “Voting Systems and Electronic Poll Book” section of this *Guide* provides more detail about these systems.) The distinction in voting equipment is important because it determines the method by which a voter casts their ballot.

Some counties use a ballot card upon which the voter marks their selections with a pen, pencil, or other marking device. These ballot cards are “read” by an electronic card reader and tabulated. This is called an “optical scan” voting system. Other Indiana counties vote upon a direct record electronic voting system (or “touchscreen computerized voting system”), in which voters cast their ballot selections on the face of the unit. State law often refers to a “ballot label” when referencing a DRE system. A ballot label is simply each individual screen that makes up the whole ballot.

In some counties, newer systems combine features of a touchscreen and optical scan ballot card system. These hybrid models permit a voter to mark their ballot using a touchscreen device. After, an optical scan ballot is printed with the voter’s selections, reviewed by the voter, and tabulated by an optical scan ballot reader.

On rare occasions, a county may decide to use a hand-counted, traditional paper ballot. This should not be confused with the ballot card noted above. While both are printed on card or paper stock, a paper ballot is counted by hand while a ballot card is tabulated by an optical scan ballot reader.

Whichever voting system is used, each county must prepare a “ballot” for use on both election day and for absentee voting purposes. There are very specific Indiana statutes spelling out the format and language requirements that apply to optical scan ballots (IC 3-11-13) and direct record electronic voting system ballots (IC 3-11-14). (Equipment that combines the features of the ballot card and DRE systems follow the statutes under IC 3-11-13.)

A county election board or ballot printer should carefully study the statutes that apply to the ballot printing and layout standards for optical scan or direct record electronic voting systems.

### Primary Election Ballot Printing Needs

In Indiana, elections are held in May (primary election) or November (municipal or general election, depending on the year). Each state determines when their primary election is to be held; in Indiana, the primary election is held on the first Tuesday after the first Monday in May. (IC 3-10-1-3) The primary election allows the two major political parties, Democratic and Republican, to nominate their candidates for November’s election.

NOTE: The Democratic and Republican parties are the two major political parties in Indiana. “Major political party” designation is determined by the results of the most recent Secretary of State’s race. The political party with the candidates having the highest and second-highest number of votes in that election are considered major parties. (IC 3-5-2-30)

Each county election board prepares all primary ballots with the names of all candidates for major political party nominations, the names of the candidates for election to party offices such as precinct committeeman and delegates to the state political party conventions, and any other offices or elections on a public question held at the same time as the primary election.

When a voter enters the polling location during a primary, the voter must provide the poll clerks with the voter's name and designate a political party affiliation if the voter wishes to cast a primary ballot. (IC 3-10-1-24) Since Indiana law only permits a voter to receive a primary ballot that lists the candidates of one party, a county must print separate Democratic and Republican primary election ballots and the ballot cards of each party participating in the primary must be distinctively marked or be of different colors to be easily distinguishable. (IC 3-10-1-13; 3-10-1-17) However, state law does not require that the primary ballot(s) be printed in any specific colors, so long as this requirement is met.

On rare occasions a statewide or local public question or other type of special election may also be held on the same date as the primary election. Should this occur, a county must print the text of the public question on the top of the partisan primary ballot after the ballot instructions. (IC 3-10-1-19) However, a voter who does not wish to vote in the Democratic or Republican Party primary election but does wish to vote on a public question on the ballot at a primary is not required to designate the voter's party and must be permitted to vote only on the public question. The county election board must provide a means, whether by separate "non-partisan" printed ballot or by "locking out" positions on an electronic voting system, to allow a voter who does not want to declare party affiliation access to vote on a public question.

As noted in the "Voter Registration Issues" section, Indiana permits a 17-year-old to be a registered voter and participate in the May primary election. State law permits an "underage" voter to vote in races for party offices, so it is not likely a special "17-year-old" ballot must be printed. If a special election is held on the same date as a primary election, however, a special "17-year-old" ballot must be printed to omit the special election question or office.

For a primary election, counties using optical scan paper ballots must print at least one hundred percent (100%) of the number of votes cast for the candidate of the party who received the greatest number of votes cast in the precinct at the last general election. (IC 3-10-1-12) For counties using touchscreen DRE machines, state law requires there be a poll worker or ePollbook receipt that denotes the voter's choice of a Democratic, Republican, or, in rare cases, non-partisan ballot selection that the voter hands the poll worker to load the correct ballot style for the voter. (IC 3-10-1-24)

**NOTE ON PARTY OFFICES:** If a candidate for a party's precinct committeeman or state convention delegate election is unopposed, then the name of the unopposed candidate will not be printed on the primary ballot unless the appointed member of the county election board representing that party files a written request for the unopposed candidates to appear on the party's primary ballot. (IC 3-10-1-5)

### **General or Municipal Election Ballot Printing Needs**

In November, a general or municipal election is held. General elections are held in even-numbered years when federal offices (President and Vice-President, U.S. Senate, U.S. House of Representatives) are on the ballot. Municipal elections are held in the odd-numbered year between the non-presidential and presidential election years. (The year after a presidential election is an "off-year," though a few counties have towns that hold elections at this time.)

Federal law requires the general election to be held on the first Tuesday after the first Monday in November in even-numbered years; Indiana law requires the municipal election to be held on the first Tuesday after the first Monday in November in odd-numbered years. Unless there is a special election, no federal, statewide, or state legislative offices will be on the municipal election ballot.

Each county election board is responsible for preparing all general, municipal, or special election ballots with the names of all candidates for federal offices, statewide offices, state legislative offices, local offices, and school board offices. The county election board also prepares ballots containing any applicable statewide or local public questions. The county may print all general election offices on a single ballot. (IC 3-11-2-2.1)

A general or municipal election ballot must permit straight party voting for bona fide political parties (Democratic, Republican, and Libertarian parties). Straight party voting permits a voter to make one selection to cast a vote for all partisan candidates on the ballot belonging to the political party. Using the straight party device does not cast a vote for public questions, non-partisan school board elections, or judicial retention questions, and voters should be advised to make those additional selections, if they so desire. Further, state law recently changed to remove straight party voting from at-large partisan races for county council, city council, town council, and township board. When these at-large races appear on the ballot, voters must be instructed to make individual marks to select their choice(s).

While straight party voting is permitted in Indiana, it only applies in November general election as the May primary election is focused on deciding which candidates to nominate for the fall election. In other words, a voter must make individual selections on a primary election ballot to help determine which Democratic or Republican candidates will appear on the November ballot.

Pay special attention to the “ballot layout” section below as the placement of the straight party device on the ballot has changed in recent years. Further, the party’s symbol must be printed next to the political party’s name. The symbols are certified by the Indiana Election Division to the county election board before each November election.

### Special Elections & Public Questions

Rarely, a special election may be called to fill a vacancy created when an elected member of the U.S. House resigns his position or to comply with a court order due to a contest action. However, special elections are called more frequently concerning referenda. The *Referendum, Recall, and Impeachment* brochure published by the Indiana Election Division is a good resource to understand the limited types of referenda questions permitted in Indiana.

The most common types of referenda elections concern tax levies (IC 20-46-1) or capital improvement projects (IC 6-1.1-20). The Department of Local Government Finance (DLGF) website ([www.in.gov/dlgef](http://www.in.gov/dlgef)) has a section devoted to the process, and is a helpful resource. Referenda must be held on the date of a primary, general, or municipal election if an election is held that year. A special “referendum” election may be held in the off-year between elections, but it must be held on the date that a primary or general election would be held. In other words, should a special election be called in 2021, then it must be held on the first Tuesday after the first Monday in May or November. The cost of the referendum elections held in an off-year is to be paid, in full, by the entity or entities requesting the election. (IC 6-1.1-20-3.6(e); IC 20-46-1-14(c))

Referendum questions must be certified to the county election board no later than 74 days before the primary election to be held on the primary election day for capital improvement projects under IC 6-1.1-20, and 60 days for school tax levies under IC 20-46-1. August 1 is the deadline for a public question to be certified to appear on the November ballot. (IC 6-1.1-20-3.6(e) and 20-46-1-14(c)) Please refer to the “ballot layout” section below to note where public questions are to be printed on the ballot as the order has changed in recent years.

On occasion, the Indiana General Assembly will authorize public questions specific to one or more counties or pass legislation to amend the state’s Constitution. County-specific public questions may be authorized in off-years and legislation may note the entity required to pay for the election. Constitutional amendment questions

are held on the date of the general election. Questions authorized by the Indiana General Assembly will be certified to county election boards by the Indiana Election Division.

NOTE: Judicial retention questions are not considered public questions, and have a special position on the ballot.

### **Absentee Ballots**

Each county election board is responsible for preparing all absentee ballots used in a primary, municipal, general, and special election. There are additional items required to be printed on a ballot card and hand counted paper ballot used for absentee voting. Please see the Absentee Ballot Printing section in *ABSENTEE BALLOT PREPARATION* chapter later in this *Guide*.





# VOTING SYSTEMS & ePOLLBOOKS

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## Types of Voting Systems

Indiana law permits three types of voting systems: optical scan ballot card, direct record electronic voting system, and hand-counted paper ballots. The distinction in voting equipment is important because it determines the method by which a voter casts their ballot.

Some counties use a ballot card upon which the voter marks their selections with a pen, pencil, or other marking device. These ballot cards are “read” by an optical scan ballot card reader and tabulated. This is called an “optical scan” voting system. Other Indiana counties vote upon a direct record electronic voting system (or “touchscreen computerized voting system”), in which voters cast their ballot selections on the face of the unit. State law often refers to a “ballot label” when referencing a DRE system. A ballot label is simply each individual screen that makes up the whole ballot.

In some counties, newer systems combine features of a touchscreen and optical scan ballot card system. These hybrid models permit a voter to mark their ballot using a touchscreen device. After, an optical scan ballot is printed with the voter’s selections, reviewed by the voter, and tabulated by an optical scan ballot reader.

On rare occasions, a county may decide to use a hand-counted, traditional paper ballot. This should not be confused with the ballot card noted above. While both are printed on card or paper stock, a paper ballot is counted by hand while a ballot card is tabulated by an optical scan ballot reader.

### Voting System Certification Process and Standards

A voting system (a direct record electronic voting system [DRE] or an optical scan ballot card system) may not be marketed, sold, leased, installed, or permitted to be used in an Indiana election without first being certified by the Indiana Election Commission. Voting system vendors who violate this requirement are subject to potentially serious sanctions, such as civil penalties or revoking the right of the vendor to do business in Indiana for a specific period of time. (IC 3-11-17; IC 3-11-7-19(f); IC 3-11-7.5-28(f))

However, a vendor may display or demonstrate a voting system that has not been approved by the commission for use in Indiana, if the vendor complies with all of the following requirements:

- 1) The display or demonstration occurs at a conference of election officials sponsored by a state agency, an association of circuit court clerks, or an association of voter registration officers.
- 2) The vendor files a notice with the election division at least seven (7) days before the scheduled starting date of a Conference sponsored by a state agency, an association of clerks or voter registration officers that identifies the vendor and voting system and supplies other information regarding the vendor, voting system, and the intended display or demonstration of the voting system.
- 3) Displays in all communications, including written communications, about the voting system that the system is not approval for use in the state of Indiana. (IC 3-11-15-49)

All currently certified voting system models, including specific hardware, firmware, and software versions, are certified for marketing by vendors in Indiana for a term expiring October 1, 2021. For a list of currently certified voting systems, see <https://www.in.gov/sos/elections/2652.htm>, or contact the Election Division.

To be approved by the Indiana Election Commission, a voting system must meet: (1) the 2002 Voting System Standards adopted by the Federal Election Commission; (2) the 2005 Voluntary Voting System Guidelines adopted by the U.S. Election Assistance Commission; or (3) the 2015 Voluntary Voting System Guidelines adopted by the U.S. Election Assistance Commission. The Voting System Technical Oversight Program

(VSTOP) is administered by Ball State University. This program provides the Indiana Election Commission with technical assistance in evaluating voting system certification applications and related issues.

### Using “Grandfathered” Voting Systems

A county may continue to use an optical scan ballot card system or an electronic voting system whose state certification expired on or before October 1, 2017 if the voting system: (1) was approved by the Indiana Election Commission before October 1, 2017; (2) was purchased by the county before October 1, 2017; and (3) otherwise complies with the federal Help America Vote Act of 2002 (HAVA) and state law.

However, a vendor may not market, sell, lease, or install a “grandfathered” voting system in Indiana.

### Overvote Features

An optical scan voting system must be capable of alerting a voter that the voter has cast more votes than allowed for candidates, or cast both a “yes” and a “no” vote on a public question or judicial retention question. This capability informs the voter that he has made an error and describe to the voter how he may correct the error. However, the voting system does not have to inform the voter how the voter may correct the error if the information is provided in writing conspicuously on or near the components of the voting system where the voter votes.

A voter may ask that their overvoted ballot card be spoiled, and poll workers must issue the voter a new ballot. The spoiled ballot card is then kept sealed with other spoiled ballots. (IC 3-11-13-35) Sometimes a voter wants the voting system to accept an overvoted ballot or the ballot card belongs to an absentee voter. In this case, the voting system should be designed to accept the ballot and tabulate all marks on the ballot except where in the contest(s) where the voter has overvoted. In other words, all of the voter’s selections on the ballot will be counted except in the races where the voter has voted for more candidates than is permitted.

NOTE: State law does not permit an “overvote” to occur on a direct record electronic (DRE) voting system (IC 3-11-15-13.7), and an alert feature on a voting system does not apply to hand counted paper ballots. (IC 3-11-15-13.7)

An optical scan and DRE voting system must permit a voter to “undervote,” though there is no state law requiring a voting system to alert a voter that she skipped over a race or did not cast enough votes in a “vote for more than one” race. If a voter undervotes, then the voting system is designed to tabulate all selections except for those where a voter did not mark a selection. In at-large races where more than one candidate may be selected in a contest, a voter may vote for up to the maximum number of selections allowed in the race.

Example 1 (Vote for One Contest): Vicki Voter and Brian Ballot are candidates for dog catcher, which is a “vote for one” race. John Smith is friends with both, and decides to mark his ballot card for both candidates. The optical scan reader alerts John that he has overvoted in the dogcatcher race. John wants the machine to accept his ballot card, so the machine will count all races on his ballot except for dogcatcher where no votes will be counted.

Example 2 (Vote for Three Contest): Sally Sloan reaches the “at-large” dogcatcher race on the ballot where she can pick no more than three candidates. There are five candidates running for dogcatcher, but Sally only wants to vote for two and makes her selection. Though she has “undervoted” in the dogcatcher race, the voting system is designed to count all votes on her ballot, including the two votes cast in the dogcatcher race.

### Ballot Review on DRE Systems

Federal and state law requires that each voter who uses an electronic voting system (DRE) to cast their ballot must be:

1. Allowed to verify who they voted for in a private and independent manner.
2. Be given the opportunity to change their ballot or correct any error made.
3. Notified before the ballot is cast regarding the effects of casting multiple votes for an office and be given the opportunity to correct the error.

While each DRE voting system is different, these requirements are usually satisfied by providing a review page of the selections the voter made on the ballot before they cast the ballot, or give the voter notice at the end of their ballot they can go back and make changes and require the voter to go to a final separate page on their ballot screen and hit a separate button to cast their ballot. (52 U.S.C. § 21081; IC 3-11-14-23(d))

## Using Multiple Ballot Types in an Election

Along with optical scan ballot card voting systems or direct recording electronic (DRE) voting systems, which permit voters with disabilities to cast their ballots independently and privately, traditional hand counted paper ballots may continue to be used in Indiana elections.

Most counties employ the use of at least two ballot types in an election. For example, a county uses a touch-screen DRE voting system for use on election day and during in-person absentee voting in the clerk's office. However, the county also uses ballot cards for absentee-by-mail voting, since a touch-screen machines can't be mailed to a voter. The county also uses hand-count paper ballots as their 1) emergency ballot should the DRE fail on election day and 2) for provisional ballots, since those may not be cast on a DRE machine.

Another example would be a county that uses optical scan ballot cards for election day and for all absentee voting. However, the county also makes available a DRE touch-screen machine that permits a voter with disabilities to cast their ballot independently.

## Voting Systems for Voters with Disabilities

Each polling place or vote center as well as the clerk's office and satellite offices (if applicable) used for in-person early voting must be provided with at least one voting system that permits voters with disabilities (including blind voters, visually impaired voters, and voters with mobility impairments) to cast a ballot privately and independently. A county election board may adopt a resolution to authorize the use of an electronic voting system to be used by absentee traveling boards.

## Public Test of Voting Equipment

Indiana law requires county election boards to conduct a public test of its voting systems (specifically automatic tabulators of optical scan ballot cards and DRE voting systems) before each election, specifically before in-person early voting begins in the Clerk's Office. All counties must publish notice in a newspaper as defined in IC 5-3-1-4 at least forty-eight (48) hours before conducting the public test. In addition, notice must be posted in an area where notices are generally posted outside the clerk's office (IC 5-14-1.5-4), and the media invited if a written request was filed not later than December 31 of the preceding year (IC 5-14-1.5-5). Public tests must be conducted similar to a public meeting held by the county election board.

Public tests must be held no later than twenty-nine (29) days before the election. If a voting system does not perform as expected during a public test, the county election board must attempt to correct the error and conduct a new public test as soon possible. If the additional public test confirms the error has been corrected then the automatic tabulator or DRE system may be used. (IC 3-11-13-22; IC 3-11-14.5-6) If a county election board has to conduct a second or any additional public tests on the automatic tabulators or DRE systems scheduled to be used in an election then public notice of the meeting to conduct the additional test required under IC 5-14-1.5-4 must be given, but the county election board does not need to publish notice of the additional test in the newspaper under IC 5-3-1-4. (IC 3-11-13-22; IC 3-11-14.5-2) If an automatic tabulator for

optical scan ballot cards is not publicly tested or does not go through a public test showing no errors, then the tabulator cannot be used to tabulate ballots on election day and the ballot cards must be counted by hand. (IC 3-12-3-8)

Detailed information in the sections below will help guide a county's public test. In addition, a public test "toolkit" with a sample timeline is available in the appendix of this *Guide*.

### **Public Test of Direct Record Electronic (DRE) Voting Systems**

State law requires the public test to include:

1. The visual inspection of the voting system and ballot labels.
2. The manual entry of a pre-audited group of ballots marked so as to record a predetermined number of valid votes for each candidate and on each public question on the ballot in the precinct.
3. At least one (1) ballot for each office that has an overvote in order to test the ability of the electronic voting system to reject the overvotes. (IC 3-11-14.5-5)

The county must randomly select at least three (3) precincts within the county and test the voting system units to be used at those precincts on election day. For example, precinct 1 has three (3) DRE units assigned for use on election day; precinct 2 has one (1) DRE unit; and precinct 3 has six (6) DRE units. The county election board must test the ten (10) machines collectively assigned the three (3) precincts on election day during its public test of voting equipment.

Each voting system shall be tested to ascertain that the system will correctly count the votes cast for all candidates and on all public questions in that precinct. (IC 3-11-14.5-1(a))

### **Public Test of Optical Scan (Ballot Card) Automatic Tabulators**

State law requires that the public test:

- 1) be conducted by processing a pre-audited group of ballot cards marked so as to record a predetermined number of valid votes for each candidate and on each public question on the ballot; and
- 2) include for each office on the ballot an overvote to test the ability of the automatic tabulating machines to reject the votes.

Additionally, for ballot card system that have a hybrid of ballot card and DRE system features, the public conducted by the entry of a pre-audited group of ballots, with at least ten (10) ballots cast by using the headphone or a sip/puff device, so as to record a predetermined number of valid votes for each candidate and on each public question, and include at least one (1) ballot for each office and public question that has an overvote in order to test the ability of the voting system to reject the overvotes. (IC 3-11-13-24)

The county election board of each county planning to use optical scan ballots carts must randomly select at least ten percent (10%) of the automatic tabulating machines for testing to ascertain that the machines will correctly count the votes cast for all candidates and on all public questions. If an individual attending the public test requests that additional automatic tabulating machines be tested, then the county election board shall randomly select and test additional machines up to a maximum of fifteen percent (15%) of the machines that will be used at the next election. (IC 3-11-13-22)

## ePollbooks

Like voting systems, ePollbooks must meet certain standards and protocols, which are reviewed by the Voting System Technical Oversight Program (VSTOP), before the ePollbook may be used in Indiana. Before each election, ePollbook acceptance testing occurs. Acceptance testing at the county level is an integral part of the overall process of preparing a county to use ePollbooks. After certification, each county which has contracted for an ePollbooks system will conduct an acceptance test at the time of delivery. This acceptance test will focus primarily on the ability of the ePollbook to communicate with the county server in downloading and uploading appropriate data. Certification of the ePollbook system may be revoked by the Indiana Secretary of State if it fails the acceptance test.

Detailed information about acceptance testing and other ePollbook requirements can be found on the county portal of the statewide voter registration system, as well as, on the Indiana Election Division webpage, <https://www.in.gov/sos/elections/4059.htm>.



# BALLOT LAYOUT

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Generally speaking, the information on ballot cards or electronic voting machines does not change from a primary to a general election. Ballot instructions, order and placement of offices and ballot standards are generally the same between the two elections, though there are subtle differences. For the primary election, the public question and office order in IC 3-10-1-19 must be followed.

Indiana law only permits a voter to receive a primary ballot that lists the candidates of one party. State law *requires* the ballot cards of each party participating in the primary be distinctively marked or be of different colors to be easily distinguishable. (IC 3-10-1-13; 3-10-1-17) However, state law does not require that the primary ballot(s) be printed in any specific colors, so long as this requirement is met. While it is optional for a party symbol to be printed on an optical scan primary election ballot card, the party symbol *must* be used on primary DRE voting system ballot labels. (IC 3-11-14-4)

A box for two sets of poll clerk initials must be placed on the back of a primary, general, municipal, or special election ballot card and the precinct's number or designation. (IC 3-11-13-19) The clerk's signature and seal of the office must be printed on an absentee ballot. (IC 3-11-4-19; 3-11-10-27) In a year where the clerk may be running for re-election, the clerk's signature may NOT be printed on the ballot. A generic seal must also be printed on the absentee ballot (IC 3-5-4-9), and those are available from the Indiana Election Division or the county portal accessible by the statewide voter registration system. DRE ballot labels are not required to have the initials, seal, or county clerk's signature when used for absentee voting at the clerk's office or satellite location, and traveling boards. (IC 3-11-10-26.2(f))

A county election board *may* require a voting system to display both the candidate's name and a ballot number or other candidate designation uniquely associated with the candidate. (IC 3-11-15-13.1)

Candidate filing deadlines dictate when a county election board will have the information needed to begin ballot layout. Please remember the Indiana Election Division will also certify federal, statewide, state legislative, judge and prosecutor candidates and any statewide public question authorized by the Indiana General Assembly to county election boards. State law requires the Division to submit this information no later than 74 days before the primary election and 74 days before a general election. (IC 3-8-2-17; 3-8-7-16)

## Specific Ballot Requirements

In a county that uses ballot cards, the county election board must prepare ballot cards that are uniform in size, quality, and color (IC 3-11-13-11(c)). As noted in previous sections, state law requires ballot cards used in the Democratic and Republican Party primary elections to be distinctively marked or be of different colors to be easily distinguishable. (IC 3-10-1-13; 3-10-1-17) Ballot cards must be of sufficient thickness so that the printing cannot be distinguished from the back of the ballot. A ballot may also contain a ballot variation code to ensure that the proper ballot is used in a precinct. (IC 3-11-2-10(f))

In counties that use DRE ballot labels, the county election board must prepare the ballot label on the electronic voting machine by placing every office up for election, public question, and ballot variation code on the screen of the voting machine, for each primary, municipal, and general election. (IC 3-11-14-3.5(a))

### Cautionary Statement & Instructions

The following paragraphs apply to all ballot methods unless otherwise noted. A cautionary statement must appear, underlined, at the top of all ballots:

"It is a crime to falsify this ballot or to violate Indiana election laws."

In a May primary election, the next statement on the ballot should read: "OFFICIAL PRIMARY BALLOT \_\_\_\_\_ Party (insert the name of political party.)"

After the cautionary statement (and the "official primary ballot" notice, if the ballot is for the May primary election), the following instruction must be given to voters:

- 1) General instructions on how to select candidates and complete the ballot.
  - a. In the primary, general instruction on ballot cards should include, "To vote for a person, darken or shade in the oval (*or circle, or square, or draw a line to connect the arrow*) that associated with the person's name in the proper column."
  - b. In the primary, general instructions on the DRE ballot label should include, "To vote for a person, touch the screen (or press the button) in the location indicated." (IC 3-10-1-19)  
NOTE: Instead of printing these instructions on the ballot, the above notice may be posted inside each voting booth as provided in IC 3-11-2-8(b).
- 2) Independent ticket instructions (Used only if there is an independent Presidential/VP or Gov./Lt. Gov. ticket on the ballot): "A vote cast for an independent ticket will only be counted for the candidates for President and Vice President or governor and lieutenant governor comprising that independent ticket. This vote will NOT be counted for any OTHER independent candidate appearing on the ballot." This applies to a general election only.
- 3) Write-In instructions: "A write-in vote will NOT be counted unless the vote is for a DECLARED write-in candidate. To vote for a write-in candidate, you must make a voting mark on or in the square to the left of the name you have written in or your vote will not be counted." This applies to a municipal or general election only.

When using ballot cards, these instructions must be placed on the ballot below the cautionary statement. (IC 3-11-13-11(k)) When using DRE ballot labels, the instructions can be placed on a ballot label in the same manner as ballot cards or on a separate document posted in the voting booth where a voter can easily read the instructions. (IC 3-11-14-3.5(l))

### Public Questions & Straight Party Devices

Printed below the voter instructions are any authorized public questions. Statewide questions must come first; local public questions come next. While state law does not dictate the order by which multiple local public questions must be placed, a general rule of thumb is to list them in the order certified to the county election board. NOTE: A judicial retention question is not a public question, and appears later on the ballot as covered below.

After the title of each statewide or local public question are placed these instructions, "To vote on this public question, make a voting mark on or in the square to the left of the word "YES" or "NO". After the instruction place any explanatory text for the public question and the question itself in the following manner:

(The explanatory text for the public question, if required by law)  
"Shall (insert public question)?"

YES  
 NO

After all public questions have been added to the ballot, the straight party ticket option is then placed on a general or municipal election ballot. (Remember, straight party voting does NOT apply to a primary election!) This is a ballot option that gives the voter the ability to select one political party as a means for having a vote count for candidates of that political party on the ballot. In 2016, the Indiana General Assembly amended the Indiana Election Code to allow the straight ticket option to only count in elections for partisan office where only one person could be elected.

The following straight party ticket instructions must be placed on the general or municipal election ballot (omit this language in a primary election):

“(1) To vote a straight (insert political party name) ticket for all (insert political party name) candidates on this ballot, except for candidates described in (2) below, make a voting mark on or in this circle and do not make any other marks on this ballot.

(2) To vote for any candidate for an at-large office (insert county council, city common council, town council, or township board if those offices appear on this ballot), you must make another voting mark for each candidate you wish to vote for. Your straight party vote will not count as a vote for any candidate for that office.

(3) If you wish to vote for a candidate seeking a nonpartisan office or on a public question, you must make another voting mark on the appropriate place on this ballot.”

In a presidential general election, there must also be instructions stating a ballot cast for candidates for President and Vice President are votes cast for electors and alternate electors pledged to support the candidates. (IC 3-10-4-3)

The straight party ticket (and presidential elector in presidential election years) instructions can either be placed on the ballot above of names of the political parties or be placed on a separate document inside the voting booth where the voter can easily read the instructions. (IC 3-11-13-11(l); IC 3-11-14-3.5(m))

Following the instructions, the name of each political party and independent ticket, along with the party device (a ballot symbol chosen by the political party), is placed on the ballot. The ballot device (party ticket symbol) must be placed immediately below or beside the party’s name. The party name and device must be of uniform size and type. (IC 3-11-13-11(l); IC 3-11-14-3.5(m))

### **Ballot Office Order**

Immediately after the straight party section is the placement of each office up for election in the precinct the ballot is built. (IC 3-11-13-11(e); IC 3-11-14-3.5(e)) There are differences in office order between the primary and municipal or general election. For the primary election, the office order is outlined in IC 3-10-1-19. For municipal or general elections, the office order for ballot cards is set forth in IC 3-11-13-11(e) and the office order for DREs is set forth in IC 3-11-14-3.5(e).

When an office is up for election (in a precinct) it should be placed in the following order:

For General Elections		For Primary Elections	
Federal & State Office		Federal & State Office	
	President & Vice President of the United States		President of the United States
	United States Senator		United States Senator
	Governor & Lt. Governor		Governor
	Secretary of State		United States Representative
	Auditor of State	Legislative Office	
	Treasurer of State	State Senator	
	Attorney General	State Representative	
	Superintendent of Public Instruction	Circuit & County Judicial Office	
	United States Representative		Judge of the Circuit Court
State Legislative Office			Judge of the Superior Court
State Senator			Judge of Probate Court (St. Joseph County Only)
	State Representative		Prosecuting Attorney
	Circuit & County Judicial Office		Circuit Court Clerk
	Judge of Circuit Court	County Office	
	Judge of Superior Court		County Auditor
	Judge of Probate Court (St. Joseph County Only)		County Recorder
	Prosecuting Attorney		County Treasurer
	Clerk of the Circuit Court		County Sheriff
County Office			County Coroner
	County Auditor	County Surveyor	
	County Recorder	County Assessor	
	County Treasurer	County Commissioner	
	County Sheriff	Single County Executive	
	County Coroner	County Council Member	
	County Surveyor	Township Office	
	County Assessor	Township Assessor	
	County Commissioner	Township Trustee	
County Council Member (Single Member Districts Only)	Township Board Member		
Township Office		Judge of the Small Claims Court	
	Township Assessor		Constable of the Small Claims Court
	Township Trustee		City Office

	Township Board Member (Single Member Districts Only; Marion County Only)		Mayor
	Judge of the Small Claims Court (Marion County Only)		Clerk or Clerk-Treasurer
	Constable of the Small Claims Court (Marion County Only)		Judge of City Court
City Office			City-County or Common Council Member
	Mayor	Town Office	
	Clerk or Clerk-Treasurer		Clerk-Treasurer
	Judge of City Court		Judge of Town Court
	City-County Council or Common Council Member (Single Member Districts Only)		Town Council Member
Town Office		Political Party Office	
	Clerk-Treasurer		Precinct Committeeman
	Judge of Town Court		State Convention Delegate
	Town Council Member (Single Member Districts Only)		
At-Large Offices (Vote for More Than One)			
	County Council Member		
	Township Board Member		
	Common Council Member		
	Town Council Member		
Non-Partisan School Board Office			
	District Seat		
	At-Large Seat(s)		
Judicial Retention Questions			
	Justices of the Supreme Court		
	Judges of the Court of Appeals		
	Judge of Tax Court		
	Authorized local judicial retention questions		
	Local nonpartisan judicial offices (Allen and Vanderburgh County Only)		

NOTE: In both a primary and general election, at the discretion of the county election board, Prosecuting Attorney, Clerk of the Circuit Court, and County Offices may be placed on the ballot card before county judicial offices (Circuit or Superior Court Judge). (IC 3-10-1-19.5; IC 3-11-13-11(e)); IC 3-11-2-12.5; IC 3-11-14-3.5(e))

If there is any office that has multiple districts on the ballot, *such as a County Council that has seats for District 1, 2, 3, and 4 up for election*, then the districts must be placed alphabetically or numerically. Offices may be listed continuously either vertically or horizontally, and can be placed on separate pages of the ballot. (IC 3-11-13-11(e)) Each office name must be of uniform size and in bold type. At a primary election, if there is an office on the ballot that includes both district and at-large seats then the at-large seats must be placed first and then the district seats. (IC 3-11-13-11(f); IC 3-11-14-3.5(f); IC 3-10-1-19.2)

At a general or municipal election, political parties on the straight party ticket and candidates for partisan political office must be placed in the following political party order based on the results of *the last Secretary of State election in the county*.

1. The party whose candidate received the highest amount of votes.
2. The party whose candidate received the second highest amount of votes.
3. Any other party who had a candidate on the ballot at the last Secretary of State election, based on what order the candidate finished in that election.
4. Any other party that did not have a candidate on the ballot at the last Secretary of State election and all independent tickets, in the order the candidates filed their petitions to get on the ballot. (IC 3-11-13-11(g); IC 3-11-14-3.5(g))

Each office placed on the ballot must have its own instructions on how many candidates can be elected. These instructions must be placed immediately below the office name. (IC 3-11-13-11(f); IC 3-11-14-3.5(f)) For offices where only one person can be elected the instructions are, "Vote for one (1) only." For an office where more than one person can be selected the instructions are, "Vote for not more than (insert the number of candidates to be elected) candidate(s) for this office. To vote for this office, you must make a voting mark for each candidate you wish to vote for. A straight party vote will not count as a vote for any candidate for this office." (The second sentence does not need to be used during a primary election.) School board offices have slightly different instructions, "Vote for not more than (insert the number of candidates to be elected) candidate(s) for this office." (IC 3-11-13-11(i); IC 3-11-14-3.5(i))

After the specific office instructions place the candidates' names for the specific office. (IC 3-11-13-11(a); IC 3-11-13-18; IC 3-11-14-3.5(a)) If there is an office on the ballot where more than one person can be elected, then candidates from the same party should be listed together, arrange alphabetically according to the candidate's surname. *Example: Harold Hadley, Richard Ristine, and Otis Bowen are the three Republican candidates running for County Council At-Large, where three may be elected. When these candidates are placed on the ballot together they must be listed alphabetically by surname (last name) with Otis Bowen first, Harold Hadley second, and Richard Ristine third.* However, in a primary election, all candidates for an office on a party specific ballot must be listed in alphabetical order by surname. In Lake County, candidates on a party primary ballot, except candidates for precinct committeeman and state convention delegate, are placed in random order using a lottery conducted by the Lake County Board of Election and Registration. (IC 3-10-1-13)

Next to each candidate should be placed the name of the candidate's party or the word "Independent" if the candidate filed as an independent. (IC 3-11-13-11(h); IC 3-11-14-3.5(h)) For school board candidates the word "Nonpartisan" must be placed next to each candidate's name. (IC 3-11-13-11(e); IC 3-11-14-3.5(e); 3-11-2-12.9) The candidate's name and partisan designation must be uniform capital letters and have uniform space between each name. (IC 3-11-13-11(h); IC 3-11-14-3.5(h))

If candidates for a particular office carry over onto another page on the ballot card, there must be a note of the ballot card that clearly states that more candidates are on the other page. (IC 3-11-13-13) If the ballot card is multiple pages, the instructions for how many candidates a voter can elect for a particular office can be placed above or to the side of the candidates' names and the candidate's party name can be abbreviated. (IC 3-11-13-12)

### Hand Counted Paper Ballots

Hand counted paper ballots are a ballot type that is a rarely used option in Indiana, except in some small town elections. Paper ballot layouts are similar to ballot cards. Paper ballots requirements, layout, and instructions can be found in IC 3-11-2.

## Write-In Voting

All general and municipal election ballots must permit a voter to cast a write-in vote. This requirement includes absentee ballots. A column or row for write-in candidates is NOT required if there are no declared write-in candidates for that office with one exception. Procedures to permit write-in voting must be included on the ballots where candidates for federal offices appear even if no declared write-in candidate name President/Vice-President, U.S. Senate, or U.S. House is certified to the county by the Indiana Election Division. (IC 3-11-2-6)

When a column or row for write-in voting is required, each type of voting system must provide an opportunity to cast a write-in vote by using one of the following formats:

- 1) Ballot Card Voting Systems: Ballot cards must be folded or accompanied by a secrecy envelope to ensure the secrecy of a write-in vote. A write-in vote cast on a ballot card voting system must include both the name of the candidate and the title of the office. (IC 3-11-13-18)
- 2) Electronic (DRE) Voting System: Is designed so that the write-in vote is cast directly upon the voting unit in the proper space. (IC 3-11-14-23)
- 3) Paper Ballots: When required, an additional column will be placed to the right of all party and candidate columns (boxes) on the ballot. (IC 3-11-2-6)

### Special Military Write-In Ballot (FWAB)

A special ballot, the "federal write-in absentee ballot" (FWAB) is prepared for military and overseas voters by the Department of Defense. On this ballot, a voter may write-in the names of candidates for the any offices, including federal, statewide, legislative, and local, as well as votes on any public questions.

### Ballot Printing Errors

Unfortunately sometimes all of the safeguards don't work. It is always, always, always a good idea to have as many people as possible proof the ballots before the ballots go to print.

Not later than the Monday before distributing ballots and voting systems to the precincts in the county, the county election board shall notify the county chairman of each major political party and, upon request, the chairman of any other bona fide political party in the county, that sample ballots are available for inspection . (IC 3-6-5-14)

When ballots with omissions, misprints or improperly set up systems make it into the hands of absentee voters (or worse still, election day voters) the county election board that printed the ballots must act quickly to reduce the possibility that an election result will be contested and overturned due to the ballot error.

Some ballot errors are harmless. State law specifically permits an election board to authorize the use of ballots with minor errors if the election board does not believe that the voters will be confused by the error *and* no voter objects to the use of the ballots. (IC 3-11-2-16) Other ballot errors are critical, and can lead to a *court-ordered special election if a candidate contests the election due to a ballot error*.

NOTE: If the election board is notified of a “critical error” during the absentee ballot process, there are procedures to permit voters to “recast” defective absentee ballots. (IC 3-11-10-1.5) The voter must first file a request for a replacement absentee ballot (ABS-5) before the voter is issued another absentee ballot.

# ELECTION RESULTS TABULATION

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Generally, the specific choice a voter makes on the ballot is tabulated by the voting system. Exceptions to this rule concern straight party voting, which are noted below in the “General Election Ballot” section. For statutory descriptions of election results tabulation see IC 3-12-1.

It’s also important to note a voter may undervote or overvote in one or more contests on the ballot. Not voting in a contest or selecting too many candidates in a race does not void a person’s entire ballot. See “Overvote Feature” section for more details.

## Primary Election Ballot

In Indiana, voters must choose a Democratic or Republican Party ballot in the primary election, and poll clerks record this choice in the poll book. The choice between the parties is required because the major political parties are deciding which candidates to nominate for November’s general or municipal election ballot. A voter may only participate in one partisan primary election. On occasion, there may be a special election held on the same day as the primary election. Should there be a non-partisan public question, then a separate “non-partisan” ballot is to be offered to voters who do not want to vote in a partisan primary.

Election administrators should pay close attention to the “Ballot Layout” chapter of this *Guide* as state law has additional formatting requirements for a primary election ballot. Voting is straightforward on the primary election ballot. Voters make individual selections, and the voting system will record those choices. While Indiana law permits “straight party” voting, this tabulation feature is only available in a general or municipal (November) election.

## General Election Ballot

In a general or municipal (November) election, Indiana law permits voters to 1) use a straight party device and make individual selections or 2) ignore the straight party device and make individual selections.

In Indiana, the Democratic, Libertarian, and Republican parties currently qualify for “straight party” designation on a municipal or general election ballot. If a voter selects one of the three party devices, then candidates of the political party will receive the voter’s vote without the need to make additional selections in partisan races. There are two exceptions to this rule:

- 1) In at-large partisan race where a voter votes for more than one candidate, state law requires the voter to make individual selections even when those candidates are aligned with a political party. (IC 3-11-7-4; IC 3-11-7.5-10)
- 2) Non-partisan school board elections, public questions, or judicial retention questions requires a voter to make separate marks for those questions or contests, if they so desire. (IC 3-11-13-14; IC 3-11-14-23)

A voter does NOT need to use the straight party device when voting in the November election. It’s simply a “shortcut” to support candidates of one political party without the need for making individual candidate selections in each partisan contest. Voters make skip over the straight party device, review each contest, and make individual selections in each race.

Sometimes a voter will use the straight party device and also make individual selections in partisan races. Doing both – using straight party AND making individual choices – does not void a person’s ballot, void an individual race (unless the voter overvoted by selecting more candidates than the instructions permit), or cast two votes for a candidate in a race where only one candidate can be selected. Instead, the voting system is programmed to follow IC 3-12-1-7, which essentially allows the specific individual choice in a race to override the straight party selection.

For instance, Sally uses the Democratic Party straight party device but also makes an individual mark in the dogcatcher race for the Republican candidate. All Democrat candidates in “vote for one” races will receive her vote as a result of her straight party choice except in the dogcatcher race where the Republican candidate will get her vote.

Another common example: Roger uses the Republican straight party device and also votes for Republican candidates in all “vote for one” races. The voting system will ignore the straight party choice and cast a vote for all of the individual Republican candidates. (This example assumes he votes for all Republican candidates and does not skip a partisan “vote for one” contest.)

This nuanced tabulation is less obvious on ballot cards, as the optical scan ballot reader designed to read a person’s ballot and only provide an alert when a race is overvoted. On the other hand, a direct record electronic (DRE) voting system is required to show a voter which candidates are receiving a vote before the ballot is cast, and DRE systems are not permitted to allow an overvote to occur.

### **When Ballot Tabulation May Occur**

State law does not permit counties to begin counting ballots until election day. Absentee paper ballots or optical scan ballot cards are to remain sealed and tabulated at the election day precinct or central count location, depending on the county’s method of counting absentee ballots. Counties using DRE systems for in-person early voting may upload the precinct results to the election management system before the polls close on election day, but may not release results until 6:00 PM prevailing local time or after the polls close, if extended by court order. (IC 3-12-3-14; IC 3-14-4-10)

# ABSENTEE VOTING

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NOTE: While this *Guide* provides a roadmap for the county election administrator to follow, it does not replace instructions found in Title 3 of the Indiana Code. In addition to reviewing this section, county election administrators are encouraged to review IC 3-11 and IC 3-11.5, where absentee procedures are largely covered. County users may also find additional training materials and standard operating procedures on the county portal of the statewide voter registration system.

A person who cannot be physically present to vote at the polls on election day does not lose the person's right to participate in the electoral process. In Indiana, qualified voters eligible to vote by absentee ballot may select the appropriate method for casting the ballot: 1) by mail, 2) in-person "early voting" in the office of the circuit court clerk, or 3) by travelling board. Military and overseas voters may request an absentee ballot to be delivered by fax, email, or mail. Each method has its own state-prescribed form, and a voter should use the current version of the form.

## Absentee Voting By Mail

A qualified voter may request that the ballot be mailed to the voter. The ballot is mailed to the voter at the address listed on the application, whether outside or inside the voter's county of residence. (IC 3-11-4-18; IC 3-11-10-24) In this case, a voter is mailed an absentee ballot, voting instructions, and a postage fully prepaid return envelope that includes an affidavit for the voter to sign. (IC 3-11-4-20; IC 3-11-4-21)

A voter who is otherwise qualified to vote in person may vote by absentee ballot if the voter meets one of the following qualifications (IC 3-11-10-24; 3-11-10-25):

- 1) Absent from the county on election day and has a specific, reasonable expectation of being absent during the entire 12 hours that the polls are open;
- 2) Absent from the precinct of the voter's residence on election day because of working as a precinct election officer, a watcher, a challenger or pollbook holder, or as a person employed by an election board to administer the election for which the absentee ballot is requested;
- 3) Confined on election day to the voter's residence, to a health care facility, or to a hospital because of an illness or injury during the entire 12 hours that the polls are open;
- 4) A voter with disabilities;
- 5) An elderly voter (a voter at least 65 years of age);
- 6) Prevented from voting due to the voter's care of an individual confined to a private residence because of illness or injury during the entire 12 hours that the polls are open;
- 7) Scheduled to work at the person's regular place of employment during the entire twelve (12) hours that the polls are open;
- 8) Prevented from voting due to observance of a religious discipline or religious holiday during the entire 12 hours the polls are open; or
- 9) Participates in the Attorney General's address confidentiality program (for domestic abuse).
- 10) A voter who is a member of the military or public safety officer (meaning an individual who is one of the following):
  - a. A member of a fire department (as defined in IC 36-8-1-8).
  - b. An emergency medical service provider (as defined in IC 16-41-10-1).
  - c. A member of a police department (as defined in IC 36-8-1-9).
  - d. A correctional officer (as defined in IC 5-10-10-1.5).
  - e. A state police officer.
  - f. A county police officer.
  - g. A police reserve officer.

- h. A county sheriff.
  - i. A deputy sheriff.
  - j. An excise police officer.
  - k. A conservation enforcement officer.
  - l. A town marshal.
  - m. A deputy town marshal.
  - n. A postsecondary educational institution police officer appointed under IC 21-17-5 or IC 21-39-4.
  - o. A probation officer.
  - p. A paramedic.
  - q. A volunteer firefighter (as defined in IC 36-8-12-2).
  - r. An emergency medical technician or a paramedic working in a volunteer capacity.
  - s. A member of the armed forces of the United States.
  - t. A member of the Indiana Air National Guard.
  - u. A member of the Indiana Army National Guard.
  - v. A member of a state or local emergency management agency.
  - w. A member of a consolidated law enforcement department established under IC 36-3-1-5.1.
- 11) A voter is a “serious sex offender” as defined by state law (IC 35-42-4-14(a))
- 12) A voter is prevented from voting due to the unavailability of transportation to the polls.

#### **Photo Identification Requirements to Vote by Mail**

An absentee voter casting a ballot by mail is not required to provide proof of identification when casting the absentee ballot. However, certain first-time voters who registered to vote by mail are to be asked for proof of residency in order for their absentee ballot to be counted. A copy of a valid Indiana driver’s license or state ID card where the address on the ID matches the voter’s registration is one of several acceptable residency documents, including a utility bill, paycheck stub, or school transcript. See “Processing Absentee Applications” section for more details. (IC 3-7-33-4.5)

#### **Absentee by Mail (ABS-MAIL) Application Deadline**

An application for an absentee ballot to vote by mail (ABS-MAIL) must be received by the circuit court clerk or the Lake County Election Director not earlier than the date the registration period resumes following an election and not later than 11:59 p.m. (prevailing location time) on the eighth day before election day, if the application is a mailed, emailed, faxed or hand-delivered. (IC 3-11-4-3)

As noted above, “received” means the clerk or Lake County Election Director has physical custody of the form and it has been filed with the office. Absentee applications to vote by mail that are postmarked on or before the absentee ballot application deadline date and received after the deadline must be rejected! Deadline dates are noted in the instructions on the ABS-Mail form and in several Indiana Election Division publications.

**A person who receives a completed absentee ballot application from another person must indicate on the application the date the person received the application and file the application with the county election board by noon ten (10) days after receiving it, or by the applicable absentee ballot deadline, whichever occurs first. (IC 3-11-4-2(g)) However, this requirement for timely delivery does not apply to a postal employee or to an employee of a bonded courier company.**

A person, other than a postal employee or an employee of a bonded courier company, who files an absentee ballot application other than the person’s own application, must complete and file an affidavit (ABS-17). Please read “Absentee Ballot Application Forms” section of this *Guide* for more details. (IC 3-11-4-2(h))

### **Returning Absentee Ballots Received By Mail**

A voter who receives an absentee ballot by mail must mark the ballot in secret and seal the ballot in the envelope provided. After voting the mailed absentee ballot, the voter must then deliver the sealed absentee ballot envelope to the county election board by 1) depositing the envelope in the mail; 2) delivering the envelope in person; or 3) delivering the envelope to a member of the voter's household, bonded courier company, or the voter's attorney in fact. If any other person receives from a voter a ballot prepared by a voter for voting, the person commits a Level 6 felony. (IC 3-14-2-16)

Any person who delivers a voted absentee ballot to the county election board must complete an affidavit (Form ABS-19) that contains:

- 1) information concerning the voter;
- 2) information concerning the person delivering the voted absentee ballot;
- 3) the person's statement that the person is delivering the absentee ballot as a member of the voter's household or the voter's attorney in fact (if the individual is an attorney in fact, they must attach a copy of the power or attorney unless it has already been filed with the county election board);
- 4) the date and location where the absentee ballot was delivered to this person;
- 5) a statement that the individual delivering the absentee ballot has complied with Indiana laws governing absentee ballots; and

a statement that the affidavit is executed under the penalties of perjury, including a statement of the penalties for perjury. (IC 3-11-10-24(d))

A voted absentee ballot to vote by mail must be received by the circuit court clerk or the Lake County Election Director on or before election day. For counties performing a central count of absentee ballots, the absentee ballot must be received on or before 12:00 p.m. (NOON), prevailing local time. (IC 3-11.5-4-3) Counties sending absentee ballots out to precinct polling locations must receive an absentee ballot not later than the time set for the last ballot delivery. (IC 3-11-10-3)

As noted above, "received" means the clerk or Lake County Election Director has physical custody of the ballot by the deadline time. Absentee vote-by-mail ballots that are postmarked on or before election day and received after election day must be rejected! Deadline dates are noted in several Indiana Election Division publications.

On election day if a voter has not yet returned their absentee ballot to the county election board they can hand deliver the ballot sealed in the absentee ballot envelope to the county election board before the deadline noted above, or take their absentee ballot to their polling location, surrender it to the precinct inspector, and vote a regular ballot. (IC 3-11-10-31; IC 3-11.5-4-18)

If a voter applies for an absentee ballot by mail, but has not received the ballot and appears at the polls on election day, the voter may vote a regular ballot in person at the polls after completing an affidavit documenting that the person has not received the requested absentee ballot. (Form PRE-5) (IC 3-11-10-31; IC 3-11.5-4-18)

### **Requested a Replacement Vote-By-Mail Absentee Ballot**

If a voter does not receive a mailed absentee ballot before election day or if the absentee ballot is spoiled or destroyed the county election board may issue a replacement ballot, after receiving a request form from the voter to do so. (ABS-5). The replacement ballot must be sent with a new absentee ballot security envelope. It is also advisable that a voter be instructed to ignore or destroy the materials sent to them with their spoiled absentee ballot. Should a voter's original and replacement absentee ballot arrive timely at the county election board, the original ballot should be rejected and the replacement ballot should be processed. (IC 3-11-4-17.7; 3-11-4-17.8; 3-11-10-1.5)

## Absentee Voting by Traveling Board

A qualified voter confined within the county because of illness or injury, a voter caring for a confined person, or a disabled voter whose precinct is not accessible to a disabled voter may vote an absentee ballot before a bi-partisan traveling absentee voter board. An absentee ballot voted before a traveling absentee voter board must be cast on *any of the nineteen (19) days* immediately preceding the election. (IC 3-11-10-25)

For voters voting absentee by mail or before a traveling board, a voter who is otherwise qualified to vote in person may vote by absentee ballot if the voter meets one of the following qualifications (IC 3-11-10-25):

- 1) Expects to be confined due to illness or injury;
- 2) Expects to be caring for a confined person at a private residence; or
- 3) A voter with disabilities who believes the voter's polling place is not accessible.

State law permits a traveling board to go *OUTSIDE* of the county to provide a ballot to a confined voter IF the county election board unanimously agrees to permit out-of-county travel. (IC 3-11-10-25) Also, a disabled voter who is unable to make a voting mark on the ballot or sign the absentee ballot secrecy envelope **MUST** vote before a traveling absentee voter board. (IC 3-11-10-24)

### Photo Identification Requirements for Traveling Board

An absentee voter casting a ballot before a traveling board is not required to provide proof of identification when casting the absentee ballot. However, certain first-time voters who registered to vote by mail are to be asked for proof of residency in order for their absentee ballot to be counted. A copy of a valid Indiana driver's license or state ID card where the address on the ID matches the voter's registration is one of several acceptable residency documents, including a utility bill, paycheck stub, or school transcript. See "Processing Absentee Applications" section for more details. (IC 3-7-33-4.5)

### Traveling Board Application (ABS-TRAVELING BOARD) Deadline

An application for an absentee ballot must be received by the circuit court clerk or the Lake County Election Director not earlier than the date the registration period resumes following an election and not later than 12:00 p.m. (noon), prevailing local time, on the day before the Election day. The application may be a mailed, emailed, faxed, or hand-delivered application from a confined voter or person caring for a confined person and the applicant requests that the ballot is delivered by a traveling board.

As noted above, "received" means the clerk or Lake County Election Director has physical custody of the form. Applications received after this deadline date, even if postmarked on or before the deadline date, must be rejected. However, if the county election board determines by a unanimous vote that an otherwise qualified voter has been hospitalized or injured after the deadline to apply for an absentee ballot, the board may authorized the person to vote by absentee ballot. (IC 3-11-4-1(b))

NOTE: traveling board appointments are limited and are scheduled at a mutually agreeable time for the voter and county election board. Voters should provide a reliable phone number or email address, if possible, for county election officials to schedule an appointment.

A traveling board may not be denied access to a voter's place of confinement if the voter is confined due to illness or injury if the traveling board requests access at a time agreed to by both the board and the voter, and the time is during the regular office hours of the circuit court clerk.

## Traveling Board Ballot Deadline

Traveling board appointments must conclude the day before the election. (IC 3-11-10-25) However, if the county election board determines by a unanimous vote that an otherwise qualified voter has been hospitalized or injured after the deadline to apply for an absentee ballot, the board may authorized the person to vote by absentee ballot. (IC 3-11-4-1(b))

## Absentee Voting In-Person at the Clerk's Office ("Early Voting")

A qualified voter may vote before an absentee voter board at the county courthouse or other designated location for absentee voting in the county. An absentee ballot voted before an absentee voter board must be cast *not more than 28 days before the election nor later than noon on the day before the election.* (IC 3-11-10-26)

If a voter votes at the clerk's office or a satellite office, the voter is not required to attest that the voter is confined, a voter with disabilities, elderly, working at the polls in a precinct other than where the voter resides, a specific, reasonable expectation of being absent from the county on Election day, or working during the entire 12 hours the polls are open, observing a religious holiday, participating in the Attorney General's confidentiality program, or is a "serious sex offender", or unable to obtain transportation to the polls. This exemption from stating a reason to vote by absentee ballot does not apply to absentee voting by mail or by traveling board. (IC 3-11-4-1; 3-11-4-2; 3-11-4-18; 3-11-10-24; 3-11-10-25; 3-11-10-26)

All counties must make one location of the Clerk's Office available for in-person, early voting for the 28-days before election day. In addition, the clerk's office location must be open the two Saturdays preceding Election day. Most counties must permit voters to cast absentee ballots for at least seven (7) hours on each of the two (2) Saturdays preceding election day. For counties with a population of less than 20,000, the county election board may reduce the number of in-person, "early voting" hours the clerk's office is open to four (4) on the two (2) Saturdays preceding election day. (IC 3-11-10-26) Early voting hours may be reduced in a special election; see IC 3-11-10-26.5 for details.

More than thirty-five counties in Indiana have moved to a vote center model, which means a voter may vote on election day at any of the locations unanimously approved by the county election board. The vote center law not only requires the county Clerk's office to be open for early voting at the time and dates noted above, but also requires at least one vote center to be open the two Saturdays before election day. (IC 3-11-18.1-4(17))

Many counties still require a voter to vote on election day at a polling location assigned to their precinct. This is an important distinction from a vote center model not only in the way a person votes on election day, but also for in-person absentee voting. A county election board may adopt a resolution to authorize the circuit court clerk to establish satellite early voting locations (other than the clerk's office) in the county where voters may cast absentee ballots before an absentee voter board. The county election board must adopt such a resolution by unanimous consent of the entire membership of the board. The resolution must state the locations and hours of operation of any satellite offices. The voting procedures at these offices must be substantially the same as the procedures for absentee voting at the clerk's office. (IC 3-11-10-26; IC 3-11-10-26.3)

If the county election board adopts a satellite early voting resolution for a primary election, the locations for the satellite offices and hours at which absentee voting may occur at the satellite offices established for the primary election must be used for the subsequent general or municipal (November) election. (IC 3-11-10-26.3(e)) The county election board does not need to pass a "new" satellite early voting resolution for the general or municipal election if such a resolution was adopted for the primary election. However, a county election board may want to add more sites to the primary election satellite early voting plan. In this case, the county election board must unanimously agree to the satellite early voting locations that are to be opened in a general or municipal election that are in addition to those offered in the primary election.

### **Photo Identification Requirements**

An absentee voter casting a ballot before an absentee board in the office of the circuit court clerk (or a satellite office of the clerk) before election day is required to provide proof of identification in the same manner as a voter who casts a vote in person at the polls on election day. (See “Photo Identification” section of this manual.) (IC 3-11-10-26)

If the voter is unable or declines to present the identification, the voter is permitted to cast a provisional ballot.

### **In-Person Early Voting Application (ABS-IN PERSON) Deadline**

An application for an absentee ballot must be received by the circuit court clerk or the Lake County Election Director not earlier than the date the registration period resumes following an election and not later than noon on the day before election day, if the voter is voting absentee in person at the clerk’s office or satellite absentee voting facility. Counties will have paper applications on-site for a voter to complete, though many counties are using electronic pollbooks (ePollbooks), which eliminate the need for a paper application.

NOTE: Counties may use an ePollbook only during early voting OR during early voting and on election day. (IC 3-7-29-6) State law allows ePollbook counties to eliminate the in-person absentee application if certain procedures are followed. See IC 3-11-10-26(d) for details.

### **In-Person Early Voting Ballot Deadline**

The deadline for in-person early voting at the Clerk’s Office or satellite early voting location, including designated vote centers, is 12:00 p.m. (noon), prevailing local time, the day before the election. However, a person who queued up in the line to absentee vote in-person on or before the noon deadline must be permitted to vote. When the deadline to absentee vote in person at the clerk’s office or satellite location arrives, a person designated by the clerk must determine who the last person in line to vote is and do one of the following:

1. Write down the name of each voter.
2. Stamp each voter’s hand.
3. Stand, or designate another individual to stand, immediately behind the last voter who may vote.

## **Absentee Applications**

Whether submitted in person or by mail, absentee ballot applications must be made on state approved forms, except for the Federal Postcard Application (FPCA) form for military and overseas voters. Applications must be mailed, emailed, or faxed, upon request, to voters and party central committees. (IC 3-11-4-4)

A county election board may receive absentee ballot applications on the date voter registration opens for the next election. For example, a voter may request an absentee ballot for the May 2018 primary election as early as December 1, 2017, or the date voter registration “opens” for the primary election. Applications received before this deadline are early and may not be filed or processed by county election officials. Absentee application deadlines are noted below. (IC 3-11-4-3)

Absentee ballot applications must require the applicant to swear or affirm that all of the information set forth on the application is true to the best of the applicant’s knowledge or belief. The absentee ballot application must also allow an individual accepting a completed application from another person to include the date the individual received it, other than absentee applications for voting in the clerk’s office or a satellite location. The absentee ballot application must also require a person who assisted with the completion of the application to swear under the penalties of perjury to the statements required to be made by the assisting person on the application. The absentee ballot application must also set forth the penalties for perjury. These absentee ballot application requirements do not apply to certain military and overseas voters who swear an oath specified under federal law.

A voter must sign the voter's own absentee ballot application, except for certain voters with disabilities. If a disabled voter cannot sign the application, the voter can name a person to hold the voter's power of attorney, and this person may then sign the absentee application for the voter. In addition, the voter may designate an individual eligible to assist the voter under IC 3-11-9-2(a) to sign the application on behalf of the voter and add the individual's name to the application. (IC 3-11-4-2)

A person may provide another person with a "pre-completed" absentee ballot application with the following items provided:

- 1) the voter's name;
- 2) registration and mailing address, if the same; and
- 3) date of birth.

However, a person is prohibited from providing another person with an absentee ballot application with the following items "pre-completed" on the application:

- 1) the address to mail the ballot (other than the individual's own registration address);
- 2) the party ballot choice in a primary election;
- 3) the types of absentee ballots (such as presidential only, or school board only);
- 4) the reason why the voter is qualified to vote absentee by mail or before a traveling board; and
- 5) the voter identification number.

The county election board shall deny a pre-completed absentee ballot application if the application is challenged by a county election board member or absentee voter board member in a sworn affidavit (ABS-20), and the county election board, after conducting a hearing, determines that the absentee ballot application violates this requirement. (IC 3-11-4-2)

If a person assists another person in completing the part of the absentee ballot application, the person assisting must state the following information on the application under the penalties of perjury:

- 1) The name, address, and telephone numbers of the person assisting.
- 2) The date of the assistance.
- 3) That the individual assisting complied with state laws regarding submitting applications (such as timeliness).
- 4) That the person assisting had no reason to believe that the applicant was ineligible or did not properly complete and sign the application.

A person who receives a completed absentee ballot application from another person must file the application with the county election board by noon, prevailing local time, ten (10) days after receiving it, or by the applicable absentee ballot deadline, whichever occurs first. (IC 3-11-4-2(g)) However, this requirement for timely delivery does not apply to a postal employee or to an employee of a bonded courier company.

A person, other than a postal employee or an employee of a bonded courier company, who files an absentee ballot application other than the person's own application, must complete and file an affidavit (ABS-17) stating the following:

- 1) The name, address, and telephone numbers of the person filing the application.
- 2) That the individual filing the application complied with state laws regarding submitting applications.
- 3) The date (or dates) that the absentee ballot applications attached to the affidavit was received.
- 4) That the person filing the application had no reason to believe that the applicant was ineligible or did not properly complete and sign the application.
- 5) That the affidavit is completed under the penalties of perjury (with those penalties being set out on the affidavit).

The county election board shall record the date and time the affidavit was filed. (IC 3-11-4-2)

## **Absentee Application Deadlines**

A voter who is eligible to vote by absentee ballot must first file a state-approved application form requesting the ballot. Absentee applications are not kept on file for all future elections; instead, an eligible voter must submit an absentee application in each election he wants to vote absentee. (Military and overseas voters are the exception, if the Federal Post Card Application (FPCA) is filed with county election officials.)

As noted above, requests for an absentee ballot must be made on current or grandfathered forms. County election officials should review the forms order signed by the co-directors of the Indiana Election Division to determine which versions are acceptable for use in an election.

An application for an absentee ballot must be received by the circuit court clerk or the Lake County Election Director not earlier than the date the registration period resumes following an election and not later than the following dates: (IC 3-11-4-3)

- 1) Form ABS-In Person: Noon, prevailing local time, on the day before election day, if the voter is voting absentee in person at the clerk's office or satellite absentee voting facility. If the county uses an electronic poll book and provides optical scan absentee ballots, and if the election board has adopted a procedure under IC 3-11-10-26(d) (which does not require a separate absentee application form), then a voter must be in the act of voting or in line to vote under IC 3-11-10-29.2(c) by this deadline.
- 2) Form ABS-Traveling Board: Noon, prevailing local time, on the day before the election day, if the application is a mailed, emailed, faxed, or hand-delivered application from a confined voter or person caring for a confined person and the applicant requests that the ballot is delivered by an absentee (traveling) voter board.
- 3) Form ABS-Mail or Form ABS-Attorney General: 11:59 p.m. on the eighth (8th) day before election day, if the application is a mailed, emailed, faxed or hand-delivered application from a voter wanting to vote by mail. (IC 3-11-4-3)

For clarification, "received" means the clerk or Lake County Election Director has the absentee application in their possession, whether it be mailed, hand-delivered, faxed, or emailed. Absentee applications mailed on or before the deadline date as determined by the absentee method (mail, in-person, traveling board) and received after the proper deadline date may not be processed. Unlike voter registration forms, postmark dates on absentee applications are not to be considered if the application was received after the deadline.

The exception to this rule are any absentee ballot applications timely received by the Indiana Election Division or county election official that are mailed to county election officials on or after the associated deadline date for the absentee method. Those applications are to be treated as "timely" received by the county election official associated to the voter, and are subject to the same review to determine if an absentee ballot is to be issued to the voter. (IC 3-11-4-3)

If the county election board determines by a unanimous vote that an otherwise qualified voter has been hospitalized or injured after the deadline to apply for an absentee ballot, the board may authorized the person to vote by absentee ballot. (IC 3-11-4-1(b))

Special deadlines and procedures apply to absentee ballot applications from Military and Overseas Voters. Please read the "Military and Overseas Voters" section of this chapter, and review the *Military and Overseas Voters' Guide* published by the Indiana Election Division for more details.

## Absentee Application Processing

The county election board (or absentee voter board in clerk's office) must examine each absentee ballot application to determine whether:

- 1) the applicant is a registered voter;
- 2) the information on the application appears to be true; and
- 3) the application has been completed and filed in accordance with Indiana and federal law.

**IMMEDIATELY** upon receiving an application to vote absentee, determine if the applicant is a registered voter of the precinct. If the applicant is not a registered voter of the precinct, their application must be DENIED. NOTE: If an individual's voter registration application is "pending", the absentee ballot may not be sent to the voter until the voter's registration status becomes active. (IC 3-11-4-18 (c)).

If the voter has changed the voter's name or address within the precinct, then the application serves as a change of address or name change request, and the application may be processed. The voter registration record should be updated before election day, if possible, to reflect the address change or name change.

If the new address of the applicant is outside the precinct, the voter must complete a change of address or, if eligible, use the proper form to transfer the voter to the proper precinct. (VRG 4/12) (IC 3-11-4-17.5)

If the voter is required by law to provide additional documentation of the name and address of the voter as part of the registration process, but has not yet provided that documentation to the county voter registration office, then the county election board must approve the application if the application otherwise complies with state law. However, the county election board must add a notation to the application and to the statewide voter registration system indicating that the applicant will be required to provide this additional documentation to the county voter registration office before the absentee ballot may be counted. (IC 3-11-4-17.5(e)) The county election board must also send a notice to the voter stating that the voter is required to provide this additional documentation to the county voter registration office no later than 6 p.m. on election day for the absentee ballot to be counted. (IC 3-11-4-18)

In a primary (May) election, a voter must indicate party preference – Democratic or Republican or non-partisan – on their application. A non-partisan choice is available only if a special referendum election is held in a jurisdiction within the county. See "Ballot Layout" section of this *Guide* for more information. A primary election absentee voter's application must be rejected if party preference is not selected. (IC 3-11-4-18.5)

There is no requirement in the Indiana Election Code for the county election board to contact a voter who submits an incomplete absentee ballot application. Some county election boards have in the past adopted policies that the county clerk or employee in charge of handling absentee ballot applications contact the voter about the incomplete application. If your county election board should decide to adopt similar policies make sure what is passed is uniform and nondiscriminatory to all voters.

County election administrators note the voter's absentee application request in the statewide voter registration system (SVRS). The system allows counties to perform a variety of functions to expedite the mailing of absentee ballots and creating reports to track absentee activity. County election officials may want to refer to training manuals found in the SVRS county portal for more details.

After an absentee ballot application is approved, the voter is provided with a ballot and, if voting by mail, additional materials to aid in completing the ballot. County election administrators must organize the applications according to precinct and applications to absentee vote by mail and traveling board must be copied and made available for public inspection before the voter's returned absentee ballot is attached to the original application and stored for sealed for election day counting. (IC 3-11-10-8; IC 3-11-10-8.5) ABS-Attorney General applications are not subject to public inspection. (IC 3-11-10-8.5) See the "Retention of Election

Records” section of this *Guide* for more information.

### **Challenged Absentee Applications or Voter in “Pending” Status**

A county election board member or absentee ballot voter board member may challenge an absentee ballot application by filing an affidavit. The Indiana Election Division prescribes the form of the affidavit (ABS-20). The affidavit must contain a brief statement of the facts indicating that:

- 1) the applicant is not a voter of the precinct according to the voter registration record;
- 2) the application contains a false statement; or
- 3) the application has not been properly executed or filed in accordance with state or federal law.

If the absentee voter board member or county election board member files a challenge affidavit (ABS-20) and the two absentee board members cannot agree on whether to approve or deny the application, the absentee voter board members shall refer the application to the county election board for determination. (IC 3-11-4-17.5)

If a challenge affidavit challenges an absentee ballot application submitted by a person who is applying to vote absentee in the clerk’s office, the voter shall be permitted to cast a provisional ballot, which the county election board shall retain and not transmit to the voter’s precinct on election day (IC 3-11-4-17.5)

Once the challenge affidavit is filed, the county election board shall notify each applicant and conduct a public hearing on the challenge and either approve or deny the application. The county election board may also refer the matter, if appropriate, to the county prosecuting attorney.

The requirement that absentee ballots be mailed on the same day that the absentee ballot application is received does not apply to absentee ballot applications that have been challenged or individuals whose voter registration application status is “pending.” (IC 3-11-4-18.5)

### **Absentee Ballot Printing & Mailing Deadlines**

In addition to printing ballots used on election day, each county election board must print absentee ballots. Information on ballot layout, instructions, and requirements for optical scan ballot cards and electronic (DRE) voting machines can be found in the “Ballot Layout” chapter in this *Guide*.

Not less than sixty (60) days before the date of a primary, general or municipal election, the circuit court clerk must estimate the number of absentee ballots required in the county for the election. (IC 3-11-4-10) After completing the estimate, the county election board shall immediately begin to have these ballots printed. (IC 3-11-4-14)

To comply with federal and state law, the absentee ballots must be delivered to the circuit court clerk at least fifty (50) days before any election and then transmitted to approved applicants not later than forty-five (45) days before any election. (IC 3-11-4-15; Military and Overseas Voter Empowerment Act [MOVE])

The absentee print order delivery date and absentee ballot mailing date noted above is the absolute deadline for counties to comply with Indiana election law. A county election board may receive their absentee ballot print order in advance of the fifty (50) day deadline. Should a county receive their absentee ballot delivery early, then it must begin mailing absentee ballots no later than five (5) days after the date of the absentee ballot print order delivery. (IC 3-11-4-18(c))

**EXAMPLE:** Suppose that absentee ballots are delivered to the circuit court clerk on the 55th day before an election. If an unchallenged absentee ballot application is received on the 75th day before the election, then the ballots must be transmitted to the voter by the 50th day before the election (meaning five days after delivery on Day 55), to all voters who have already submitted an absentee application. After the 50th day before the election, absentee ballots are to be mailed the same day the unchallenged absentee application is received.

The date a county election board begins mailing absentee ballots is important. After the initial push of mailing ballots out to absentee applications on file, a county must transmit an absentee ballot on the day of the receipt of the application. However, if a voter's absentee application is challenged or the voter's registration is in pending status, then the ballot may not be sent until the challenge is resolved or the voter's registration status becomes active. (IC 3-11-4-18(c))

Absentee optical scan or paper ballots (direct record electronic (DRE) voting system are exempt from this rule), regardless of whether or not they are mailed or voted in person, must have the following three validations placed upon the back of the ballot before being issued to a voter:

- 1) the circuit court clerk's official seal (stamp);
- 2) the signature or facsimile signature of the circuit court clerk (unless the clerk is a candidate – see below); and
- 3) the initials of both members of an absentee voter board. (IC 3-11-4-19)

In the case of a mailed absentee ballot, the initials of the two appointed members of the county election board could be substituted for those of the absentee voter board. In the case of a ballot delivered by an absentee voter board, the ballot must be initialed by the absentee voter board delivering the ballots or (where a county election board adopts a resolution to permit this procedure), by the county election board or the election board member's representative. (IC 3-11-4-19; 3-11-10-19; 3-11-10-27)

Absentee ballots that are not initialed may not be counted. (IC 3-11-10-17; IC 3-11.5-4-13) In the case of a recount or contest petition, an absentee ballot that does not have the initials of the absentee voter board or the county election board members may not be counted. (IC 3-12-1-13) If the ballot lacks the clerk's seal and signature (or the alternative device or symbol prescribed by the Indiana Election Commission), the ballot may also be challenged if there is evidence of fraud. (IC 3-12-1-12) *Therefore, it is important that each absentee ballot is validated with two sets of initials before being mailed or handed to a voter by an absentee voter board during in-person early voting or by traveling board!*

If the individual serving as circuit court clerk is a candidate for re-election or election to another office, then the name or signature of this individual cannot appear on the ballot (except as a candidate). Instead, the ballot must contain a uniform device or symbol prescribed by the Indiana Election Commission. (IC 3-5-4-9)

### Vote-By-Mail Absentee Ballot Packet

A "packet" of election materials must be sent to voters who request to vote absentee by mail. There are four essential elements: 1) outer envelope, 2) absentee ballot, 3) voted absentee ballot envelope & affidavit, and 4) absentee voter's bill of rights. Counties may include additional information to a voter, short of electioneering. For example, a county may insert a document on how to mark their ballot or remind voters to return ballots as soon as possible because of delays in postal processing.

#### 1) Outer Absentee Ballot Envelope

This is the larger of the two envelopes needed to mail an absentee voter's election materials. While the design is largely left to counties, the ABS-8 notes the minimum information required by state law to be printed on the outer envelope. (IC 3-11-4-18(a)) Counties are encouraged to reach out to the United States Postal Service (USPS) mail design analysts to confirm the outer envelope can be properly read by postal service equipment and to use the "Official Election Mail" logo. Learn more at [www.usps.gov](http://www.usps.gov) or you can reach a USPS mail design analyst at 855-593-6093 or [mda@usps.gov](mailto:mda@usps.gov).

#### 2) Absentee Ballot

The "Absentee Ballot Printing" section above includes important reminders for review. Be certain absentee

voter boards (or the county election board members) are affixing their initials to the back of the ballot in the box designated.

### 3) Voted Absentee Ballot Envelope & Affidavit

Counties are required by law to provide a postage, pre-paid envelope for a voter to return an absentee-by-mail ballot. (IC 3-11-4-20) This return envelope must include the ABS-6, which is the affidavit an absentee voter must sign before returning the ballot to the county election board. (IC 3-11-4-21) As noted above, USPS mail design analysts are available to review a proof of the county's absentee ballot return envelope and affidavit to ensure it meets postal requirements.

NOTE: a special federal ballot envelope provided by the Federal Voting Assistance Program may be used. For more information, see the current edition of the *Military and Overseas Voters Guide*, or contact the Federal Voting Assistance Program at [www.fvap.gov](http://www.fvap.gov).

### 4) Absentee Voter's Bill of Rights

The Indiana Election Division prescribes a statement that includes information concerning: (1) the rights and responsibilities of voters in casting and returning an absentee ballot; (2) the laws concerning providing assistance to an absentee voter, completion of the ballot in secret, and return of the voted ballot; and (3) how to report election law and absentee ballot law violations. A county election board must provide a voter who receives an absentee ballot by mail with a copy of the Absentee Voter's Bill of Rights. (IC 3-5-8-2.5)

NOTE: When mailing any overseas or military absentee ballots, counties must include the MOVE Sheet produced by the Indiana Election Division along with the Absentee Voter's Bill of Rights.

## Absentee Ballots

### Absentee Ballot Deadlines

An absentee ballot must be received by the circuit court clerk or the Lake County Election Director no later than:

- 1) Noon, prevailing local time, if absentee ballots are counted at a central location (most counties). (IC 3-11.5-4-7)
- 2) Not later than the time for the county election board to deliver the absentee ballot to the precinct election board of the voter's precinct before the closing of the polls on election day. (IC 3-11-10-3)

For clarification, "received" means the clerk or Lake County Election Director has the absentee ballot in their possession. Absentee ballots mailed on or before the deadline date and received after the proper deadline date noted above may not be counted. However overseas voters are exempt from this rule. If an overseas voter mails their absentee ballot and the envelope is postmarked on or before the date of the election, then a county election board must count the overseas voter's absentee ballot if received no later than noon, ten (10) days after the date of the election. (IC 3-12-1-17)

Upon receiving an absentee ballot, the county election board or the absentee voter board in the clerk's office, must note whether the voter was required to provide additional documentation as part of the voter registration process, but had not done so when the board previously mailed out the absentee ballot to the voter. If the county voter registration office advises the board that the voter has still not provided the required documentation, then the board must add a notation to the application and to the secrecy envelope in which the ballot is contained, alerting the inspector that the inspector must check the poll list (or other county election board certification) on Election day to determine if the voter has supplied the required documentation. If not, the inspector or counter must process this absentee ballot as a provisional ballot. (IC 3-11-10-4.5)

## Signature Review

Upon return of the absentee ballots, the county election board or absentee voter board must examine the signature of the absentee voter to determine its genuineness. The county election board should compare the signature that appears on the envelope containing the absentee ballots with the signature that appears on the voter's absentee ballot application. The county election board may also compare the signature on the ballot envelope with any other signature of the voter that is considered genuine. If an absentee voter board is charged with comparing the voter's signature and questions whether a voter's signature is valid, the question is referred to the county election board. (IC 3-11-10-4)

In a central count county, if the county election board finds that the signature is not genuine, the board must write on the envelope the words: "*The county election board has rejected this ballot because the signature of this voter is not genuine.*" (IC 3-11.5-4-4) In a county which does not count absentee ballots at a central location, if the county election board is in unanimous agreement that the signature on the ballot envelope *is not* genuine, the board must write on the envelope the words: "*The county election board has questioned the genuineness of the signature of this voter.*" These ballots still must be delivered to the polls on election day with instructions to again verify the voter's signatures. (IC 3-11-10-5)

If a voter with a disability is unable to make a signature on the absentee ballot application or absentee ballot secrecy envelope that corresponds to the voter's signature in the records of the county voter registration office, the voter may request that his or her signature be attested to by: (1) the traveling board; (2) a member of the voter's household; or (3) the individual serving as attorney in fact for the voter. If a person attests to the voter's signature, this attestation permits an inspector to determine that the signature of the voter corresponds to the voter's signature in the county voter registration records. (IC 3-11-4-21)

If a voter has an attorney in fact sign the absentee ballot secrecy envelope affidavit, a copy of the power of attorney must be enclosed in the envelope. The attorney in fact may not personally mark the ballot for the voter. (IC 3-11-4-21)

In a county which does not count ballots at a central location, if the county election board is unable to unanimously agree that the signature on the ballot envelope is genuine, the words: "*Signature Disputed*" must be written on the envelope. These disputed ballots must then be delivered to the polls on election day together with any documentary evidence that would assist the precinct election officials in determining the genuineness of the signature. (IC 3-11-10-6) The precinct election officials must then decide whether or not the ballot should be counted or rejected. (IC 3-11-10-7)

## Absentee Ballot Security

If a county election board (or absentee voter board) unanimously finds that the signature on a ballot envelope or transmitted affidavit is genuine, the board shall immediately enclose the accepted and unopened ballot envelope together with the voter's application for absentee ballot in a carrier envelope. The carrier envelope may contain other matched absentee applications and approved absentee ballots belonging to voters from the same precinct.

The carrier envelope must be securely sealed and endorsed with the official title of the circuit court clerk and the following words: "This envelope contains an absentee ballot and must be opened only at the polls on election day while the polls are open." (IC 3-11-10-8; IC 3-11.5-4-5)

During the period that absentee ballots are being received, each county election board shall keep the ballots in cabinets, boxes, or a room upon which there are two (2) locks – one (1) for each of the appointed members of the election board. Each day the absentee ballots shall be placed in the cabinets, boxes, or room under the direction of the appointed members of the board.

If an appointed member cannot be present each day, then that member shall designate someone from the member's political party to be present with the key to lock at the time the ballots are secured and at the time the lock is opened the next day. The key of each appointed member of the board shall be kept secure in the manner determined by that appointed member. (IC 3-11-10-10)

## Processing and Tabulating Absentee Ballots

In Indiana, counties may count absentee ballots at the precinct or at a central location. With the exception of Marion County, counties must count absentee ballots at the precinct unless the county election board adopts an order to be a vote center county OR to retain precinct polling locations but count absentees at a central location. (As the only county with a consolidated city, Marion County must count its absentee ballots at a central location unless the county election board unanimously agrees to count the absentees at the voter's precinct (IC 3-11.5-4-0.5)).

To become a vote center county, counties are instructed to follow the guidance in IC 3-11.5-18.1 or view information online at [votecenter.in.gov](http://votecenter.in.gov). Vote Center counties permit a voter to vote at any location on election day, and for this reason, state law requires counties to count absentee ballots at one central site since delivery to a voter's precinct isn't practical.

Counties that want to move to the central count absentee model must have their county election board adopt a resolution, by unanimous vote of the entire board, stating that the absentee ballots cast by voters in the county will be counted using the rules provided in IC 3-11.5. (IC 3-11.5-5-1; IC 3-11.5-6-1) Once the resolution is passed a copy must be filed with the election division. The resolution may only be rescinded upon a unanimous vote of the entire county election board.

Rather than using the precinct election board to count absentee ballots, a central count county uses bi-partisan counting teams and has bi-partisan couriers deliver lists to the precinct, if applicable. A county may use one courier, if the county election board unanimously agrees and the individual is a voter of the county. If the central count county also uses an ePollbook, couriers are not necessary. (IC 3-11.5-4-22)

Regardless of where absentee ballots are sent to be counted, all absentee ballots must be opened and tabulated on election day. Further, ballots cast on a direct recording electronic (DRE) touch screen machine, as part of absentee in-person early voting or traveling board, are to be counted at a central location. However, absentee voters using a DRE are to be included on the full list of absentee voters delivered to the precinct or vote center on election day. (IC 3-11-10-12.5)

Sometimes an absentee ballot is destroyed or never reaches the voter, or the voter makes an error marking their ballot at home. These issues are resolved by using the ABS-5 or PRE-5 affidavit:

- The ABS-5 applies to those circumstances where a voter's ballot was destroyed, spoiled, or not received. The county election board may issue a replacement absentee ballot to the voter after receiving the completed form. This process would also apply if the county discovers a misprint on the ballot or death of a candidate where the ballot was re-printed. (IC 3-11-4-17.7; 3-11-4-17.8; 3-11.5-4-2)
- The PRE-5 affidavit may only be used if a voter applies for an absentee ballot by mail, but has not received the ballot and appears at the polls on election day. The voter may vote a regular ballot in person at the polls after completing the PRE-5 affidavit documenting that the person has not received the requested absentee ballot. (IC 3-11.5-4-18(c))

A voter may be required to provide additional documentation as part of the voter registration process, but did not do so when the board previously mailed out the absentee ballot to the voter. The ABS-18 form is transmitted to the absentee voter to return to the county election board providing the required information. If the county voter registration office advises the board that the voter has still not provided the required

documentation, then the board must add a notation to the application and to the secrecy envelope in which the ballot is contained, alerting the central count counting team or precinct inspector to check the poll list (or other county election board certification) on Election day to determine if the voter has supplied the required documentation. (IC 3-11-10-4.5) If no indication is shown, the counter or inspector must process this absentee ballot as a provisional ballot. (IC 3-11.5-4-12; IC 3-11-10-16.5)

For quick reference, processes for counting absentee ballots at the precinct are largely found in IC 3-11-10; processes for counting absentee ballots at a central location are largely found in IC 3-11.5. The sections below highlight many of the absentee procedures a county is to follow but is not an exhaustive list.

### Counties Counting Absentee Ballots at a Central Location

An absentee ballot cast in a county that counts absentee ballots at a central location must be received by the county election board by noon, prevailing local time, on election day to be counted. (IC 3-11.5-4-10) (*NOTE: See "Military and Overseas Voters" for the later deadline that applies to absentee ballots from some of these voters.*) Not later than noon, prevailing local time, on election day each circuit court clerk, or an agent of the clerk, shall visit the appropriate post office to accept delivery of absentee envelopes. (IC 3-11.5-4-7)

Procedures at the precinct polling location or vote center will be different if an electronic pollbook (ePollbook) or not. For counties using an ePollbook, the list of voters voting absentee is uploaded to the ePollbook and requires no additional work by the precinct election board. (IC 3-11.5-4-9(a)) All vote center counties are required to use an ePollbook (IC 3-11-18.1); however, non-vote center counties may adopt an order to use an ePollbook under IC 3-7-29-6. In a vote center county, challenges to absentee voters are handled at the central location. In a central count county which is NOT a vote center county, challenges to absentee voters are handled at the precinct. (IC 3-11.5-4-15)

Immediately after the ePollbook used at each polling place or vote center has been updated to indicate the absentee ballots that the county received, no later than noon on election day, an absentee ballot counter, in the presence of the county election board, may begin processing absentee ballots. In other words, ePollbook counties may start counting absentee ballots on or after noon, prevailing local time, on election day. (IC 3-11.5-4-11(b))

For counties using a printed paper pollbook, the clerk must certify to the inspector or to the inspector's representative, at the time that the ballots and supplies are delivered under IC 3-11-3-1, the names of voters to whom absentee ballots were sent or who marked ballots in person, and whose ballots have been received by the county election board under IC 3-11-10. The first list, and a supplemental list delivered by couriers of voters voting absentee after the first list was certified and no later than noon, prevailing local time, election day, are to be marked in to the pollbook as absentee voters. (IC 3-11.5-4-9) The supplemental certification must be delivered to the precinct no later than 3PM, prevailing local time, on election day. (IC 3-11.5-4-8)

Before marking the pollbook, however, the inspector must alert the challengers and pollbook holders that the names of absentee voters are to be entered into the pollbook. The names and addresses of the absentee voters on the certificates are to be provided to the challengers and pollbook holders. If a challenger or pollbook holder determines an absentee voter is not a legal voter of the precinct where the ballot is being cast, then the PRE-4 challenge affidavit must be executed. (IC 3-11.5-4-15)

If while marking the poll list next to a voter's name to indicate that a voter has voted absentee the inspector determines that the voter has previously voted in person at the precinct on Election day, then the inspector shall indicate on the list of absentee voters next to the voter's name that the voter has "voted in person at the precinct."

The poll clerks must sign a statement printed on the certificates indicating that the inspector marked the poll list and attached any "Uniform Services Voter Registration Certificate" (ABS-11) of military voters who registered and voted under IC 3-7-36-14 (see "Military and Overseas Voters" section) in the presence of both poll clerks to indicate that the absentee ballot of the voter has been received by the county election board.

In the presence of poll clerks, the inspector must seal an envelope containing the signed processed certifications, any certificates of voters who registered and voted under IC 3-7-36-14, and any PRE-4 challenge affidavits. On the outer envelope, a statement is to be printed indicating that the inspector or poll clerk has complied with the requirements of IC 3-11.5-4 governing the marking of the poll list and certificates. The statement is to be signed by the inspector and each poll clerk. Couriers then immediately return to the central location and upon delivering the envelope to the county election board, the courier must sign a statement printed on the envelope indicating that the courier has not opened or tampered with the envelope since the envelope was delivered to the courier. (IC 3-11.5-4-9)

At any time after the couriers return the absentee voter certificate, absentee ballot counters, in the presence of the county election board, may begin processing absentee ballots. (IC 3-11.5-4-11(a))

At the central location, processing the absentee ballots are the same regardless of the county's decision to use an ePollbook or not. When notified that counting may begin, bi-partisan counter teams are to open the outer or carrier envelope containing an absentee ballot envelope and application; announce the absentee voter's name; and compare the signature upon the application with the signature on the affidavit found on the absentee ballot envelope. (IC 3-11.5-4-11)

An absentee ballot envelope may be opened and ballot removed for processing, if the counters find that the:

- 1) affidavit is properly executed;
- 2) signature on the application corresponds to the signature on the absentee ballot affidavit;
- 3) absentee voter is a qualified voter of the precinct;
- 4) absentee voter is registered and is not required to file additional information with the county voter registration office under IC 3-7-33-4.5; and
- 5) in case of a primary election, the absentee voter has not previously voted, the absentee voter has executed the proper declaration relative to age and qualifications and the political party with which the absentee voter intends to affiliate. (IC 3-11.5-4-12)

If not, the counter must process this absentee ballot as a provisional ballot. (IC 3-11.5-4-12)

An absentee ballot must be rejected if the counter finds that the:

- 1) affidavit is insufficient or the ballot has not been endorsed with the initials of two (2) members of an absentee voter board or county election board;
- 2) signature on the absentee application does not match the signature on the affidavit found on the absentee ballot envelope OR there is no signature on either document; however, if a voter with a disability is unable to make a signature on an absentee application that corresponds to the voter's signature in the records of the county voter registration office or on an absentee ballot secrecy envelope that corresponds with the voter's signature in the records of the county voter registration office or on the absentee ballot application, then the voter may request that the voter's signature or mark be attested to by the traveling board absentee voter board, a member of the voter's household, or an individual serving as attorney in fact for the voter, and this attestation is generally found below the signature line on the affidavit on the absentee ballot envelope;
- 3) absentee voter is not a qualified voter in the precinct;
- 4) absentee voter has voted in person at the election;
- 5) absentee voter is not registered to vote;

- 6) ballot is open or has been opened and resealed; however, an absentee ballot transmitted by fax or email by a military or overseas voter may not be rejected because the ballot was sealed in the absentee ballot envelope by the individual designated by the clerk to receive absentee ballots transmitted by fax or email;
- 7) ballot envelope contains more than one (1) ballot of any kind for the same office or public question;
- 8) ballot has been challenged and there is no absentee ballot application from the voter to support the absentee ballot; or
- 9) in the case of a primary election, if the absentee voter has not previously voted, the voter failed to execute the proper declaration relative to age, qualifications and the political party with which the voter intends to affiliate. (IC 3-11.5-4-13)

Each ballot not accepted or counted for any of the above listed reasons must, without being unfolded to disclose how it is marked, be endorsed with the words: "Rejected <insert reason>." All rejected absentee ballots are to be enclosed and securely sealed in an envelope labeled: "Defective Absentee Ballots." The defective absentee ballot envelope must also identify the precinct and the date of the election. Rejected absentee ballots are to be returned to the same officer and in the same manner for the return and preservation of official ballots cast and uncast at the election. (IC 3-11.5-4-14)

When using an automatic tabulating machine (IC 3-11.5-6-3), or when traditional hand-counted paper ballots are used, ballots are to be counted by laying each ballot upon a table in the order in which the ballot was opened and removed from the security envelope. (IC 3-11.5-5-6) To minimize delay, absentee ballot counters are to continue the count without interruption until all absentee ballots for the precinct are canvassed and the required certificates are prepared and delivered to the county election board. (IC 3-11.5-6-4; IC 3-11.5-5-5; IC 3-11.5.5-17) Counties should follow the procedures noted in IC 3-11.5-6-21 or IC 3-11.5.5-18 for securing counted and uncounted absentee ballots, and upon delivery of the ballot envelope or bag, sign an oath prescribed in IC 3-11.5-6-22 or IC 3-11.5.5-10.

The county election board should determine the procedures for counting absentee ballots cast on an electronic voting system by passing a resolution at a public meeting of board before the election. (IC 3-11-10-26.2)

### Counties Counting Absentee Ballots at Precinct Polling Locations

To be counted, an absentee ballot cast in a county that counts absentee ballots at the polls must be returned to the county election board in time for the board to deliver the ballot to the appropriate polling place before the close of the polls on election day. (IC 3-11-10-3) *(NOTE: See "Military and Overseas Voters" for the later deadline that applies to absentee ballots from some of these voters.)*

Absentee ballots received by mail after the county election board has begun final delivery of the ballots are considered to have arrived too late and need not be delivered to the precinct polling locations. (IC 3-11-10-14) Therefore, the county election board should establish a delivery schedule that will permit a final check at the post office and still allow for delivery of any absentee ballots to the precinct polling locations with ample time for the precinct officials to process those ballots. (IC 3-11-10-11; IC 3-11-10-12)

On election day, the clerk or an agent of the clerk must visit the appropriate post office to accept delivery of absentee envelopes at the latest possible time that will permit delivery of the ballots to the appropriate precinct election boards before the polls close at 6 p.m., prevailing local time. (IC 3-11-10-11(a)) In addition, no later than noon, prevailing local time, on election day, the county voter registration office must visit the appropriate post office to accept delivery of mail

The appointed members of the county election board or members of an absentee voter board will deliver the absentee ballots to the polls on election day. Delivery of absentee ballots must at all times be under the combined control of members of both major political parties. Upon delivery to the polls, the precinct inspector

must sign a receipt for the ballots. (IC 3-11-10-12; 3-11-10-13)

The county election board must also deliver a certified list to the precinct election board indicating which voters who were required to provide additional documentation as part of the registration process had provided that documentation to the county voter registration office no later than 3 pm on Election day. If the board determines that the supplemental list may not be received before the closing of the polls, the board shall attempt to contact the precinct election board to inform the board regarding the content of the supplemental list and file a copy of the for that precinct as part of the records of the board. If a voter's name appears on this certified list, the voter's absentee ballot is entitled to be counted if otherwise in compliance with state law. If not, then the voter's absentee ballot is to be processed as a provisional ballot. (IC 3-11-10-12; 3-11-10-16; 3-11-10-16.5)

After the list of voters and the absentee ballots are delivered to the precinct, the Inspector, at any time between the opening and closing of the polls on Election day, must do all the following in front of the precinct election board (Democratic and Republican judges):

- 1) open the outer carrier envelope containing an absentee ballot envelope and application;
- 2) announce the absentee voter's name; and
- 3) compare the signature on the application with the signature on the affidavit found on the absentee ballot envelope or transmitted affidavit attached to the ballot envelope. (IC 3-11-10-15)

An absentee ballot may be processed and counted if the Inspector finds that the:

- 1) absentee affidavit is properly executed;
- 2) the signature on the application corresponds to the signature on the affidavit;
- 3) the absentee voter is a qualified voter of the precinct;
- 4) the absentee voter is registered and is not require to file additional information with the county voter registration office under IC 3-7-33-4.5;
- 5) the absentee voter has not voted in person at the election; and
- 6) in case of a primary election, if the absentee voter has not previously voted, the absentee voter has executed the proper declaration relative to the age, qualifications, and the political party with which the absentee voter intends to affiliate.

The Inspector shall open the envelope containing the absentee ballot so as not to deface or destroy the affidavit and take out each ballot enclosed without unfolding or permitting a ballot to be unfolded or examined. The absentee ballots are then handed to the judges who deposit the ballots in the proper ballot box.

Afterward, the Inspector marks the poll list in the presence of the poll clerks to indicate that the voter has voted by absentee ballot. In a primary election, the voter's party affiliation must also be recorded. If the voter has registered and voted under IC 3-7-36-14 (special rule for certain military and overseas voters), then the Inspector attached the certificate to the poll list noting the voter has registered. (IC 3-11-10-17)

Counties that count absentee ballots at precinct polling locations but use electronic pollbooks follow a slightly different process. While a certified paper list of absentee voters would still be delivered with the absentee ballots to a precinct, the county election board should electronically forward absentee voter information to the ePollbook. so there should not be a need for the Inspector to record the names (and party affiliation in a primary election) of absentee voters. (IC 3-11-8-10.3)

An absentee ballot must be rejected if the Inspector finds that the:

- 1) affidavit is insufficient or the ballot has not been endorsed with the initials of two (2) members of an absentee voter board or county election board;
- 2) signature on the absentee application does not match the signature on the affidavit found on the absentee ballot envelope OR there is no signature on either document; however, if a voter with a disability is unable to make a signature on an absentee application that corresponds to the voter's signature in the records of the county voter registration office or on an absentee ballot secrecy envelope that corresponds with the voter's signature in the records of the county voter registration office or on the absentee ballot application, then the voter may request that the voter's signature or mark be attested to by the traveling board absentee voter board, a member of the voter's household, or an individual serving as attorney in fact for the voter, and this attestation is generally found below the signature line on the affidavit on the absentee ballot envelope;
- 3) absentee voter is not a qualified voter in the precinct;
- 4) absentee voter is not registered to vote;
- 5) ballot is open or has been opened and resealed; however, an absentee ballot transmitted by fax or email by a military or overseas voter may not be rejected because the ballot was sealed in the absentee ballot envelope by the individual designated by the clerk to receive absentee ballots transmitted by fax or email;
- 6) ballot envelope contains more than one (1) ballot of any kind for the same office or public question;
- 7) ballot has been challenged and there is no absentee ballot application from the voter to support the absentee ballot; or
- 8) in the case of a primary election, if the absentee voter has not previously voted, the voter failed to execute the proper declaration relative to age, qualifications and the political party with which the voter intends to affiliate. (IC 3-11-10-17)

Each ballot not accepted or counted for any of the above listed reasons must, without being unfolded to disclose how it is marked, be endorsed with the words: "Rejected <insert reason>." All rejected absentee ballots are to be enclosed and securely sealed in an envelope labeled: "Defective Absentee Ballots." The defective absentee ballot envelope must also identify the precinct and the date of the election. Rejected absentee ballots are to be returned with the election materials after the polls close and preserved by the county with the official ballots cast and uncast at the election. (IC 3-11-10-18)

All absentee ballot applications, envelopes, and materials delivered to the inspector must be returned to the county election board, along with all other election materials, once the polls close and the precinct election board has completed counting the ballots in their precinct. Once the absentee ballot materials are return to the county election board, the county clerk must seal the materials until the deadline to file an election contest or recount has past. The materials must be retained by the county clerk for 22-months following the election, at which point the materials may be disposed of in accordance with federal and state law under the county's record retention plan. (52 U.S.C. § 20701; IC 3-10-1-31.1)

### **Challenged Absentee Ballots**

**Absentee ballots may be challenged on election day for the reason that the absentee voter is not a legal voter of the precinct where the ballot is being cast. (IC 3-11-10-21; IC 3-11.5-4-15)** The process will vary slightly depending on whether the absentee ballot is counted at the precinct or at a central location:

**For counties where absentee ballots are counted at the precinct polling location:** The challenge should be made at the time the Inspector reads aloud the name of the absentee voters to prevent the voter's name from being processed in the poll book. The PRE-4 challenge affidavit, which is printed on the provisional ballot security envelope (PRO-2), must be completed by the challenger. It is recommended the inspector print "absentee voter" in the challenged voter's section of the PRE-4/PRO-2 affidavit. A challenged absentee voter's application and ballot may then be placed in the provisional ballot security envelope. The challenged absentee

ballot is placed with other provisional ballots in the PRO-4 envelope and delivered to the county election board after the polls are closed.

**For counties where absentee ballots are counted at a central location:** The county election board transmits a certified list of absentee voters under IC 3-11.5-4-1 and IC 3-11.5-4-8 to the vote center or precinct polling location. The Inspector provides the list of names and addresses of the absentee voters to alert challengers and pollbook holders so that the voter may be challenged. The PRE-4 provisional ballot affidavits must be completed by the challenger, and it is recommended “absentee voter” be written in the section for the challenged voter. The PRE-4 affidavit is attached to the absentee voter certificate and a notation should be made on the certificate to alert the counters at the central count location to set aside the challenged voter’s absentee ballot and secure as a provisional ballot.

The county election board must hold a hearing to determine whether or not a provisional ballot may be counted, and the hearing requirements and provisional ballot processing are outlined in IC 3-11.7. However, there are two important exceptions for challenged absentee ballots that do not apply to voters challenged at the polls: 1) the absentee voter’s application serves as the voter’s testimony at the hearing so the absentee voter is not required to complete the affidavit on the PRO-2 security envelope; 2) an absentee voter is not required to provide proof of identification. (IC 3-11-10-22; IC 3-11.5-4-16)

NOTE: Do not confuse “rejected” or “defective” absentee ballots with “challenged” absentee ballots. Rejected or defective absentee ballots are not counted for several reasons as outlined in a previous section of this *Guide*. Examples of rejection include signature on the application does not match the ballot or the ballot lacks two sets of absentee voter board initials. An absentee ballot may only be challenged for the reason that the absentee voter is not a legal voter of the precinct. This is the only valid challenge to an absentee voter that the county election board should decide at its hearing.

If a county election board determines an absentee voter’s ballot is not counted, then the ballot associated to the voter’s unique identified on the direct record electronic (DRE) machine must be deleted or, in the case of an optical scan ballot card or paper ballot, remain sealed inside the absentee ballot envelope. The PRO-2 affidavit should be marked “not counted” with a stated reason and signed by the county election board. The voter’s provisional ballot history should be updated in the statewide voter registration system (SVRS).

If a county election board counts the challenged absentee voter’s ballot, then the voter’s application and ballot envelope are stored with the other election materials kept by the county clerk, and the ballot is tabulated and stored with the counted ballots. The PRO-2 affidavit should be marked “counted” and signed by the county election board. The voter is to receive credit in their voting history for voting in the election. The provisional ballot materials are stored.

## **Military and Overseas Voters**

Absent uniformed services voters or overseas voters may request to have their absentee ballot transmitted by mail, email or fax. (IC 3-11-4-5.7) Deadlines, rules and procedures for military and overseas voters vary slightly from the general “civilian” population.

State law refers to an “absent uniformed services voter,” meaning a member of the military, or the spouse or dependent of a military voter, who is absent from the place of residence where the member is otherwise qualified to vote. An “absent uniformed services voter” may be within the United States or overseas. (IC 3-5-2-1.5) The definition of absent uniformed services voter includes a member of the Indiana National Guard deployed outside Indiana. An “overseas voter” is an individual who may be either a civilian who resides outside of the United States or a member of the military (or spouse or dependent) who is absent from the United States on election day. (IC 3-5-2-34.5)

A military voter or overseas voter may apply for an absentee ballot at any time by filing the Federal Post Card Application (FPCA) prescribed by the U.S. Department of Defense. The FPCA is a combined form permitting the military or overseas voter to update their registration address and request an absentee ballot. (NOTE: The ABS-15 form is an obsolete state form effective December 31, 2017.)

The FPCA is valid for one calendar year (January 1 to December 31), and the county election board must process the FPCA application and mail ballots for all elections as if an application had been submitted for each election. (IC 3-11-4-6; 3-11-4-8) Whenever a military or overseas voter files an FPCA for a primary election, the application is valid for any election conducted during the period that ends on December 31 following the date the application is filed unless an absentee ballot mailed to the voter at the address in the application is returned to the county election board during that period as undeliverable.

Sometimes a military or overseas voter will use an ABS-MAIL state form and mark the box: "I am a member of the military or a public safety officer." The ABS-MAIL form may not be used to update a voter's registration. The ABS-MAIL application is only valid for the specific election, may only be requested when voter registration opens, and be received by the county election board no later than 11:59PM, prevailing local time, eight (8) days before the election.

Absent uniformed services voters or overseas voters have the right to submit an absentee application by mail, email, or fax. The qualified military or overseas voter is entitled to request that a ballot be transmitted to the voter by mail, email or fax by using the FPCA. If the email address or fax number provided by the voter does not permit transmittal, the law then requires the county to transmit the application or ballot by mail instead.

If an absentee ballot application from a military voter or overseas voter is denied, the county election board must provide the voter with the reason for the denial of the application. The board must send a written notice to the voter stating the reasons for the denial. The notice (ABS-14) must be sent not later than 48 hours after the application is denied, and sent to the voter at the address at which the voter requested that the ballot be mailed. (IC 3-11-4-17.5)

#### Special Exceptions for Military & Overseas Voters:

##### 1) Statewide Voter Registration Deadline Extended for Military & Overseas Voters Using the FPCA.

If a military or overseas voter uses the Federal Post Card Application (FPCA), a county voter registration office must use update a military or overseas voter's registration as long as the federal form is received no later than eight (8) days before the date of the election.

If an absent uniform services voter (or the voter's spouse or dependent) applies to register during this time period, the application is subject to the same requirements that apply to applications received from other voters during the general registration period. If the application is approved, then the voter is entitled to vote in the upcoming election.

An absent uniform services voter (or the voter's spouse or dependent) may apply to register to vote on the seventh day before the election and until noon election day if the voter:

- 1) returns to Indiana during the period beginning seven days before election day and ending at noon on election day following discharge from service or reassignment;
- 2) shows the county voter registration office a discharge from service, dated not earlier than the beginning of the registration period that ended eight days before election day, or a copy of government movement orders, with a reporting date not earlier than the beginning of the registration period that ended eight days before election day; and

- 3) completes a registration application;
- 4) signs an affidavit that the voter has not voted at any other precinct in the election (ABS-13).

If an absent uniform services voter (or the voter's spouse or dependent) registers under the conditions noted above then the voter is entitled to vote in the upcoming election at the office of the circuit court clerk any time after the voter registers but before noon election day. If the person votes in the upcoming election at the office of the circuit court clerk, the voter will cast an absentee ballot and the circuit court clerk will certify that the voter registered under this statute, and the circuit court clerk will attach the certification to the voter's absentee ballot envelope (ABS-11).

The county election board delivers these certificates by courier to the precinct election boards at the polls on election day. The inspector attaches the certificates to the poll list in the presence of the poll clerks and the poll clerks sign a statement indicating that the inspector did so. If the person does not vote in the upcoming election then the circuit court clerk delivers the voter's registration application to the board of registration (if applicable). The voter is then registered effective the first day of the next registration period. (IC 3-5-2-1.5; 3-7-36-14; 3-11-4-3; 3-11-10-16; 3-11.5-4-8; 3-11.5-4-9; 3-11.5-4-24)

### 2) Ongoing Absentee Application.

An absentee ballot application (FPCA) for the primary submitted by a military or overseas voter is considered an application for any election conducted during the period that ends on December 31 following the date of the application was filed. This application must show that the voter was a resident and otherwise qualified to vote in the precinct where the voter resided before leaving the U.S.

### 3) Absentee Ballots Sent by Fax or Email

The county election board shall send and receive absentee ballots by email or fax from an absent uniform service voter or overseas voter if the voter:

- 1) requests to receive and submit an absentee ballot by email or fax; and
- 2) signs and dates a statement submitted with the email or on the cover of the fax that states: "I understand that by faxing or emailing my voted ballot I am voluntarily waiving my right to a secret ballot." (ABS-9)

If the voter requests to receive and submit an absentee ballot by fax, then the fax number to which the ballot is faxed shall be recorded by the clerk's office with the other information recorded about absentee ballot application. The county election board shall send, not later than the end of the first business day after the absentee ballot is received, confirmation to the voter that the ballot was received to the fax number the voter provides for this purpose or by email if the voter provides an email address (or, if no fax number or email is provided, or the fax number or email does not permit confirmation to be sent, then by U.S. mail). Voters submitting absentee ballots by email or fax do not have to mark their ballot in secret and seal the ballot into an absentee ballot envelope for delivery.

The person receiving absentee ballots by email or fax shall:

- 1) note receipt of the ballot in the records as other absentee ballots;
- 2) fold each ballot received separately to conceal the marking;
- 3) enclose the ballot in a blank absentee envelope (ABS-10) and secure the envelope (The emailed or faxed ballot may not be rejected because the ballot was sealed in the absentee ballot envelope by the person designated by the clerk to receive the ballots);
- 4) securely attach the emailed or faxed affidavit received with the ballot to the envelope; and
- 5) mark on the envelope "Absentee Ballot Received by FAX or Electronic Mail." (IC 3-11-10-1).

Absentee ballots sent by fax or email may be received on Election day and counted, though are subject to the same deadlines as other absentee ballots depending on the county's decision to count absentees at a precinct polling location or central location.

The ABS-9 must be submitted with the absentee ballot for the ballot to be processed and counted. (IC 3-11-4-6)

#### 4) Extended Deadline for Military and Overseas Voter's Absentee Ballot in Certain Circumstances

An absentee ballot from an overseas voter or a military voter who is stationed outside of the United States will not be considered as arriving too late to be counted if the ballot is postmarked no later than Election day, and is received by the noon, prevailing local time, ten (10) day deadline for counting provisional ballots. (IC 3-12-1-17)

If the postmark is unclear, the county election board, by unanimous vote of the entire board, determines the postmark date. If the board cannot reach a unanimous decision about the postmark, the absentee ballot may not be counted.

NOTE: This extended deadline does not apply to all military voters, only to military voters stationed outside of the United States or U.S. citizens residing overseas. Typically, military voters have APO or FPO addresses to note they are residing overseas. (IC 3-12-1-17)

#### 5) Federal Write-In Absentee Ballot

In a primary, general, or municipal election, a military or overseas voter may submit a Federal Write-In Absentee Ballot (FWAB) to serve as a "back-up" ballot in the event their "official" absentee ballot is not received or timely returned.

Because the FWAB and FPCA have a similar format, an overseas or military voter may believe the FWAB replaces the FPCA. In Indiana, it does not. The FWAB may not be used as an application for absentee ballot or used to register a military or overseas voter to vote. In other words, the military or overseas voter must first apply for an absentee ballot using the Federal Post Card Application (FPCA) in order for the FWAB to be valid. Further, a county must reject a FWAB filed without an FPCA.

An overseas or military voter can use the FWAB to vote for any candidate for nomination at a primary election so long as the voter chooses one political party primary to vote in. A voter cannot pick and choose candidates from different political parties. In a general, municipal, or special election a voter can vote for any candidate, political party, or public question on the ballot. If a voter writes in the name of a political party then all the candidates for the party will receive the voter's vote. Also a voter is not required to write the name of a candidate exactly as the name appears on the ballot. The key is that the absentee ballot counters must be able to determine the intent of voter when selecting candidates and answering public questions. If a voter submits a FWAB, the ABS-19 is not required to be attached for it to be counted and processed. (IC 3-11-4-12.5; IC 3-12-1-18; IC 3-12-1-19; IC 3-12-2-7.5)

If a federal write-in absentee ballot is received by the county election board in an envelope which does not indicate that a ballot is inside, and is inadvertently opened, the ballot may be counted if otherwise valid. The county election board is required to immediately seal the absentee ballot in an envelope indicating that a voted absentee ballot is enclosed and document the date the absentee ballot was sealed in the envelope, attested to by each member of the county election board (IC 3-12-2-7.5)

Should the military or overseas voter's "official" absentee ballot be timely received, then the FWAB may not be counted. If the military or overseas voter's "official" absentee is not timely received, then a bi-partisan team is to remake an "official" ballot using the selections the military and overseas voter wrote on the FWAB to the best of their ability. (IC 3-12-2-7.5) To be counted, however, the FWAB must be received by the county no later than

the specific absentee ballot deadline (noon for central count counties; by the last absentee ballot delivery in precinct count counties). (IC 3-11-10-11)

#### 6) Federal Only Ballot

On the Federal Post Card Application (FPCA), a military or overseas voter must check one of these categories:

- 1) I am a member of the uniformed services or merchant marine or active duty or an eligible spouse or dependent.
- 2) I am an activated National Guard member on State orders.
- 3) I am a U.S. citizen residing outside the United States, and I intend to return.
- 4) I am a U.S. citizen residing outside the United States, and my return is not certain.
- 5) I am a U.S. citizen and have never resided in the United States.

For reasons #1, #2, or #3, a county election official issues the military and overseas voter a regular ballot based on the precinct assigned to their voter registration address. If a military or overseas voter selects the statement set forth in reason #4 above, then the voter receives a federal only ballot, which would only include the offices for President and Vice-President, U.S. Senate, and U.S. House, depending on the election cycle. (In Indiana, voters falling in to category #4 are registered to vote at the address of the county voter registration office. See the *Indiana Voter Registration Guidebook* for more details.)

Note: Federal only ballots only apply to U.S. citizens who formerly resided in Indiana and now live overseas and whose return date is not certain. The federal only ballot may not be given to any other voter!

Note: Federal only ballots are NOT the same as *presidential only* ballots. As stated above, federal only ballots apply to a specific category of overseas voters. A presidential only ballot is available during presidential election years (i.e. 2020), and is used by “regular” voters who fall in to a very specific fail-safe category depending on when and where they move to another state.

A voter using the FPCA and marks reason #5 – “I am a U.S. citizen and have never resided in the United States” – is not entitled to cast a regular ballot in Indiana and the application should be rejected.

#### Processing Absentee Ballots of Military & Overseas Voters

The county election board (or absentee voter board in the office of the clerk) shall compare the signature as it appears on the affidavit transmitted with the voter’s absentee ballot to the voter’s signature as it appears on the application for the absentee ballot. The board may also compare the signature on the affidavit with any other admittedly genuine signature of the voter.

*In counties where absentee ballots are counted at a precinct polling location*, the inspector shall compare the signature on the absentee ballot application with the signature on the affidavit attached to the ballot envelope. Otherwise, absentee ballots received by email or fax shall be handled and processed as other absentee ballots, and delivered to the precinct before the polls close.

*In counties where absentee ballots are counted at a central location*, the absentee ballot counters shall compare the signature on the absentee ballot application with the signature on the affidavit attached to the ballot envelope. Otherwise, absentee ballots received by email or fax shall be handled and processed as other absentee ballots, and may not be counted if the faxed or emailed ballot arrives after noon, prevailing location time, on Election day .

(IC 3-5-4-6; 3-11-4-7; 3-11-4-8; 3-11-4-17; 3-11-4-22; 3-11-10-1; 3-11-10-1; 3-11-10-4; 3-11-10-5; 3-11-10-6; 3-11-10-8; 3-11-10-14; 3-11-10-16; 3-11-10-7; 3-11.5-2-5; 3-11.5-4-4; 3-11.5-4-5; 3-11.5-4-10; 3-11.5-4-11; 3-11.5-4-13)

An absentee ballot from an overseas voter or a military voter who is stationed outside of the United States will not be considered as arriving too late to be counted if the ballot is postmarked no later than Election day, and is received by the noon, prevailing local time, ten (10) day deadline for counting provisional ballots. (IC 3-12-1-17) However, if the military or overseas voter has a Federal Write-in Absentee Ballot (FWAB) filed for the election, then the FWAB is counted on election day in place of the voter's fax, email, or mailed absentee ballot received after the applicable deadline. (IC 3-12-2-7.5)

If the postmark is unclear, the county election board, by unanimous vote of the entire board, determines the postmark date. If the board cannot reach a unanimous decision about the postmark, the absentee ballot may not be counted.

**NOTE: This extended deadline does not apply to all military voters, only to military voters stationed outside of the United States. Typically, these voters have APO or FPO addresses. (IC 3-12-1-17)**

#### 7) MOVE Information Sheet

In addition to the Absentee Voter's Bill of Rights, the MOVE information sheet must be included in the packet of information provided to a military or overseas voter.

#### 8) Notice of Dispensation of Absentee Ballot Application for Military & Overseas Voter (ABS-14)

If an absentee application submitted by a military or overseas voter is rejected, the county must send the ABS-14 notice to the voter explaining why the application was rejected. The notice is also required to be sent when your office receives and accepts an absentee application from a military or overseas voters.

## **Electioneering & Absentee Ballots**

The crime of "electioneering" (a Class A misdemeanor) may not be committed in the presence of a voter known to possess the voter's absentee ballot. However, the voter's spouse, the guardian of an incapacitated voter, or a member of the voter's household is not prohibited in engaging in electioneering in the presence of the absentee voter.

A bi-partisan traveling board team may not engage in electioneering when interacting with a voter. (IC 3-14-3-16) Individuals voting absentee in-person at the clerk's office, early voting vote center, or satellite site may bring in materials to aid them with completing the ballot, similar to the experience of an election day voter. However, a person "voting early" may not wear anything expressing support or opposition to any candidate or political party or expressing approval or disapproval of any public question in any manner that could reasonably be expected to convey that support or opposition to another individual. (IC 3-14-3-16) The polls may not be located in a building where any display, that is visible to a voter, of political preference or party allegiance. But, this does include any pictures, photographs, or other likenesses of any currently elected federal, state, county, or local official, **unless they are located in the area of the chute or the room where voting is taking place.** A picture, photograph, or other likeness of the official can be covered on election day, rather than being removed from that location. (IC 3-11-8-6.3)

"Electioneering" does not include material mailed to a voter, or a telephone or an electronic communication to a voter expressing support or opposition to a candidate or a political party or expressing approval or disapproval of a public question.

## Power Of Attorney & Assistance to Voters with Disabilities

A voter's power of attorney is not permitted to request an absentee ballot on behalf of the voter without the voter's consent. Further, the attorney in fact *may not* personally mark the ballot for the voter. (IC 3-11-4-21). Should a voter be unable to make a voting mark on the ballot, then a bi-partisan travelling board MUST be requested to allow the voter to vote absentee. (IC 3-11-10-24) Alternatively, the voter may vote absentee in-person at the clerk's office, though a PRE-3 affidavit of voter assistance must be completed before an individual may be brought in to the voting booth to assist the voter. (IC 3-11-9)

A voter must sign the voter's own absentee ballot application, except for certain voters with disabilities. If a disabled voter cannot sign the application, the voter can name a person to hold the voter's power of attorney, and this person may then sign the absentee application for the voter. In addition, the voter may designate an individual eligible to assist the voter under IC 3-11-9-2(a) to sign the application on behalf of the voter. The person providing assistance must complete the affidavit of voter assistance found on the absentee application. (IC 3-11-4-2)

A voter's attorney in fact may sign the absentee ballot secrecy envelope affidavit, but a copy of the power of attorney must be enclosed in the ballot security envelope. (As noted above, a voter's attorney in fact may not mark the voter's ballot.) If an individual does not have power of attorney, then an individual may assist the voter in sealing the envelope but may not write the voter's name. The person assisting the voter in sealing the security envelope must sign their name in the space below the voter's signature on the ABS-6 affidavit.

If a voter with a disability is unable to make a signature on the absentee ballot application or absentee ballot secrecy envelope that corresponds to the voter's signature in the records of the county voter registration office, the voter may request that his or her signature be attested to by: (1) the traveling board; (2) a member of the voter's household; or (3) the individual serving as attorney in fact for the voter. If a person attests to the voter's signature, this attestation permits an inspector to determine that the signature of the voter corresponds to the voter's signature in the county voter registration records.

## Death of an Absentee Voter

In a county where absentee ballots are counted at a central location, if proof is given to the absentee ballot counters that an absentee voter marked and forwarded an absentee ballot, but died before election day, the ballot of the deceased voter is rejected by the absentee ballot counters. (IC 3-11.5-4-17; 3-11.5-4-13)

In a county where absentee ballots are transmitted to the precincts, if proof is given to a precinct election board that an absentee voter marked and forwarded an absentee ballot, but died before election day, then the Inspector shall return the ballot of the deceased voter with the other defective ballots. (IC 3-11-10-23)

If a voter casts an absentee ballot on a DRE machine the ballot will be assigned a unique identifier number. Should the voter die before election day the county clerk must use the unique identifier assigned to the voter's ballot to cancel the voter's ballot and so that it is not counted on election day. (IC 3-11-10-26.2) However, the casting of an absentee ballot by a deceased voter does not invalidate an election. (IC 3-11-10-23)

## Absentee Voter Boards

Each county election board must appoint as many absentee voter boards as it believes will be necessary to administer absentee voting in the county. Absentee voter boards consist of two (2) people, one nominated by each of the two major political parties.

To be eligible to serve on an absentee voter board, a person must meet all of the following qualifications (IC 3-11-10-36; IC 3-11.5-4-22):

- 1) be a registered voter of the county;
- 2) be able to read, write and speak the English language;
- 3) may not have any property bet or wagered on the outcome of the election;
- 4) may not be a candidate to be voted for at the election, except as an unopposed candidate for precinct committeeman or state convention delegate; and
- 5) may not be the spouse, parent, father-in-law, mother-in-law, child, son-in-law, daughter-in-law, grandparent, brother, sister, brother-in-law, sister-in-law, uncle, aunt, nephew or niece of a candidate.

**NOTES:** Any relationship identified above that is the result of birth, marriage or adoption (an adopted child, for example) would disqualify a person who is the relative of an **opposed** candidate from working on an absentee voter board. This provision does not apply if the candidate is **unopposed**.

**A person who is a candidate to be voted on at the election, or who is related to a candidate in a manner that would disqualify the person from serving, may still serve as an absentee voter board if:** (1) the candidate is seeking nomination or election to an office that is not county-wide (a city or township, for example); and (2) the county election board restricts the duties of the person on the absentee voter board to functions that could have no influence on the casting or counting of absentee ballots within that election district.

The county chairmen of each of the two major political parties make nominations for appointment to an absentee voter board. Not later than noon, prevailing local time, fifty (50) days before election day, the county election board must notify the county chairmen of the number of nominations that will be needed to fill positions on absentee voter boards. The county chairmen must notify the county election board of their nominations not later than noon, prevailing local time, forty-six (46) days before election day. The county election board must appoint those persons nominated by the county chairmen. If a county chairman fails to make the nominations, then the county election board may appoint any voter of the county subject to the qualifications listed above. (IC 3-11-10-37; 3-11.5-4-23)

A voter appointed to an absentee voter board is entitled to compensation. A member of an absentee voter board must be compensated using the following standards (IC 3-11-10-38):

- 1) traveling absentee voter boards are entitled to a per diem in an amount set by the county executive (county commissioners) per day and reimbursement for mileage paid at a rate set by the county council;
- 2) absentee voter boards assigned to the office of the clerk of the circuit court are entitled to a per diem set by the county executive (the county commissioners);
- 3) absentee voter boards assigned to deliver voted absentee ballots to the precincts on election day are entitled to a per diem and reimbursement for mileage paid at a rate set by the county council.

A member of an absentee voter board must receive training from the county election board before beginning to perform the member's duties. (IC 3-11-10-39)

## Central Count Couriers & Counters

In counties that count absentee ballots at a central location, to conduct an absentee ballot program the county must appoint courier to deliver information to a precinct about voters who cast an absentee ballot before election day and counters to count the votes cast on an absentee ballot.

Each county election board must appoint as many absentee ballot counters and couriers as it believes will be necessary to administer absentee voting in the county. Absentee ballot counter and courier teams consist of two (2) people, one appointed from each of the two major political parties. To be eligible to serve on an absentee ballot counter or courier, a person must meet all of the following qualifications (IC 3-11.5-4-22):

- 1) be a registered voter of the county;
- 2) be able to read, write and speak the English language;
- 3) may not have any property bet or wagered on the outcome of the election;
- 4) may not be a candidate to be voted for at the election, except as an unopposed candidate for precinct committeeman or state convention delegate; and
- 5) may not be the spouse, parent, father-in-law, mother-in-law, child, son-in-law, daughter-in-law, grandparent, brother, sister, brother-in-law, sister-in-law, uncle, aunt, nephew or niece of a candidate.

NOTES: Any relationship identified above that is the result of birth, marriage or adoption (an adopted child, for example) would disqualify a person who is the relative of an opposed candidate from working on an absentee voter board. This provision does not apply if the candidate is unopposed.

**A person who is a candidate to be voted on at the election, or who is related to a candidate in a manner that would disqualify the person from serving, may still serve as an absentee ballot counter or courier if:** (1) the candidate is seeking nomination or election to an office that is not county-wide (a city or township, for example); and (2) the county election board restricts the duties of the person on the absentee ballot counter or courier team to functions that could have no influence on the casting or counting of absentee ballots within that election district.

Certain 16 and 17 year olds who are not voters may serve as absentee ballot counters and couriers. A person must meet the requirements found in IC 3-6-6-39 and be approved by a unanimous vote of the entire county election board to serve as an absentee ballot counter or courier. (IC 3-11.5-4-23)

The county chairmen of each of the two major political parties make nominations for appointment to an absentee ballot counter or courier team. Not later than noon, prevailing local time, fifty (50) days before election day, the county election board must notify the county chairmen of the number of nominations that will be needed to fill positions on absentee ballot counting and courier teams. The county chairmen must notify the county election board of their nominations not later than noon, prevailing local time, forty-six (46) days before election day. The county election board must appoint those persons nominated by the county chairmen. If a county chairman fails to make the nominations, then the county election board may appoint any voter of the county subject to the qualifications listed above to fill any position noted above. (IC 3-11-10-37; 3-11.5-4-23)

A voter appointed to an absentee ballot counting or courier team is entitled to compensation. A member of an absentee voter board must be compensated using the following standards (IC 3-11.5-7-2):

- 1) Couriers are entitled to a per diem in an amount set by the county executive (county commissioners) per day and reimbursement for mileage paid at a rate set by the county council; and
- 2) Absentee ballot counters are entitled to a per diem set by the county executive (the county commissioners).

A member of an absentee voter board must receive training from the county election board before beginning to perform the member's duties. (IC 3-11-10-39)

## Online Absentee Ballot Status Tool

An online absentee ballot status tool is available to all Indiana voters on [www.indianavoters.com](http://www.indianavoters.com). Voters may click the “Absentee Ballot Status” icon on the main landing page, which will prompt the individual to enter their county, first and last name, and date of birth as captured on their voter registration record. If a match is found, the voter can determine if the county has received and processed their absentee ballot application, view the date the absentee ballot was mailed, and whether or not the ballot was received.



# ELECTION DAY

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## Legal Notice of Election

Before a primary, general, municipal, or special election, the county clerk must provide legal notice to the voters of the upcoming election. For a primary election, legal notice must be provided by completing the CAN-9 and publishing it with a newspaper in the county, filing a copy with the election division, and inserting a copy in the minutes of a county election board meeting not later than 10 days before the primary election. (IC 3-8-2-9; IC 5-3-1-2) Each county clerk must include on the CAN-9 the names of presidential candidates who have been certified by the Indiana Election Division to appear on the a political party's primary ballot in the year that office is up for election (2020), the names and addresses of each candidate who filed and has been certified to appear on the primary ballot, and the text of each public question that will voted on by the voters during the primary.

For a general, municipal, or special election, the county clerk must provide legal notice of an election by using the CAN-39. The CAN-39 must include the name of all office and the text of all public questions that will appear on the general, municipal, or special election ballot. Including the names and addresses of candidates on the ballot is optional. The CAN-39 must be published in a newspaper in the county, filed with the Indiana Election Division, and inserted into the minutes of a county election board meeting not later than 10 days before the election. (IC 3-10-2-2)

## Polling Locations

Polling places are located in a wide variety of locations, including government buildings, schools, churches, fire stations and even garages in private homes. In recent years, standards regarding the accessibility of polling places for disabled voters have reduced the number of potential polling place sites in some communities. Many counties made significant improvements by complying with the requirement that all polling places be accessible.

Except in a county where vote centers are used, the polls for each precinct may be located in only one (1) place and are designated by the county commissioners of each county. The county commissioners (or in Marion County, the Mayor of Indianapolis as "county executive") must designate polling places not less than twenty-nine (29) days before election day. Precinct polling places are permanent and remain unchanged until the board of county commissioners or county executive orders otherwise. As a result, county commissioners or the county executive is only *required* to designate polling places if there is a *change*. (IC 3-11-8-3.1)

However, each precinct does not necessarily have to have its own polling place. If a county election board adopts an order by the unanimous vote of the entire election board, the polls for a precinct may be located with the polls in an adjoining precinct so that both precincts vote before the same precinct election board. (IC 3-11-8-4.3) In these cases, however, the poll workers must maintain separate poll books for each precinct and keep ballots separate so that each precinct has its own vote totals for candidates when the canvass is conducted. There are special procedures for combining polling places in municipal elections and special elections. (IC 3-10-6-11; IC 3-10-8-6)

Each polling place or vote center must be located in an accessible facility for elderly voters and voters with disabilities. The polling place must comply with state and federal standards concerning parking areas, paths to the facility where voting occurs, the entrance to the facility, passages within the facility, and the room or area within the facility where voting occurs. (IC 3-11-8-1.2)

If there is no accessible facility to use as a polling place in the precinct, then the polls may be located in a building in an adjoining precinct if the building is not more than five (5) miles from the closest boundary of the

precinct OR anywhere within the same township if no other accessible place for disabled voters is available. This mileage restriction does not apply if a county election board adopts an order by unanimous vote to locate the polls for the precinct at the polls for an adjoining precinct, using the precinct election board of the adjoining precinct. (IC 3-11-8-4.3).

If the county election board unanimously determines that there is still not an accessible facility available, then the most convenient accessible facility *anywhere in the county* may be chosen. With the unanimous consent of both county election boards, it is even possible to locate an accessible polling place in a bordering county. This might occur when an accessible facility is located on the other side of a county line road, for example. (IC 3-11-8-3)

Generally, no polling location change can be made within two (2) days of an election. However, if a county election board unanimously agrees that using a designated polling place would be dangerous or impossible, the county election board can designate a new polling place for the precinct during the final two (2) days before an election. The board must give the best possible notice of the change. (IC 3-11-8-3.2)

### Legal Notice of Polling Locations

The county commissioners must publish a legal notice stating the location of each polling place for each precinct. The county commissioners must publish this list at least once and at least ten (10) days before the election. If it is necessary to make a change after publication, notice of the change must be provided in the same manner. The legal notice must indicate that the polls for each precinct are located in an accessible facility. (IC 3-11-8-3.2)

The same legal notice for polling locations is required for counties that use vote centers. (IC 3-11-18.1-9) But, if there is a change in vote center location after publication, before providing notice of the change, the county election board must amend the vote center plan to reflect the change in locations and file that amendment with the Indiana Election Division. (IC 3-11-18.1-15)

### Compensation for Using Site as Election Day Polling Place

School buildings, fire stations, and other public buildings must be made available for use as a polling place or vote center without charge to the county. A county cannot be required to sign an agreement to assume liability as a condition for using the public building as a polling place. (IC 3-11-8-4)

### Voting System Delivery

State law requires the county election board to have all necessary voting systems and furniture required for a voter to cast a ballot delivered to the precinct no later than 6:00 p.m., prevailing location time, the day before election day. The county executive is required to provide transportation, if requested by the county election board. [(IC 3-11-11-13-6(c) (optical scan ballot system); IC 3-11-14-14 (DRE)]

### Polling Location Set-Up

At least one (1) hour before the polls open on election day, the precinct election officers are to meet at the polls. The inspector then directs the boundaries of the chute designated; sample ballots, instruction cards, and other materials posted; and everything put in readiness for the commencement of voting. (IC 3-11-13-27; IC 3-11-14-17)

Instruction cards must direct voters how to obtain a ballot, prepare a ballot, and obtain a new ballot, should the ballot be spoiled. (IC 3-11-3-23) The instruction cards must also include in underlined type that:

- 1) it is a crime to violate Indiana election laws;
- 2) the voter should examine the ballot to determine if it contains the initials of the poll clerks in ink on the back of the paper or optical scan paper ballot, (does not apply to DRE electronic voting systems);

- 3) the voter should examine the ballot to determine if the paper or optical scan paper ballot has any other marks on it (does not apply to DRE electronic voting systems);
- 4) the voter should not make any mark on the ballot except a voting mark in the appropriate space on the ballot, because a mark other than a voting mark could void the ballot (does not apply to DRE electronic voting systems); and
- 5) the voter should return to the poll clerks and request another ballot if one of these provisions has been violated (does not apply to DRE electronic voting systems).

In addition, the county election board must supply each polling place with instruction cards that explain the voting procedure to voters and the procedure for write-in voting. A precinct that employs a voting system that does not permit write-in voting on the system must post instruction cards directing the voter to request a paper ballot from a precinct election officer. (IC 3-11-3-22)

One instruction card must be posted in each voting booth. One instruction card must be posted at the end of the voting chute. At least three instruction cards must be posted in and about the polling location. (IC 3-11-3-24)

**NOTE: Voting instructions for polling places must be printed in at least 14-point type on cards in English, Braille, and any other language that the board considers necessary. Precinct election boards are also required to furnish a magnifier to a voter upon request. (IC 3-11-3-22)**

Precinct election officers will also be provided with other materials to post in the polling location including the Voter's Bill of Rights in English and Spanish, a warning not to "electioneer" beyond a certain point, a notice that a voter must provide photo identification in order to cast a regular ballot, and a sample ballot for the precinct. These materials must be set up before the polls open on election day. Usually this can be done the evening before the election when the voting system being used at the polls are delivered or when the precinct election officers meet at 5 a.m. on election day.

### **Chute**

The "chute" is defined in IC 3-5-2-10: "Chute' means the area or pathway that extends fifty (50) feet in length, measured from the entrance to the polls. If the property line of the polling place is less than fifty (50) feet from the door or entrance to the polling place, the chute is measured from the exterior door or entrance to the polling place to one-half the distance to the property line of the polling place nearest to the entrance to the polls. Whenever there are two (2) or more doors or entrances to the polls, the inspector of the precinct shall designate one (1) door or entrance as the door for voters to enter for the purposes of voting."

After poll workers determine the end of the chute, a "No Electioneering Beyond This Point" sign is to be posted, alerting voters and others outside the polling place that no partisan activity is permissible from that point forward.

## Accessibility Standards for Polling Locations

The Help America Vote Act (HAVA) is a federal law requiring each polling place to be accessible to elderly voters and voters with disabilities. Before election day, the persons recommending where polling places should be located must take care to designate sites that meet accessibility standards. (IC 3-11-8-6)

County election administrators may purchase additional equipment to aid a site in becoming compliant with the Americans with Disabilities Act (ADA). For example, portable wheelchair ramps may be used to help a wheelchair user bridge the surface of a parking lot to the elevated level of a sidewalk or door entrance. Portable “doorbells” may be placed outside the voting entrance for an individual to push and alert a poll worker inside the individual needs assistance opening the door. If voting occurs on the second floor or an elevated platform inside a polling location, please ensure any elevators or wheelchair lifts are operational before election day.

The accessible voting area must be on an accessible route and have adequate maneuvering space for voters who use wheelchairs or other mobility aids. Allow approximately five square feet for a wheelchair to navigate behind and around the machine. Blinds on windows behind check-in staff should be closed so voters who read lips can communicate with workers. Tables should have a clear knee space of at least 27 inches. (IC 3-11-8-1.2)

Each polling place must have at least one voting system equipped for individual with disabilities, such as a direct record electronic (DRE) voting system or other ballot marking device. Poll workers must be trained on how to use the accessible features of a voting system, and create a welcoming environment for all voters.

## Election Materials

### Poll Book

The poll book is a list of voters in a precinct produced to confirm and track which voters cast a ballot on election day. There are two different forms of poll books, the traditional paper list printed for each precinct in the county, and an electronic pollbook.

In counties that use the traditional paper pollbook, the book for each precinct is printed by the county voter registration official no later than 10 days before an election. The book must contain:

- 1) The full name of the voter.
- 2) The address of the voter.
- 3) The assigned voter identification number.
- 4) Whether the voter is required to provide additional identification before voting either in person or by absentee ballot.
- 5) The date of birth of the voter, including an indication whether the voter is less than eighteen (18) years of age for a poll list used in a primary election.
- 6) The scanned signature of the voter.
- 7) Whether the voter is required to provide an affirmation of the voter's residence.
- 8) A bar code that allows the county voter registration office to efficiently record whether the voter has signed the poll list.
- 9) For a poll list used in a primary election, a letter abbreviation of the name of the major political party whose ballot the voter has requested.

- 10) A space for a poll clerk to indicate when a voter has cast an absentee ballot.
- 11) A space for a poll clerk to indicate when a voter has cast a provisional ballot.
- 12) For a voter required to submit additional documentation required under IC 3-7-33-4.5, a space for a poll clerk to insert letters serving as an abbreviation for the type of documentation provided by the voter.

A warning must also be printed at the top of each page of the pollbook stating that anyone who knowingly makes a false statement concerning the individual's name, voter identification number, or residence address, or by signing the pollbook commits a Level 6 felony. (IC 3-7-29-1)

Electronic pollbooks are electronic devices and software containing the county voter registration list that are approved for use in the state of Indiana by the Secretary of State. (IC 3-11-18.1-12) The system provides the same information that is provided on a traditional paper pollbook. The system must also meet certain criteria and be able to execute functions found in IC 3-11-8-10.3.

Federal law and state law require an individual applying to register to vote to provide a "voter identification number." This number is an Indiana driver's license number or (as referenced in the state voter registration application form, a state identification card number) as issued by the Indiana Bureau of Motor Vehicles (BMV). If an individual does not have a BMV-issued driver's license or identification card, the individual must provide the last four digits of his or her social security number as a voter identification number. (IC 3-7-13-13) If an individual does not have either a BMV driver's license or identification card number, or a social security number, the statewide voter registration system will assign a voter identification number to this individual.

During an election, a precinct election poll clerk shall explain the voter identification number to each voter and request that each voter provide (or update) the voter's identification number on the poll book. However, the poll clerk must also explain that a voter is *not required* to provide a voter identification number at the polls in order to vote. (IC 3-11-8-25.1) If a voter does give a voter's identification number, then the county voter registration office shall update the voter's registration to include that information. (IC 3-7-13-13)

### Forms & Envelopes

In addition to ballots and poll book, the county election board must provide of additional election materials to poll workers to complete and return after the polls close. Generally, the "PRE" series of forms are used for election day work, but there are few forms outside this series that should be provided to poll workers. Current versions of the forms must be used (unless the Election Division has grandfathered a previous version). Counties should consult the "Forms Master List" provided by the Indiana Election Division to determine which revision(s) of a form is acceptable.

Forms to be provided to precinct election officials in all elections include, but are not limited to:

Form Number	Form Name	Form Number	Form Name
PRE-1	Precinct Oath Book	PRE-8	Appointment of Replacement Precinct Election Officer
PRE-2	Statement of Expenses of Precinct Election Officers	PRE-10	Inspector's Affidavit for Return of Ballots & Supplies
PRE-3	Affidavit of Voter Assistance	PRE-19	Affidavit of a Public Safety Officer or Member of the Military Returning to the Polls to Vote After Responding to an Emergency
PRE-5	Voter Affidavit to Vote Regular Ballot After Failing to Receive Mailed Absentee Ballot	VRG-4/12	Affidavit of Request for Transfer of Voter Registration at the Time of Requesting a Ballot
PRE-7	Qualified Elector's Affidavit Disqualifying a Precinct Election Officer	VRG-11	Indiana County Voter Registration Form (English & Spanish)
		CEB-1	Certificate of Delivery of Precinct Election Materials by Inspector & Judge

*Note: Provisional ballot voting requires additional forms and materials to be provided to precinct election officers, and those materials are to be provided in every election. See the "Provisional Ballot Voting" section of this Guide for more information.*

These following forms are specific to an election type (primary, general, municipal, or special) and only used by precinct election officers during the identified election:

Election	Form Number	Form Name
Primary	PRE-6	Affidavit to Challenge a Person at a <u>Primary</u> Election Due to Party Affiliation
Primary	PRE-17	<u>Primary</u> Election Certificate & Memoranda of Total Votes Cast in a Precinct
General	PRE-11	<u>General</u> Election Certificate & Memoranda of Total Votes Cast in a Precinct
Municipal	PRE-18	<u>Municipal</u> Election Certificate & Memoranda of Totals Votes Cast in a Precinct

Counties must also provide a number of envelopes to secure specific types of elections materials, including but not limited to:

Envelope for Precinct Materials	Form Number or IN Code Cite	Purpose
Provisional Ballot Carrier Envelope*	PRO-4	Secures uncounted provisional ballot envelopes received on Election day
Provisional Ballot Affidavit & Security Envelope*	PRE-4/PRO-2	
Provisional Ballot Envelope for Ballots Issued After Regular Poll Closing Hours*	PRO-5	If a court order extends voting beyond 6:00 p.m. local prevailing time, voters must use a provisional ballot and this universe of provisional ballot envelopes are to be secured in this envelope instead of the PRO-4 envelope
Provisional Ballot Envelope for Spoiled Provisional Ballots*	PRO-6	If a voter spoils a provisional ballot, it should be placed in this envelope rather than the spoiled ballot envelope for “regular” ballots
Voter Registration Affidavit Envelope	PRE-12	
Grand Jury Affidavits Envelope	PRE-13	
Miscellaneous Forms Envelope	PRE-15	
Zero Tape Envelope		Secures voting system “zero” tape, which is printed before the polls open and signed by precinct election board
Results (Totals) Tape Envelope		Secures vote totals generated from voting system unit.
Rejected Absentee Ballot Carrier Envelope		Secures absentee ballots that are rejected by precinct election board (also used by central count teams where applicable)
Spoiled Absentee Ballot Carrier Envelope		Secures absentee ballot
Voted Ballot Bag		
Unvoted Ballot Bag		
Spoiled Ballot Envelope		

*\*Please see “Provisional Ballot Voting” section of this Guide for more detailed information concerning provisional ballot materials*

For those envelopes where there is an Indiana Code citation, please review those sections carefully for specific advice on what information should be printed on the envelope, if any.

NOTE: Please see the “Retention of Election Records” section of this *Guide* for the retention schedule for specific kinds of election materials.

### Affidavit of Voter Assistance (PRE-3)

Before entering the voting booth, certain voters may request assistance if the voter 1) has a disability (permanent or temporary), or 2) is unable to read or write the English language. The following individuals may assist a voter, if requested to do so:

- The voter may designate a person to assist them, including a relative or friend. However, a voter may not designate the voter's employer, an officer of the voter's union, or a union representative.
- If the voter requests assistance, but does not designate someone else to help them, BOTH precinct election judges must accompany the voter into the voting booth to assist the voter.

A person providing assistance to a voter, including the precinct election judges, must complete the Affidavit of Voter Assistance (PRE-3) before entering the voting booth to assist a voter.

Note: precinct election officials may not leave the polling place with election materials to permit a voter to vote in the street or from an automobile. The voter **MUST** enter the polling place to cast a ballot. In other words, "curbside" voting is **NOT** allowed in Indiana.

### Precinct Election Officers (Poll Workers)

Each precinct polling place or vote center has at least one precinct election board, consisting of the inspector and the two precinct judges. Poll clerks, assistant poll clerks and sheriffs assist the precinct election board with their duties; however, in a county using vote centers, the vote center plan may designate poll workers with different titles who carry out some or all of the duties assigned by state law to the inspector, judge, poll clerk, assistant poll clerk, or sheriff. Other partisan persons are often present in polling places for political parties and candidates, including challengers, watchers, and poll book holders. (IC 3-6-6-1; IC 3-6-6-2; IC 3-6-6-5.5)

In some special circumstances, such as nonpartisan special elections, only one judge or one poll clerk may be present at the precinct. The county election board may also provide that more than one precinct in which the special election will be conducted will be administered by the same precinct election board. (IC 3-10-8-6)

See the current edition of the *Election Day Handbook*, published by the Indiana Election Division, for more information regarding poll worker rights and duties.

### Vote Center Counties

A county using vote centers may use other titles to designate precinct election officers and specify which precinct officers are to perform a duty required under election law to be performed by a precinct election officer (IC 3-6-6-5.5). However, a vote center must have at least one precinct election board – Inspector, two Judges – assigned, in addition to other precinct election officers.

### Precinct Polling Location Counties

Generally, each precinct can have up to nine (9) precinct election officers appointed to administer the election at the polling location. These positions, by rank, are the following:

- 1) One inspector.
- 2) Two judges of opposite political parties.
- 3) Two poll clerks of opposite political parties.
- 4) Two assistant poll clerks of opposite political parties, if the county election board determines they are needed in a specific precinct.
- 5) Two election sheriffs of opposite political parties.

A county election board may adopt a resolution by unanimous vote of the entire membership of the board, to provide that one individual may serve as inspector for more than one precinct located at the same location. (IC 3-6-6-38.5).

***NOTE:** Indiana Code 3-6-6-38 states that the county election board may adopt a resolution omitting sheriffs or poll clerks and providing that other election officials of each precinct shall perform the duties of the election poll clerks or sheriffs. This resolution, if adopted, applies to each voting precinct named in the resolution (or to all precincts in the county if so provided in the resolution). This resolution expires December 31 of each year and must be readopted to remain effective. Currently, most Indiana counties have eliminated the election sheriff positions.*

A polling place may employ assistant poll clerks, if needed. The county election board may appoint two assistant poll clerks who must be registered voters of the county and of opposite political parties. A person may serve as an assistant poll clerk and not be a registered voter of the county if the person is at least 16 and no more than 17 years of age and a resident of the county. (IC 3-6-6-3) If assistant poll clerks are to be appointed, the county election board must designate, in writing, which precinct will have assistant poll clerks. A copy of this notice must be filed with the circuit court clerk. Copies must be mailed to the county chairmen of each major political party. (IC 3-6-6-4)

### Precinct Election Officer Duties

In general, the following list contains the duties of each precinct election official (IC 3-6-6-30; 3-6-6-32; 3-6-6-33; 3-6-6-34; 3-6-6-35):

PRECINCT OFFICER	DUTIES
INSPECTOR	Overall, in charge of the precinct. Receives election materials from the county election board. Sets up the polling place. Inspects the ballots. Performs initial processing of absentee ballots. Tabulates ballots and returns election materials to the county election board. Requests Photo Identification from voters.
JUDGES	Judge of opposite political party to the inspector acts as check and balance to the inspector. Assists inspection of the ballots. Oversees deposit of ballots into the ballot boxes. Assists in the tabulation of the votes. Judge of opposite party accompanies precinct inspector when returning election materials. Requests Photo Identification from voters.
POLL CLERKS	Verifies the registration status of voters. Oversees poll lists or books. Requests and explains voter identification number to voters. Assists in vote tabulation. Compares voter's signature on poll list with registration signature, if available at polls. Requests Photo Identification from voters.
SHERIFFS	Monitors the polling location. Assists others in their duties. Maintains order at the polls. May leave polls to request assistance from a law enforcement officer if violation of law occurs or appears imminent. Requests Photo Identification from voters.

### Requirements to Serve as Precinct Election Officer

While judges, poll clerks, assistant poll clerks and sheriffs may be represented in each precinct by both political parties, each precinct inspector will be a member of the same political party throughout the county. Each inspector is nominated by the political party whose candidate received the most votes in the county at the last election held for secretary of state. (IC 3-6-6-8)

The county chairmen of both major political parties nominate registered voters of the county for each of the remaining precinct election offices. (IC 3-6-6-9) The county chairmen make these nominations, including inspector, by filing written notice with the circuit court clerk no later than noon, prevailing local time, twenty-one (21) days before each election. (IC 3-6-6-10)

The county election board must appoint those voters who are nominated by the county chairmen on or before the noon, twenty-one day deadline. (IC 3-6-6-11) If a Democratic or Republican county chairman does not fill a precinct election officer position, the county election board, by majority vote of the board, may fill the vacant officer position by appointing an individual who would be eligible to serve in the office if nominated by the county chairman. (IC 3-6-6-13) Before election day, the county election board may fill vacancies in any precinct election office upon nomination by the appropriate county chairman.

A person must meet all of the following requirements in order to serve as a precinct election officer (IC 3-6-6-7):

- 1) Is able to read, write and speak the English language.
- 2) Does not have any property bet or wagered on the result of the election.
- 3) Is not a candidate to be voted for at the election in that precinct, except as an unopposed candidate for a precinct committeeman or state convention delegate.
- 4) Is not the spouse, parent, father-in-law, mother-in-law, child, son-in-law, daughter-in-law, grandparent, grandchild, brother, sister, brother-in-law, sister-in-law, uncle, aunt, nephew or niece of a candidate who is a candidate to be voted for in that precinct.
- 5) Is the chairman or treasurer of the committee of a candidate whose name appears on the ballot. (*This only applies to the position of Inspector*)
- 6) Has attended the training required by state law to serve as an inspector, and, if a county requires training for other precinct election officers, has attended the training required by the county.

A relationship identified above that results from birth, marriage, or adoption (adopted child, for example) disqualifies a person who is the relative of an opposed candidate from working as a precinct election officer. However, this restriction on relatives **DOES NOT APPLY** if the candidate is **UNOPPOSED**. (IC 3-6-6-7) In a primary election, a candidate is considered “unopposed” if no other candidate is running for nomination to the same office within the same party’s primary, even if another person is running for nomination to the same office, but in the other party’s primary.

An opposed candidate or family member (as noted above) of an opposed candidate may serve as a poll worker in a precinct where the candidate’s name does not appear on the ballot. In a county where all precincts are assigned to a vote center on Election day, an opposed candidate or family member (as noted above) may not serve as a precinct election officer since all precincts are present and, therefore, the candidate’s name would appear on a ballot at the vote center.

Example One: Bob Williams is a candidate in the general election for the office of Rural Township Trustee, and is opposed by Jim Miller. Bob cannot serve as a precinct election officer in Rural Township. However, since his name is not on the ballot in nearby Urban Township, and if he is otherwise qualified to do so, Bob Williams can serve as an inspector in a precinct in Urban Township.

Example Two: Trevor Trent is an unopposed candidate in the general election for the office of County Assessor. Even though he is unopposed, his name will be on the ballot everywhere in the county, and so he cannot serve as a precinct election officer anywhere in the county.

Example Three: Geraldine Adams is an unopposed candidate for Republican Party precinct committeeman in Rural Township Precinct 2. If otherwise qualified, Geraldine may serve as a precinct inspector in Rural Township Precinct 2.

Example Four: Charlie Adams is the husband of Geraldine Adams. If otherwise qualified, he can serve as a judge in Rural Township Precinct 2.

Example Five: Mary Jones is the only candidate for County Coroner running in the Democratic Party primary. Susan Miller is the only candidate running for County Coroner in the Republican Party

primary. In this case, both Mary Jones and Susan Miller are “unopposed candidates” at the May primary election. An otherwise qualified relative of Mary Jones or Susan Miller may serve as a precinct election officer at the primary election in the county.

However, in the General Election in November, Mary Jones and Susan Miller are now opposing each other for election to the office of County Coroner. As a result, a relative who was eligible, and served as a precinct election officer at the primary may not be eligible to serve as a precinct election officer at the general election.

Example Six: Bob Williams is a candidate in the general election for the office of Rural Township Trustee, and is opposed by Jim Miller. The county they reside in is a vote center county. Bob cannot serve as a precinct election officer in the county because ballots for voters residing in the township would be available at each vote center.

### **College Students and High School/Home Schooled Students as Poll Workers**

If the appropriate county chairman makes no nomination for a precinct election office by the deadline for doing so, the county election board may, by unanimous vote of its entire membership, appoint a college student who is a registered voter of the county to serve as a nonpartisan precinct election officer. (IC 3-6-6-13(c))

The county election board, by unanimous vote of its entire membership, may permit an individual who is 16 or 17 years of age to serve as any precinct election officer other than inspector, or to assist any precinct election officer, including the inspector, if the individual:

- 1) is a U.S. citizen;
- 2) is a resident of the county;
- 3) is a student with a grade point average of at least 3.0 out of 4.0;
- 4) has the approval of the principal of the school the student attends or the approval of the individual responsible for the student’s education if the student is home schooled;
- 5) has the approval of the student’s parent or guardian;
- 6) has satisfactorily completed any training required by the board; and
- 7) would otherwise be eligible to serve as a precinct election worker under Indiana law.

The 16 or 17 year old is not required to be a registered voter to be a poll worker. (IC 3-6-6-39)

### **Precinct Election Official Training**

The county election board must conduct a training and educational meeting for precinct election officers. The county election board must require inspectors to attend this meeting, and may require other precinct election officers to do so. The meeting must include information relating to the voting systems used in the county, and to making polling places and voting systems accessible to elderly voters and disabled voters. The county election board must maintain a record of the attendance of each individual at the county training meeting.

If an individual is appointed to a precinct election office after the required instructional meeting, or was appointed before the meeting was held, but can demonstrate to the county election board that the individual could not attend the meeting due to good cause, then the county election board can authorize that individual to serve as a precinct election officer if the county election board determines that there is not enough time to conduct the required training. (IC 3-6-6-40)

### **Election Material Pick-Up & Post-Election Return**

The inspector of each precinct, or another member of the precinct election board authorized in writing by the inspector, shall appear at the office of the county election board on the second or third day before election day to receive ballots and other supplies. (IC 3-11-3-10)

Supplies include: sample ballots, all poll lists, registration lists, forms, envelopes, and other supplies considered necessary to conduct the election; ballots; twenty (20) ink pens; copies of the voter's bill of rights in English and Spanish; copies of instructions to the provisional ballot voters; and blank voter registration applications. As stated here, ballots may be hand-counted paper ballots, optical scan ballot cards, emergency ballots for use in counties with direct record electronic (DRE) systems, and provisional ballots. (IC 3-11-3-11)

For counties using ePollbooks, the county election board (rather than the inspector) delivers and installs the necessary hardware, firmware, and software necessary to use the ePollbooks. In these counties, an additional notice must be included in the election materials to note a person commits a level 6 felony, if the individual knowingly makes a false statement to a precinct election officer concerning the individual's name; the individual's voter identification number, or the individual's residence address. (IC 3-7-29-1(f)); IC 3-11-3-11(b))

After the close of polls, the inspector and the judge of the opposite political party shall deliver election materials to the circuit court clerk immediately upon tabulation of the votes. (IC 3-12-2-9) Upon delivery of the election materials, the inspector must take and sign an oath stating the inspector: closed and sealed the election materials in the presence of the judges and poll clerks; securely kept the ballots and papers in the envelope, bag, or box; did not permit any person to open the container or otherwise touch or tamper with the ballots; and has no knowledge of any other person opening the container. (IC 3-12-2-10)

### Compensation and Meals

Except as provided below, each precinct election officer is entitled to compensation. All precinct election officers are to be paid a per diem fixed by the county executive (county commissioners). (IC 3-6-6-25) In addition, the inspector may be paid an additional amount for the inspector's services in picking up election supplies at the circuit court clerk's office. Inspectors and judges may be paid an additional amount for their duties in returning the precinct election supplies to the clerk's office. (IC 3-6-6-26)

Each inspector must make arrangements to provide meals for all precinct election officers throughout the day. The county council may adopt an ordinance providing for a meal allowance rather than an actual meal. Any such ordinance must state the amount of the meal allowance. (IC 3-6-6-31)

Each precinct election officer has unique duties to perform on election day. The precinct election board (consisting of one inspector and the two judges) manages the precinct and determines all questions of challenge and other matters that come before the board, subject to state law. When necessary, the precinct election board assists the poll clerks and sheriffs in the performance of their duties.

### Additional Persons Permitted Inside Polling Places

In addition to the precinct election officers, political parties often employ workers to assist the party on election day. These partisan workers include challengers, pollbook holders and watchers. Although these partisan workers are not a part of the precinct election board or official precinct election officers, they provide a valuable service to political parties. Each of these partisan workers has different rights and responsibilities but all must have credentials to confirm their status at the request of the precinct election board.

Challengers act to ensure that only registered voters of the precinct vote at each polling place. Pollbook holders monitor which registered voters voted and which did not. Watchers act as a check to the precinct election officials to ensure that they are properly carrying out their duties. A watcher may be affiliated with a political party, a candidate or the media.

## Challengers and Pollbook Holders

All bona fide political parties (currently Democratic, Libertarian, and Republican parties in Indiana) or independent candidate may appoint challengers and pollbook holders for each precinct in which the political party or independent candidate is on the ballot.

If a public question is submitted to the electorate, a county election board may appoint challengers and pollbook holders if a petition requesting the appointment is filed with the board. The petition must be signed by the chairman of a political action committee organization under IC 3-9 to support or oppose the approval of the public question; and at least the number of voters equal to two (2%) percent of the votes cast in the last election for secretary of state in the county. (IC 3-6-7)

A challenger must be a registered voter of the county and at least eighteen (18) years of age to serve in this capacity. (IC 3-6-7-1.7; IC 3-6-7-1) A pollbook holder is not required to be a voter of the county or to be of any specific minimum age. However, an appointed election day precinct clerk cannot serve as a pollbook holder on election day.

No candidate (except an unopposed candidate for precinct committeeman or state convention delegate) may be appointed as a challenger or as a pollbook holder for any election. (IC 3-6-7-1.5)

A challenger or pollbook holder must possess an identification card. Each county chairman of a bona fide political party, independent candidate, or county election board (if applicable for public question) must issue the proper identification card for each challenger and pollbook holder appointed. There is no state prescribed form that the county chairman must use for this purpose, and the county chairman is not required to file a list of challengers or pollbook holders with the county election board. Instead, state law requires the issued identification card to state, in writing, the following information:

- 1) the status of the individual as a challenger or pollbook holder;
- 2) the name of the individual serving as a challenger or pollbook holder;
- 3) the name of the person who appointed the challenger or pollbook holder, and whether the person is a political party, an independent candidate, or a county election board; and
- 4) if the challenger or pollbook holder has been appointed by a political party, the name of that political party. (IC 3-6-7-1)

The challenger or pollbook holder must keep their identification card on their person whenever they are near a polling place and must produce their identification card whenever asked by a member of a precinct election board.

A challenger or pollbook holder can be assigned to multiple precincts. However, only one challenger or pollbook holder for each political party or independent candidate may be in a polling place at any one time during election day. (IC 3-6-7) In other words, if two or more challengers or pollbook holders of the same political party are assigned to the same precinct, both could not be in the same polling place at the same time. (IC 3-6-7-1)

A challenger or a pollbook holder is permitted inside of the polling place where the voters are voting. A challenger or pollbook holder may enter and leave the polls throughout the day, and may arrive as early as thirty (30) minutes before the polls open. (IC 3-6-7-5) A pollbook holder is permitted to receive a list of voters who have cast a ballot from the poll clerk provided voting is not delayed and no electioneering occurs. IC 3-11-8-10.5.

A voter must provide the voter's true and full name when requested by a challenger. (IC 3-11-8-19) If a voter is challenged, a challenger must complete the proper affidavit (PRE-4) succinctly stating the reasons for the

challenge. (IC 3-11-8-19; IC 3-11-8-21) The challenged voter must complete the proper affidavit for a challenged voter (PRE-4) and the voter portion of the provisional ballot PRO-2 envelope. The election division requires that the PRE-4 affidavit appear on the PRO-2 envelope. (IC 3-11-8-23; IC 3-11-8-23.5) In situations where a voter must complete a VRG-4/12 and is still challenged, the challenge voter is not required to complete their part of the PRE-4 affidavit. Instead the VRG-4/12 would serve as the affidavit and should be attached to the PRO-2 envelope after the challenged voter completes their provisional ballot. (IC 3-11-8-23(a))

In most cases a voter who is challenged cannot be given a regular ballot and must be given a provisional ballot to complete. The only exception is when a voter is challenged based on their party affiliation at the primary election. Should this occur the challenger and challenged voter must complete the PRE-6. If the challenged voter completes the PRE-6, confirming that either, at the last general election voted for a majority of the regular nominees of the political party for whose candidates the challenged person proposes to vote in the primary election and intends to vote for the regular nominees of the political party at the next general election, or because the challenged person did not vote at the last general election, intends to vote at the next general election for a majority of the regular nominees of the political party holding the primary election, then they must be given a regular ballot. (IC 3-10-1-9)

See the “Provisional Ballot Voting” section of this *Guide* for more information.

### Political Party Watchers

The state chairman and county chairman of each bona fide political party (currently Democratic, Libertarian, and Republican parties in Indiana) or an independent candidate for a federal or state office are entitled to appoint watchers at each precinct in which the political party or independent candidate is on the ballot. If both the state chairman and the county chairman of a political party have appointed watchers the political party may have two watchers present at the polls of each precinct. The credentials of watchers appointed by the state chairman must be signed by the state chairman. (IC 3-6-8-1; IC 3-6-8-3)

If more than one precinct votes at the same polling place using the same precinct election board, each political party or independent candidate on the ballot is entitled to have one watcher for each precinct voting at the polling place. In a vote center county, each party or independent candidate may appoint one watcher for each electronic poll book station or the number of poll book stations specified in the county’s vote center plan, whichever is greater. (IC 3-6-7-1; IC 3-6-8-1)

A county election board may appoint watchers in an election concerning a public question if a petition requesting the appointment is filed with the board. The petition must be signed by the chairman of a political action committee organized under IC 3-9 to support or oppose the approval of the public question; and at least the number of voters equal to two percent (2%) of total votes cast for secretary of state in the county. (IC 3-6-8-1)

A watcher must be a registered voter of the county. (IC 3-6-8-2.5) No candidate (except as an unopposed candidate for precinct committeeman or state convention delegate) may be appointed as a watcher at any election. (IC 3-6-8-2)

A watcher must possess an identification card. The county chairman or state chairman of a bona fide political party, chairman of the independent candidate’s committee, or county election board must issue the proper identification card for each watcher appointed. There is no state prescribed form that the county chairman must use for this purpose. Instead, the identification card must state, in writing, the following information:

- 1) the status of the individual as a watcher;
- 2) the name of the individual serving as a watcher;

- 3) the name of the person who appointed the watcher; and
- 4) if the watcher has been appointed by a political party, the name of that political party.

The card must be signed by the chairman and must be presented upon request by a member of the precinct election board. (IC 3-6-8-3)

A party watcher has clearly defined responsibilities. (IC 3-6-8-4) A party watcher is entitled to do the following:

- 1) Enter the polling place thirty minutes before it opens and remain there until after the votes have been tabulated.
- 2) Inspect ballot boxes and any of the voting equipment used in the precinct before any votes have been cast.
- 3) Inspect the work being done by any precinct election officer, but not interfere with their duties.
- 4) Enter, leave and reenter the polls at any time on election day.
- 5) Witness the calling and recording of the votes, the reading of the totals from the voting systems or any other proceedings of the precinct election officials in the performance of their official duties.
- 6) Receive a copy of the summary of the vote prepared under IC 3-12 and signed by the precinct election board.
- 7) Accompany the precinct inspector and judge of the opposite political party in delivering the tabulation and election returns to the county election board by the most direct route.
- 8) Be present when the inspector takes a receipt for the tabulation and election returns delivered to the county election board.
- 9) Call upon the election sheriffs to make arrests.
- 10) Obtain a list of voters who have voted from the poll clerk provided no voters are delayed and no electioneering occurs. (IC 3-11-8-10.5)

#### Candidate Watchers

#### AS A GENERAL RULE A CANDIDATE IS NOT ENTITLED TO HAVE A WATCHER IN A POLLING PLACE.

There are some limited exceptions:

- *In a primary election*, while candidates may not be watchers for themselves, a group of candidates may appoint watchers to act on the candidate's behalf.
  - Watchers for candidates are appointed under the following conditions *in primaries only*:
    - twenty-six percent (26%) or more of all candidates of a political party who are seeking nomination at a county or municipal election make the request to have watchers appointed in writing to the county election board. (IC 3-6-9-1)
- *In a general election*, any candidate or group of candidates for school board offices is entitled to candidate watchers.

A watcher for a candidate or group of candidates must be a registered voter of the county and may not be a candidate at the election, except as an unopposed candidate for precinct committeeman or state convention delegate. (IC 3-6-9-4)

The written statement requesting candidate watchers must name a person to act as attorney-in-fact for the group of candidates and the precincts where the watchers will serve. (IC 3-6-9-2) The attorney-in-fact then performs the duties on behalf of the group of candidates. The attorney-in-fact will file with the circuit court clerk the names of the appointed watchers. The circuit court clerk must then issue identification cards to the watchers. (IC 3-6-9-5)

Only one (1) watcher representing a candidate or group of candidates may be present in the polling place at any one time during election day, but watchers representing different groups may be present in the polling place at the same time. (IC 3-6-9-12)

If more than one precinct votes at the same polling place using the same precinct election board, each candidate or group of candidates is entitled to have one watcher for each precinct voting at the polling place. In a vote center county, each party or independent candidate may appoint one watcher for each electronic poll book station or the number of poll book stations specified in the county's vote center plan, whichever is greater. (IC 3-6-9-12)

A watcher appointed for a group of primary candidates, or for a school board candidate, has the same rights and responsibilities as a watcher appointed by a political party chairman. (IC 3-6-9-13)

### Media Watchers

The media may also appoint watchers to each precinct on election day. (IC 3-6-10-1) Media entitled to name watchers include:

- 1) each newspaper of general circulation in the county.
- 2) each news service operating in the county (e.g. Associated Press, Network Indiana).
- 3) each radio or television station operating in the county.

On the day before Election day each corporation owning a news organization listed above must provide the circuit court clerk, the county election board and the county chairmen of each political party (or independent candidate's committee), which has appointed watchers, with a list of persons appointed to serve as media watchers for the news organizations. An officer of the corporation must sign this list. A person appointed to act as a media watcher does not have to be a regular employee of the news organization. (IC 3-6-10-2; IC 3-6-10-4)

The county election board must issue identification cards to media watchers. If an individual is named to act as a media watcher in more than one (1) county, the identification card must be obtained from the Election Division. [Form IEC-5(b)] (IC 3-6-10-6) Generally, a media watcher has the same rights and responsibilities as a watcher appointed by a political party chairman. However, a media watcher may not call upon the election sheriffs to make arrests. (IC 3-6-10-5.5)

A member of the media may film or take photographs inside a polling location. However, a media watcher may not photograph a voter if the voter objects or in a manner that would divulge how a voter cast their ballot. (IC 3-6-10-5)

If more than one precinct votes at the same polling place using the same precinct election board, media entitled to appoint watchers may have one watcher for each precinct voting at the polling place. In a vote center county, each media entitled to appoint watchers may appoint one watcher for each electronic poll book station or the number of poll book stations specified in the county's vote center plan, whichever is greater. (IC 3-6-10-1)

### Unauthorized Persons Inside Polling Places

It is a Class A misdemeanor for a person to recklessly enter the polls without authority to do so. (IC 3-14-3-15) A person is not authorized to be inside the polling place merely because they are a precinct committeeman or other political party official, *unless* the person has been issued challenger, watcher or pollbook holder credentials.

Only the following individuals are allowed inside a polling place:

- 1) the inspector, judges, poll clerks, assistant poll clerks; or a student assistant to a precinct election officer;
- 2) deputy election commissioners;
- 3) challengers and pollbook holders;
- 4) watchers;
- 5) minor children accompanying voters;
- 6) a voter, for the purpose of voting;
- 7) a person assisting a voter under IC 3-11-9;
- 8) a member of a county election board, acting on behalf of the board;
- 9) a mechanic authorized to act on behalf of the county election board to repair a voting system, with credentials signed by each member of the county election board;
- 10) a county chairman or a county vice-chairman of a political party, if bearing credentials signed by the members of the county election board unless they are a candidate for elected office;
- 11) media watchers (IC 3-6-10-1); and
- 12) the secretary of state of Indiana, in some cases. (IC 3-11-8-15)

A “service animal,” such as a seeing-eye dog, is allowed inside a polling place and the voting booth if the voter needs the assistance of the animal. (IC 3-11-9-5)

## Photo ID Law

State law requires that voters casting a vote in person (or an absentee ballot in person at the county election office) must provide government-issued photo ID before signing the poll list or casting the absentee ballot. For election day voting, only one (1) precinct election officer (inspector, judge, clerk, or sheriff) of each major political party is entitled to ask the voter to provide proof of identification. As an example, a Democratic Party inspector and a Republican Party judge could both ask the voter to provide proof of identification. (IC 3-11-8-25.1) However, some voters are exempted from this requirement:

- 1) voters who cast an absentee ballot by mail or before a traveling board; and
- 2) voters who reside in a state licensed facility (such as a nursing home) and the polling place for their precinct is located at that facility.

To qualify as “proof of identification,” a photo ID must meet each of the following four requirements:

- 1) The ID must display the voter’s photo;
- 2) The voter’s name on the ID must conform to the name on the voter registration record;
- 3) The voter’s ID must contain an expiration date, and either still be current or have expired sometime after the date of the most recent General Election (November 8, 2016); AND
- 4) The voter’s ID must be issued by the State of Indiana or the U.S. government. (IC 3-5-2-40.5)

Indiana law does not require a voter’s ID to have an address matching their registration record. However, certain “first time” voters who registered by mail will be required to provide additional documentation that DOES match their address on the voter registration record. This additional documentation may be a photo ID where the voter’s address on the ID matches their registration record, but may also be a utility bill, paycheck stub, transcript, etc. (IC 3-7-33-4.5)

In most cases, an Indiana driver’s license, Indiana photo ID card, Military or Veterans ID, or US passport is sufficient. A document issued by the U.S. Department of Defense, a branch of the uniformed services, the Merchant Marine, or the Indiana national guard, the U.S. Department of Veterans Affairs (or Veterans Administration) that otherwise complies with the requirements for “proof of identification”; but has no expiration date or states that the document has an “indefinite” expiration date, is sufficient proof of identification for a voter casting a ballot in person (IC 3-5-2-40.5).

**NO VOTER SHOULD BE TURNED AWAY FROM THE POLLS FOR FAILING TO PROVIDE PHOTO ID.** If a voter is unable or unwilling to present ID that meets these requirements, the voter may cast a provisional ballot after completing and signing a form requesting this ballot.

If the voter is unable to obtain an ID because the voter is indigent or has a religious objection to being photographed, the voter may claim this exemption from the ID requirement by appearing in person before the clerk or county election board and affirming under penalties of perjury that the exemption applies. (Form PRO-10 or PRO-11)

If the voter does not already have a valid photo ID, the voter can obtain an Indiana photo ID card free of charge from any Bureau of Motor Vehicles license branch. BMV branches are open for extended hours on election day and the day before election day. For more information, please contact the BMV at (317) 233-6000 or visit their website <http://www.bmv.in.gov>.

## Electioneering

“Electioneering” includes expressing support or opposition to any candidate or political party, or expressing approval or disapproval of a public question in any manner that could reasonably be expected to convey that support or opposition to another individual. It also includes wearing or displaying an article of clothing, sign, button, or placard which states the name of a political party or includes the name or likeness of any currently elected official. (IC 3-14-3-16)

State law authorizes a poll clerk to record the names of individuals who have signed the poll list and to make that record available to a political party watcher or pollbook holder who requests the information. The poll clerk must ensure that:

- 1) no voter is delayed in casting a vote as a result of the poll clerk preparing this record or providing the information; and
- 2) that the poll clerk does not engage in “electioneering” when providing this information. (IC 3-11-8-10.5; IC 3-11-8-29)

It is a Class A misdemeanor for any person to knowingly engage in electioneering within the polls or within the chute.

## Election Costs & Budgeting

Generally, municipal elections are conducted by the county election board. (IC 3-10-6-8; IC 3-10-7-2) When a municipal election is held in an odd numbered year, the costs incurred by the county election board must be reimbursed by the municipality where the election of officers took place. (IC 3-5-3-7) A town can enter into an agreement with the county election board to pay set cost for the county conducting the election. (IC 3-10-7-4)

For municipalities that do not enter into such an agreement, all costs that can be directly apportioned to a specific municipality, such as the cost of printing ballots for that municipality’s election, are fully charged back to the municipality and must be reimbursed not later than December 31 in the year the election takes place. (IC 3-5-3-7)

Any costs that was incurred 90 days before the primary election until the day after the municipal election and that cannot be apportioned directly to a specific municipality must be divided. 25% of the indirect costs must be absorbed by the county election board with the remaining 75% be apportioned among each municipality that held an election and did not already enter into an agreement with the county election board to pay a set cost for conducting the election. (IC 3-5-3-8) The remaining 75% must be divided among each municipality that held an

election based on the same ratio of total ballots casts among all municipal elections. (IC 3-5-3-9)

Example: The county election board conducts the municipal election in the Boone City, the town of Davis, and the town of Edwardsville. The total ballots cast in all three municipal election was 1,000. 550 ballots were cast in Boone City, 300 in Davis, and 150 in Edwardsville. Based on this ratio, Boone City would be charge with paying the county election board 55% of the indirect costs apportioned among the municipalities. Davis would be responsible for 30% of the costs, with Edwardsville paying the remaining 10%.

However, in a county which has adopted a vote center plan, all election expenses incurred administering a municipal primary or municipal election shall be apportioned among the cities and towns in the same ratio that the number of ballots who cast a ballot in the city or town bears to the total number of voters who cast a ballot in all of the cities and towns in the county at that municipal primary or municipal election.

### **Special Elections in “Off-Years”**

A public question may be certified to a county election board in an “off-year” between the presidential federal election year and a non-presidential election year (for example, 2017 was an “off-year”). The “2018 Referendum Brochure” published by the Indiana Election Division lists the only types of special elections that may be called in Indiana.

There are very specific procedures and deadlines that must be met in order for a jurisdiction to call for a special election. It is recommend the entity requesting a special election consult with their own attorney to be fully and properly advised of the process. However, a special election held for a public question must be held on the first Tuesday in May or November; it may not be called on any other day throughout the year. The entity requesting a special election in an “off-year” is responsible for all costs.

If a question is properly certified to a county election board, a special election is largely conducted in the same manner as a regular election. There are exceptions to reduce the number of in-person absentee voting in the clerk’s office (though military and overseas voters’ ballots must be mailed no later than 45-days before the election if an ongoing Federal Post Card Application (FPCA) is on file or submitted before the 45-day deadline). (IC 3-11-4-6)

Vote center counties may need to amend their plan to change or limit the number of vote centers available during the special election. Indiana law now permits a county to reduce the number of vote centers ONLY in the event of an “off-year” special election to one (1) vote center on election day, unless the number of active voters in the jurisdiction requesting the special election exceeds 10,000. (IC 3-11-18.1-6)

# PROVISIONAL BALLOT VOTING

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Provisional voting is a fail-safe method of voting. No voter should be prevented from voting on election day or during in-person early voting in the clerk's office or satellite early voting location. However, certain voters may be required to complete a provisional ballot. Provisional ballots are sealed inside a security envelope attested by the challenger and challenged voter and kept separate from all other ballots. A provisional ballot is NOT to be tabulated at a vote center or precinct polling location on election day. Instead, provisional ballots are submitted to a separate verification process managed by the county election board before it may be counted. (IC 3-11.7-2)

## Provisional Ballots & Materials

### Provisional Ballots

The county election board shall prepare provisional ballots for all offices on the ballot in the county in the number it considers necessary. The circuit court clerk shall estimate the number of provisional ballots that will be required in the county for the election not less than sixty (60) days before an election (or no more than three (3) days after the date a special election is ordered). (IC 3-11.7-1-4)

A provisional ballot must be in the same form as an absentee ballot, containing the offices appropriate for the election and precinct to which the ballot pertains, but must indicate that the ballot is a provisional ballot and not an absentee ballot. (IC 3-11.7-1-2) Each provisional ballot shall bear the clerk's signature and seal. (IC 3-11.7-1-7)

Provisional ballots must be prepared by the county election board and delivered to each circuit court clerk (or the Lake County Director of the Board of Elections and Registration) separate from other ballots and not later than:

- fifty (50) days before a primary, general, special, or municipal election; or
- thirty-eight (38) days before a general election at which presidential electors are chosen (IC 3-11.7-1-6)

The county election board shall have provisional ballots delivered in a package plainly marked or labeled with the words: "This package contains \_\_\_\_\_ (giving the number of ballots) provisional ballots." The Indiana Election Division created the Provisional Ballot Package Label (PRO-3) document for county election administrators to provide to a printer or use when creating the envelope in-house.

The county election board will deliver provisional ballots to the inspector in a tightly closed, securely fastened, strong and stout paper envelope or bag separate from the other ballots (PRO-3). The envelope or bag containing the provisional ballots shall be attested by the initials of the clerk or clerk's designee in the presence of the inspector or inspector's representative. The inspector shall sign a receipt for the provisional ballots.

The provisional ballot packages may not then be opened until they have been delivered to the precinct election board to which they are directed and the precinct election board is fully organized and ready to receive votes. (IC 3-11.7-1)

## Provisional Ballot Forms & Envelopes

The county election board shall provide each precinct election board with the proper forms and envelopes necessary to carry out provisional ballot voting. The chart below describes those materials (IC 3-11.7-1-6; 3-11.7-1-8; 3-11.7-1-9):

Form Name	Form Number	Purpose
Provisional Ballot Package Label	PRO-3	Slip or envelope containing the provisional ballots for a precinct
Provisional Ballot Carrier Envelope	PRO-4	Secures uncounted provisional ballot envelopes received on Election day
Provisional Ballot Affidavit & Security Envelope	PRE-4/PRO-2	Combined challenger and challenged voter affidavit and ballot security envelope used to execute provisional ballot voting
Provisional Ballot Envelope for Ballots Issued After Regular Poll Closing Hours	PRO-5	If a court order extends voting beyond 6:00 p.m. local prevailing time, voters must use a provisional ballot and this universe of provisional ballot envelopes are to be secured in this envelope instead of the PRO-4 envelope
Provisional Ballot Envelope for Spoiled Provisional Ballots	PRO-6	If a voter spoils a provisional ballot, it should be placed in this envelope rather than the spoiled ballot envelope for "regular" ballots
Instructions to Provisional Voter	PRO-9	Required document for precinct election officials to provide a provisional ballot voter notifying them of their rights and how to track the provisional ballot

**NOTE:** State law **REQUIRES** the PRE-4 affidavit to be printed directly on the PRO-2 Security Envelope containing the voted provisional ballot so that the PRE-4 affidavit will not be separated from the ballot.

## Issuing a Provisional Ballot

### 1) Confirm Certain Fail-Safes Do Not Apply to the Voter Before Issuing a Provisional Ballot

Whether a provisional ballot or a regular official ballot is issued to a voter depends upon whether the voter's name does or does not appear on the poll list, and depends on whether the voter has been challenged as not eligible to vote in the precinct.

Before issuing a provisional ballot, it is imperative a poll worker determine if a certificate of error is to be issued to allow the voter to cast a regular ballot, or if the voter qualifies for a fail-safe that would permit them to vote a regular ballot.

The following examples describe some situations that may arise where a voter may cast a regular ballot rather than a provisional ballot (see “Fail Safe Procedures” in the *Indiana Voter Registration Guidebook* for more details):

- 1) A person’s name does not appear on the poll list, but the county voter registration official issues a certificate of error noting a mistake was made by the county voter registration office. Voter votes a regular official ballot. However, if the voter is then challenged, (PRE-4), the voter casts a provisional ballot.
- 2) A person’s name does not appear on the poll list because the voter’s registration record is cancelled. The voter must affirm that the person has continuously resided at an address shown as the voter’s former residence on the voter registration record before being issued a regular official ballot. However, if the voter is then challenged, (PRE-4), the voter casts a provisional ballot.
- 3) A person whose name does not appear on the poll list, but who produces a registration receipt from a license branch or full service agency executed during the open registration period and the county voter registration office advises the precinct election board that the office received and approved the application or has no record of either approving or rejecting the application. Voter votes a regular official ballot. The voter must complete a voter registration application and provide the completed application to the precinct election board before voting if the county voter registration office has no record of either approving or rejecting the application. However, if the voter is then challenged (PRE-4), the voter casts a provisional ballot.
- 4) A person whose name does not appear on the poll list, who is not described in (1) through (3) above, and is challenged as ineligible to vote in the precinct (PRE-4) votes a provisional ballot.

In other cases:

- 5) A person whose name does appear on the poll list, no longer resides in the precinct, but claims the right to vote in the precinct where they formerly resided under a fail-safe provision in current law (VRG-4/12 or VRG-15). Voter votes a regular official ballot. However, if the voter is then challenged, (PRE-4), then the voter casts a provisional ballot.
- 6) A person whose name does appear on the poll list, but has moved within the precinct. Voter votes a regular official ballot. However, if the voter is then challenged, (PRE-4), the voter casts a provisional ballot.

## 2) Complete the PRE-4 Challenger Affidavit

Assuming the voter does not qualify for a certificate of error or a fail-safe, the PRE-4 Affidavit provides precinct election officials or a challenger a list of reasons that a voter may be issued a provisional ballot:

- 1) This voter’s name is not included on the poll list, and is NOT entitled to vote by using a “Fail Safe” procedure.
- 2) This voter’s name is included on the poll list, but this voter does not currently reside in the precinct, and is NOT entitled to vote in this precinct by completing a VRG-4/12 form or a VRG-15 form, or other “Fail Safe” procedure.
- 3) This voter was unable or declined to present proof of identification when required by law to do so.
- 4) This voter is identified on the poll list as required to present an additional document that confirms the voter’s identity and current residence address, but has not done so.
- 5) This voter is not a U.S. citizen.
- 6) This voter will not be 18 years of age or older at the general (November) election.
- 7) This voter’s signature on the poll list does not match the signature on the voter’s registration record.
- 8) Other.

NOTE: If a court order extends the hours that the polls are open on election day, any person voting during this extended period must cast a provisional ballot. Poll workers are encouraged to use the “other” reason and note a ballot was cast after the polls closed but during the extending period of time the polls were open pursuant to court order. These provisional ballots are placed inside and sealed the PRO-2 envelope but later all of the provisional ballots cast during the extending voting period are sealed in the PRO-5 carrier envelope to return to the county election board.

The precinct election officer or challenger must complete and sign the upper portion of the PRE-4 affidavit. Before the provisional ballot is issued, the voter must complete and sign the “Affidavit of a Challenged Voter” portion, unless as specifically set forth below. (IC 3-11-8-22.1; 3-11.7-2-1)

If a person has already made an affirmation or executed an affidavit permitted under current law to vote pursuant to a fail-safe procedure, or a person has voted by absentee ballot and completed the affidavit on the outside of the absentee ballot envelope, and is then challenged, then the person is not required to complete and sign the “Affidavit of a Challenged Voter” portion of State Form PRE-4. (IC 3-11-8-23, 3-11.5-4-16)

This can occur when the following situations arise:

- 1) To vote a regular official ballot, a person who is not on the poll list may make an oral or written affirmation to a precinct election board that the person either:
  - a. has continuously resided in the precinct, and the voter’s name has been removed from the registration list by mistake; or
  - b. produces a receipt indicating that the person applied to register to vote at a license branch or other “full service” voter registration agency while registration was open and signs a voter registration application.

If the eligibility of a person to vote in either of these situations is challenged before the voter votes a regular official ballot, the person is provided with a provisional ballot (rather than a regular official ballot). The person challenged in this situation is not required to execute the “Affidavit of a Challenged Voter” portion of Challenge Affidavit (PRE-4) if the person has already satisfied the requirements set forth in (a) and (b) above. (IC 3-7-48-7.5)

- 2) To vote a regular official ballot, a person who is on the poll list but who has moved out of the precinct may execute an affidavit under the current law permitting the person to return their former precinct to vote either:
  - a. for president only in a presidential election because the person moved out of Indiana less than 30 days before an election (VRG-15); or
  - b. because the person moved to another precinct within Indiana less than 30 days before an election (VRG- 4/12).

If the eligibility of the person to vote is challenged before the voter votes a regular official ballot, the person is provided with a provisional ballot. The person challenged in this situation is not required to execute the “Affidavit of a Challenged Voter” portion of State Form PRE-4 if the person has already satisfied the requirements set forth in (a) or (b) above. (IC 3-10-10-9, 3-10-11-4.5)

- 3) To vote a regular official ballot, a person who is on the poll list but who has moved to another precinct within the same county and the same congressional district may make an oral or written affirmation (State Form VRG-4/12) under the current law permitting a person who formerly resided in a precinct, but no longer resides there, to return their former precinct to vote. If the eligibility of the person to vote is challenged before the voter votes a regular official ballot, the person is provided with a provisional ballot. The person challenged in this situation is not required to execute the “Affidavit of a Challenged

Voter” portion of Challenge Affidavit (PRE-4) if the person has already made the oral or written affirmation required under current law. (IC 3-10-12-5)

- 4) If an absentee ballot voter is challenged for the reason the challenger believes the absentee voter is not a qualified voter of the precinct, then the challenged voter’s section of the PRE-4 does not need to be completed. Instead, the absentee application serves as the sworn testimony of the voter. It is recommended poll workers write “absentee voter” in the lower section of the PRE-4 and on the PRO-2 to alert county election officials that the absentee ballot application may be sealed inside the PRE-4/PRO-2 envelope. (IC 3-11-10-22)

In addition, a person who:

- 1) registered to vote by mail and is required to provide certain additional residency documents to the county voter registration office, but has not yet done so when the voter appears at the polls to cast a ballot, and does not do so while at the polls; or
- 2) votes under a court order extending the hours that the polls are open on election day;

must cast a provisional ballot, but is not required to execute the separate challenged voter’s affidavit described above. (IC 3-11-8-27.5)

#### Challenge to Party Affiliation at Primary Election

If a person is challenged at a primary election on the basis of party affiliation, the person is allowed to vote a regular official ballot listing candidates of that party upon completion of an affidavit stating that the person is affiliated with the political party whose ballot the person is requesting. (PRE-6) The voter is then allowed to cast that party’s primary ballot, and is not required to cast a provisional ballot. (IC 3-10-1-10.5)

#### 3) Finish the Provisional Ballot Process

Once the PRE-4 affidavit has been completed, the voter is issued a provisional ballot. Unless otherwise specified, the procedures that apply to paper ballots apply to provisional ballots, including the need for two sets of clerks’ initials. After the provisional ballot is completed, the provisional voter shall seal the ballot in the PRO-2 security envelope, which is the “flip-side” of the envelope where the PRE-4 affidavit is printed, in front of the precinct election officials. The voter MUST sign their name in the space provided on the PRO-2 affidavit. Before the voter leaves the polling place, poll workers should review the PRE-4 challenge affidavit and the affidavit on the PRO-2 side of the envelope for completeness. It is critically important the PRE-4 and PRO-2 forms be complete to provide the facts and evidence to aid the county election board in determining whether or not the provisional ballot may be counted.

In addition, poll workers MUST provide the provisional voter the PRO-9, Instructions to the Provisional Voter. This document describes the provisional ballot process and provides contact information for the county election board so the voter may inquire about the status of their provisional ballot. It also reminds an individual who cast a provisional ballot due to failure to provide photo ID that the person may, before the county election board no later than noon, prevailing local time, ten (10) days after the election, complete the PRO-10 (Affidavit of Challenged Voter Concerning Proof of Identification Requirement) or PRO-11 (Affidavit of Challenged Voter Concerning Proof of Identification Requirement in a Municipal Election). On this affidavit, the voter must either present proper ID and execute the form, or attest under penalties of perjury the voter is indigent or has a religious objection to securing an ID.

At the close of the polls, the precinct election board shall seal all the provisional ballots in the PRO-4 carrier envelope, any provisional ballots received after 6:00 p.m., local prevailing time, but on or before the poll closing time extended by court order in the PRO-5 carrier envelope, and any spoiled provisional ballots in the PRO-6 carrier envelope. Poll workers should complete the paperwork found on the outside of each envelope, which requires a count of provisional ballots found sealed inside and signatures of certain precinct election officials. The inspector shall return all provisional ballot materials to the circuit court clerk. (IC 3-11.7-2-4)

## Provisional Ballot Hearing

After election day, the county election board must meet and hold a public hearing to determine whether or not each provisional ballot is to be counted. The meeting should be noticed like any public meeting held by the county election board, and is subject to the Open Door Law.

The location for counting provisional ballot is to be treated the same as a precinct poll, and provisional ballot counters treated the same as a precinct election officer. In addition, political parties, independent candidates, or the media may appoint watchers and a candidate entitled to appoint a watcher under IC 3-6-9 may also appoint a watcher. (IC 3-11.7-4-1; IC 3-11.7-4-2; IC 3-11.7-4-3; IC 3-11.7-4-4) All provisional ballots must be counted no later than 3:00 p.m., prevailing local time, ten (10) days following an election. (IC 3-11.7-5-1(b))

### Provisional Ballot Counters

Each county election board shall appoint teams of provisional ballot counters consisting of two (2) voters of the county, one from each of the major political parties. A provisional ballot counter must have the same qualifications as a member of an absentee voter board.

The county election board shall notify the Democratic and Republican Party county chairs of the need for provisional counter appointments ten (10) days before election day. The county chair shall recommend provisional ballot counter appointees in writing no later than noon, prevailing local time, three (3) days before election day, and the county election board shall appoint the provisional ballot counters recommended. If the county chairman fails to make any recommendations, the county election board may appoint any voters of the county. In a county where absentee ballots are counted in a central location, a person can serve as both an absentee ballot counter and a provisional ballot counter. (IC 3-11.7-3)

### Rules for Counting Provisional Ballots

Unless a provisional ballot has been rejected based on evidence of fraud, tampering, or misconduct affecting the integrity of the ballot under the requirement that the poll clerks must initial each provisional ballot (IC 3-11.7-5-5), provisional ballot may be counted if the county election determines all of the following apply (IC 3-11.7-5-2(a)):

- 1) The PRE-4 affidavit executed by the provisional voter under IC 3-11.7-2-1 is properly executed;
- 2) The provisional voter is a qualified voter of the precinct and has provided proof of identification, if required;
- 3) The provisional voter registered to vote at a registration agency on a date within the registration period based on all the information available to the county election board, including:
  - a. Information provided by the provisional voter,
  - b. Information contained in the county's voter registration records, and
  - c. Information contained in the statewide voter registration file;that the voter registered to vote at a voter registration agency on a date within the registration period.

If a provisional ballot is cast by a voter whose name *does not* appear on the poll list but who indicates that the voter applied to register at the BMV or other full service voter registration agency while registration was open, then the county election board shall accept or reject the provisional ballot depending on the information, or lack of information, the board receives about the voter's registration application. The BMV or full service voter registration agency where the voter registered to vote must, by noon of the first Friday after the election, respond to the county election board's inquiry and indicate whether the agency's records contain any information about the voter's registration application. If the BMV or full service voter registration agency does not respond to the county election board's inquiry by the noon Friday deadline, or responds that the agency has no record of the alleged registration application, the board rejects the provisional ballot, and the ballot cannot be counted. (IC 3-11.7-5-2(b))

If a provisional ballot is cast by a voter after the voter was challenged solely due to the voter's failure to provide the additional residency documentation required because the voter was a first time voter in Indiana who registered by mail, and the county election board determines that the voter filed the documentation required with the county voter registration office not later than the closing of polls on Election day, then the provisional ballot must be counted. (IC 3-11.7-5-2(c))

State law sets forth rules that apply to the counting of provisional ballots cast when a voter fails to provide photo identification:

- 1) If a provisional ballot is cast by a voter after the voter was challenged solely due to the voter being unable or declining to provide proof of identification, and the voter provides a photo ID to the county election board and executes the PRO-10 affidavit (PRO-11 for municipal elections) before the noon, prevailing local time, ten (10) day deadline after Election day, then the provisional ballot must be counted. (IC 3-11.7-5-1.5(e); 3-11.7-5-2.5(b))
- 2) If a provisional ballot is cast by a voter after the voter was challenged solely due to the voter being unable or declining to provide a proof of identification, and the voter executes and delivers to the county election board the PRO-10 affidavit (PRO-11 for municipal elections) claiming that the voter is indigent and unable to obtain proof of identification without the payment of a fee before the noon, prevailing local time, ten (10) day deadline after Election day, then the provisional ballot must be counted. (IC 3-11.7-5-2.5(c) and (d))
- 3) If a provisional ballot is cast by a voter after the voter was challenged solely due to the voter being unable or declining to provide a proof of identification, and the voter executes and delivers to the county election board the PRO-10 affidavits (PRO-11 for municipal elections) claiming that the voter has a religious objection to being photographed and does so before the noon, prevailing local time, ten (10) day deadline after Election day, then the provisional ballot must be counted. (IC 3-11.7-5-2.5(c) and (d))

If a provisional ballot is cast by a voter after the voter was challenged for inability or declination to provide proof of identification, and the voter does not appear before the county election board to either 1) provide proof of identification and execute the PRO-10 (PRO-11 for municipal elections) affidavit, or 2) execute the PRO-10 (PRO-11 for municipal elections) affidavit to claim an exemption from this requirement as indigent or having a religious objection to being photographed by noon, prevailing local time, ten (10) days after the election, then the county election board must find the voter's provisional ballot invalid, and the ballot cannot be counted. (IC 3-11.7-5-2.5(f))

Finally, if a provisional ballot is cast by a voter under a court order extending the hours that the polls are open, the ballot must be counted unless the court order extending polling place hours is overturned by another court. The court may provide guidance concerning how these provisional ballots shall be processed.

In a situation other than those specified above, the county election board must decide whether or not a provisional ballot is valid, based on the evidence presented to the board concerning that provisional ballot. If a provisional ballot is cast by a voter after the voter was challenged for a reason other than the voter's inability or declination to provide photo ID and the only evidence before the county election board is the challenger's affidavit and the challenged voter's response affidavit, then the provisional ballot must be counted. (IC 3-11.7-5-1.5(f))

If a county election board determines, by majority vote of its members and in accordance with the election laws, that the provisional ballot was marked by the voter in compliance with election laws, but because of an error

caused by an election officer the ballot cannot be counted, then the sealed envelope containing that provisional ballot must be opened and the provisional ballot counted unless there is evidence of fraud, tampering, or misconduct demonstrated regarding the integrity of this ballot. The error by an election officer is not, by itself, evidence of fraud, tampering, or misconduct affecting the integrity of the ballot. (IC 3-11.7-5-1.5(a) and (c))

However, if the county election board, by a majority vote of its members, determines that evidence presented to the board demonstrates that the individual who cast the provisional ballot was ineligible to cast a regular ballot in that precinct or evidence demonstrates any other reason set forth in HAVA or Indiana election laws that the provisional ballot cannot be counted, then the provisional ballot cannot be counted. (IC 3-11.7-5-1.5(d))

The evidence presented to the county election board concerning fraud, tampering, or misconduct affecting the integrity of a provisional ballot will allow the board to determine whether or not a provisional ballot that does not comply with IC 3-11.7-5-5(a) should be counted. This law states that "if any ballot cast by a provisional voter does not contain the initials of the poll clerks, the ballot shall, without being unfolded to disclose how the ballot is marked, be endorsed with the word 'Rejected'."

#### **Absentee Ballots Treated as Provisional Ballots**

If an absentee voter is challenged for not being a legal voter of the precinct, the challenged voter's absentee ballot must be treated as a provisional ballot. The absentee voter's application becomes the voter's sworn statement for purposes of determining whether or not the ballot is to be counted. (IC 3-11-10-23) An absentee voter need not meet the photo ID requirement. Finally, an absentee ballot voter who is a first-time voter who registered to vote by mail and did not provide proof of residency must submit their proof no later than election day, where the time is dependent on the method of absentee ballot counting (central count or at the precinct). (IC 3-11-10-16.5; IC 3-11.5-4-12)

#### **Processing, Securing and Counting Provisional Ballots**

After being processed, all provisional ballots must be classified as either: (1) Valid; (2) Invalid; or (3) Rejected. A county election board decides, based on the state laws discussed above, and the evidence presented to the board, whether a ballot is valid or invalid.

State law may require that a provisional ballot be "rejected" without any further determination by the county election board. For example, a provisional ballot is "rejected" as the result of a lack of any evidence of a registration application being submitted to a full service voter registration agency, or as the result of a court order extending polling place hours being overturned.

All rejected provisional ballots shall be enclosed and securely sealed in an envelope marked "Rejected Provisional Ballots (PRO-7)." (IC 3-11.7-5-5(b))

If the board determines that:

- 1) the provisional voter affidavit has not been properly executed;
- 2) the provisional voter is not a qualified voter of the precinct;
- 3) the provisional voter failed to provide photo ID, if required; or
- 4) the provisional voter did not register to vote at a registration agency on a date within the registration period,

then the county election board must find that the provisional ballot is invalid and may not be counted; and the envelope containing the provisional ballots may not be opened. The provisional ballot envelope shall be marked with the notation: "Provisional ballot determined invalid." (IC 3-11.7-5-3(b))

In counting the provisional ballots, each ballot shall be laid upon a table in the order in which the ballots were opened and a provisional ballot counter shall read the name of the candidates voted on from the ballot while a member of the county election board (or the member's representative) that is not of the same party as the provisional ballot counter views the ballot as the names are read.

During the counting of provisional ballots, a provisional ballot counter or a member of the county election board (or a member's representative) may protest the counting of any ballot or any part of a ballot. If the provisional ballot counters cannot agree on whether to count a ballot after this protest then the question shall be referred to the county election board for decision. Following the decision by the provisional ballot counters or the county election board the counters shall sign each protested ballot and mark on the back of the protested ballot the word "counted" or "not counted", as appropriate. (IC 3-11.7-5-7; 3-11.7-5-8; 3-11.7-5-9; 3-11.7-5-10; 3-11.7-5-11; 3-11.7-5-12)

A provisional ballot counter may not count provisional ballots for one precinct while counting provisional ballots for another precinct. If a county has appointed more than one set of provisional ballot counters then a set of counters may count provisional ballots in one precinct while another set of counters count provisional ballots in another precinct. (IC 3-11.7-5-13; 3-11.7-5-14)

When the provisional ballots have been counted, the counters shall prepare a certificate stating the number of votes each candidate received for each office and cast on each public question, and deliver the certificates and tally papers to the county election board immediately upon the tabulation of the precinct's vote. The counters shall make and sign a similar certificate for the news media and deliver it to the circuit court clerk, who shall deliver it to any person designated to receive the certificate before the closing of the polls. The counters shall prepare a memorandum of the total votes cast for each candidate and on each public question and ensure that each member of the county election board receives a copy of the memorandum.

The counters, in the presence of the county election board, shall:

- 1) place all provisional ballots whether voted, spoiled, determined invalid or rejected, including all executed affidavits related to the provisional ballots and all tally papers, in a strong paper envelope or bag;
- 2) securely seal the envelope or bag;
- 3) initial the envelope or bag;
- 4) mark on the outside of the envelope or bag in ink the precinct in which the provisional ballots were cast; and
- 5) deliver the envelope or bag to the circuit court clerk and notify the clerk of the number of ballots placed in the envelope or bag. (IC 3-11.7-5-16; 3-11.7-5-17; 3-11.7-5-18; 3-11.7-5-19)

Upon delivery of the envelope or bag to the circuit court clerk, each counter shall sign an oath (PRO-8) before the clerk that the counter:

- 1) kept the ballots and papers in the envelope or bag secure;
- 2) did not permit any person to open the envelope or bag or otherwise touch or tamper with the ballots; and
- 3) has no knowledge of any other person opening the envelope or bag.

The circuit court clerk shall then place the envelope or bag in a receptacle provided by the county executive with two different locks, lock the receptacle, retain one key to the lock, and give one key to the lock to the member of the county election board who is not a member of the same political party as the clerk. The receptacle shall be preserved and disposed in the same manner as other election materials kept under seal. (IC 3-11.7-5-20; 3-11.7-5-21; 3-11.7-5-22; 3-11.7-5-23; 3-11.7-5-24; 3-11.7-5-25)

### Miscellaneous Provisional Ballot Procedures

The board must establish reasonable procedures to protect the security, confidentiality, and integrity of the personal information collected, stored, or used to provide this information. The board must restrict access to the information available regarding the provisional ballot to the individual who cast the ballot. (IC 3-11.7-6-3)

A county election board must establish a toll-free telephone number or Internet web site to enable a voter who cast a provisional ballot to determine whether the provisional ballot was counted, and if not, the reason why the ballot was not counted. (IC 3-11.7-6-3)

The county election board shall make copies of each completed affidavit returned by the precinct election board. This would include challenge affidavits and the voter's response affidavit (the PRE-4 form) that may have led to the issuance of a provisional ballot. The county election board is then required to send a copy of these affidavits to the Secretary of State. (IC 3-14-5-2) The county election board is then required to send these affidavits to the foreman of the grand jury when they are next in session. (IC 3-14-5-2)

# POST-ELECTION PROCEDURES

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After the ballots have been tabulated, county election administrators must certify the results of the election to the Indiana Election Division no later than noon (Indianapolis time) the second Monday following election day. (IC 3-12-5-1) During the period after election day and before the certification deadline, a county election board has a number of responsibilities to finalize election results. After certification, and assuming a recount or contest action has not been filed, oaths of office are filed, certificates of elections are sent, and election materials are preserved and stored, among other duties.

As a reminder, after the election, all documents and materials (paper and electronic) are “sealed” and should be secured for further inspection and examination. The voting machines utilized at the polling location in question should be locked, tagged, and secured for possible inspection at a later time. (IC 3-10-1-31.1)

## Canvassing & Audit Procedures

### Canvassing

On election night after the polls close, the county election board begins canvassing the vote to certify the election results. The county election board may employ clerical assistants, as needed, to assist in the tabulation of the vote. (IC 3-12-4-1; IC 3-12-4-4) These clerical assistants must meet the same qualifications as the person serving as a precinct election official. (IC 3-6-6-7) The number of assistants employed must be equally represented by the Democratic and Republican political parties of the state. However, the county election board may, by unanimous vote of its entire membership, also employ a college student to assist the board in a nonpartisan manner, if the student is a registered voter of the county. (IC 3-12-4-4(d))

The canvassing must be performed in public pursuant to IC 5-14-1.5; however, the room where the canvassing is conducted may be organized in a way to prevent observers from physically handling any election materials or interfering with the canvassing process. (IC 3-12-4-6) The canvassing responsibilities of the county election board include the following (IC 3-12-4-8):

- Careful examination and comparison of all certificates, poll lists and tally sheets.
- Tabulation of all votes cast for all offices and on all public questions.

If an automatic tabulating machine breaks down during canvassing, the county election board may authorize emergency procedures to count the ballot cards. (IC 3-12-3-5(d))

Counties that employ an optical scan ballot card voting system are required to appoint the bi-partisan “write-in” teams the county election board considers necessary to examine and count write-in votes. The county chairmen of each of the two major political parties must designate one (1) member for each write-in team appointed. Members of a write-in team are considered employees of the county election board and must meet the same qualifications as the clerical assistants. (IC 3-12-4-4)

Members of the election board gather and inspect records from all vote sources, including tally cards, tally print-outs and election management system (EMS) printouts; absentee ballots; ballots from traveling boards; tally of voter signatures at check-in (if paper poll lists are utilized) or printouts from electronic poll books used for the precinct at voter check-in. It is recommended that this information be entered into a spreadsheet and members of the election board check the information for accuracy. The number of rejected and spoiled ballots (if any) should be tallied, recorded and placed into the spreadsheet if one is used.

The number of total ballots cast (V) should equal the number of voters who signed in and received a ballot on Election day (ED) plus the number of voters who returned absentee (A) and travelling board ballots (T) minus the number of rejected and spoiled ballots (C).

If  $V \neq (ED + A + T) - C$ , a discrepancy has been confirmed. Determine if discrepancy is 5 or more. If 5 or more, continue the process to attempt to resolve the discrepancy.

Documentation secured at the polling place such as poll worker notes indicating problems or exceptions that occurred during the day should be consulted to determine if these additional factors explain when and how the discrepancy might have occurred. If the source of the discrepancy is discovered or the discrepancy is resolved, the Election Board shall proceed to correct the canvass if possible or determine what further action can be taken to prevent recurrence of the problem in future elections if correction of the canvass cannot resolve the discrepancy.

When the discrepancy remains unexplained, the County Election Board shall manually compute the vote totals for each contest and public question on the ballot from the printouts secured from each election machine added to the total number of absentee ballots plus traveling board ballots. These totals will then be compared to the totals produced from the specific election management system employed at the County Election office. If any discrepancies between the manual count and the electronic count for any contest or public question arise, these will be documented in the final report of the Election Board and the Election Board shall notify the Indiana Election Commission to determine if further investigation is warranted.

The County Election Board shall summarize its findings and report them with the certification of election results no later than twelve (12) days after the election and file the results with the Indiana Election Division.

If, for any precinct the total number of ballots cast and the number of voters who signed the poll book at the polls, or returned an absentee or travelling board ballot, differs by five (5) or more, the County Election Board shall set a time and place to publicly inspect and review all election documentation for the precincts in question. The meeting should occur as soon after the election as possible since the audit period is limited to twelve (12) days at which time the County Election Board must certify the results of the audit to the Indiana Election Division. Public notice of the audit must be given under IC 3-12-3.5-8(g) at least 48 hours in advance.

### **Audit Procedures for Precincts Using Direct Record Electronic Voting Systems**

Under IC 3-12-3.5-8, the Indiana Election Commission has adopted recommendations of procedure for use in cases of elections where the tally of votes cast differs by 5 or more from the number of voters who received ballots or returned absentee ballots in precincts using direct recording electronic voting system.

#### **Pre-Election and Election Day Guidelines:**

- A number of measures can be taken to minimize occurrences of discrepancies in vote counts. These include the use of recording sheets that track various steps in the voting and reconciliation process. Each sheet should include signatures or initials of supervising authorities.
- Reporting sheets should provide complete information about each of the voting system units employed at the polling place. Information should include the serial number of the voting machine and the number of votes cast on each machine.
- Absentee reporting sheets should record serial numbers and machine counts used for absentee voting. These should be completed for both courthouse and satellite voting sites for each machine per precinct.
- Hourly or periodic tally updates during election day voting will facilitate reconciliation and can be useful in identifying the time of day when an anomaly might have been discovered or reported by a poll worker. Tally should never include actual election results or returns.
- Receiving Report on which the individuals at central count location verify that all memory cards and printed tally sheets have been returned from the polling location in appropriate envelopes.

- Verification and Uploading Report on which a bi-partisan team verifies that all memory cards for each unit at each polling location have been uploaded. After uploading is completed for each site, the memory cards are returned to the envelope and another bi-partisan team verifies that all tally cards have been returned to the envelope in which they were delivered. The completed envelopes are then marked and secured in a container until the final verification that all memory cards have been uploaded.

## Election Results

### Tabulation, generally

After the polls have closed, the next step is to ascertain the results of the election. Some ballot counting procedures and rules apply uniformly to all elections, regardless of the type of voting equipment being utilized. The next few paragraphs provide insight on how a voting system tabulates results, though the same rules apply should a county use traditional, hand-counted paper ballots or if a judge issues an order to conduct a recount using a local recount commission.

First and foremost, and subject to laws to prevent election fraud, the intent of the voter is the primary factor in determining the validity of any vote. (IC 3-12-1-1) However, if it is impossible to determine how a voter intended to vote for a particular office or on a particular question, then only that office or question may not be counted. The entire ballot is not invalidated if it is impossible to determine the intent of the voter on only a portion of the ballot.

The entire ballot is void if a distinguishing or identifying mark of any kind appears on the ballot. Anytime a voter has marked or mutilated their ballot in such a way as to enable a person to be able to determine who cast the ballot, then the entire ballot is voided. However, an erasure does not constitute a distinguishing mark, unless it is made with the intent of enabling a person to determine who cast the ballot. (IC 3-12-1-3; 3-12-1-4)

Each type of voting system must be able to distinguish between straight parties, individual, crossover votes, under votes and over-votes. A person who casts a straight party vote and votes for individual candidates of the same party has not over voted. The straight party votes must be counted and the individual votes are not counted. (IC 3-12-1-7(a)) If a voter has cast a straight party vote and has also voted for the individual candidates of a different political party or individual independent candidates, the individual candidate votes take precedence over the straight party votes and are counted. The straight party votes are counted for all other offices. This rule applies whenever only one (1) person may be elected to the office being voted upon. (IC 3-12-1-7(b))

However, a straight party vote no longer counts in partisan multi-member at large districts on a county council, township board, city council, or town council. Instead a voter must vote for individual candidates for those offices on the ballot for the vote to be counted. (IC 3-11-7-4; IC 3-11-7.5-10; IC 3-12-1-7 (d) and (e))

If a voter casts a ballot for more than one straight party ticket, the whole ballot is void for candidates of a political party, but an otherwise valid vote for a nonpartisan school board candidate or on a public question is counted. (IC 3-12-1-7(f))

### Reporting Unofficial Election Results

On election day, counties report unofficial results and still have until noon (Indianapolis time) on the second Monday following election day to certify election results. (IC 3-12-5-1) Many counties will report results to the media, political party leaders, and candidates and publish those results on the county's website, if available. The Indiana Election Division asks that counties complete a simple unofficial results report for state level races before leaving county offices on election night for reporting on the state's election reporting website. (The report is not in the statewide voter registration system; instead, the state will send a hard copy to complete.) The

state's website helps to collate unofficial results for statewide, Congressional, and state legislative races, and highlights countywide offices like judge and prosecuting attorney who file declarations of candidacy with the Election Division.

Election results are not public information until the polls close, even if the county's absentee ballots are tabulated well before the polls close. County election board members and staff must exercise discretion and not release results early to any person since a violation of that law is a Level 6 felony. (3-14-4-10) It is also helpful to remind the public results are unofficial until the county election board certifies the final results to the state election division.

### Certifying Election Results

Election results are considered unofficial until the county election board completes a canvass of election results and tallies all ballots, including eligible provisional ballots and "late-arriving" overseas voter ballots. "Late-arriving" overseas voter ballots are to be counted by county election officials if the absentee ballot envelope is postmarked on or before the date of the election and received no later than noon, prevailing local time, ten (10) days after the election. (IC 3-12-1-17)

No later than noon, the second Monday after a primary, general, or municipal election, the circuit court clerk must prepare a statement identifying all votes cast at the election. Election administrators may use the statewide voter registration system (SVRS) to submit the appropriate election forms. The sections below addressing additional reporting requirements following a primary and general election highlight form numbers specific to the type of election.

In addition, counties file the County Election Report (CEB-9), which provides a snapshot of the total voters, including absentee and provisional, cost of the election, and any significant issues, in every election. A good resource to confirm the appropriate reports are filed is the forms disc provided to county election administrators at the annual conference. The disc will have the correct form series to use for a particular election cycle, and the "forms master list" shares the form number and form title, which will note whether the form applies to a primary, general, or municipal election.

While the election results reporting forms noted above can be submitted through SVRS, counties must also send a final, official copy of the summary election results AND precinct election results. Counties are not required to file hard copies of the CEB reports if the county submits the reports through SVRS. The summary and precinct election results may be hand-delivered, mailed, emailed, or faxed to the Division.

There is no requirement for a circuit court clerk to certify results in a statewide, congressional, or state legislative race to any other county. These results are ONLY certified to the Election Division. (IC 3-12-5-1) Once the state receives the county's election results, the results are collated and reported on its election night reporting website.

The only case in which a circuit court clerk certifies election results to another county is after an election for a school board, city, or town office where the election district is located in more than one county. In that case, each clerk certifies the results to the clerk of the county in which the largest part of the population of the election district is located. That clerk (and county election board) conduct the canvass for that cross-county office. This procedure also applies to a local public question on the ballot in more than one county. (IC 3-12-5-2(b))

If a town election board is conducting an election in a small town under IC 3-10-7, the town election board shall, immediately upon completion of the canvass, file the poll lists, ballots, tally sheets, and other election forms with the circuit court clerk of the county containing the greatest percentage of population of the town for preservation and voter list maintenance. (IC 3-10-7-33(b))

### Additional Election Reporting Procedures Following a Primary Election

The candidate of a political party who receives the highest number of votes for an office in a primary is the nominee of that party for that office. (IC 3-8-7-1) In addition, the county election board must declare the candidate receiving the highest number of votes for each political party office such as precinct committeeman or state convention delegate to be elected. The county election board must also declare a local public question approved or rejected, or certify a statement of votes on a statewide public question to the election division. (IC 3-12-4-9)

NOTE: Should a candidate die before a primary election, please read the section below ("Death of a Candidate before a Primary, General, or Municipal Election") to better understand the impacts on certifying election results.

In addition to the County Election Report (CEB-9), no later than noon, prevailing local time, of the second Monday following the primary election, the circuit court clerk must provide the Election Division with a list of:

- all names and addresses of candidates nominated in the primary; and
- all names and addresses of state convention delegates elected in the primary along with the congressional district in which the delegate resides. (IC 3-8-7-5)

Please note: while precinct committeemen are elected at a primary election, results of the election are not required to be certified to the state election division as it is considered a party office not an elected office under Indiana election law. In other words, results of the precinct committeeperson races are certified in the county's official results but there is no need to provide the election division with the names and addresses of elected precinct committeemen. The list of those nominated and state convention delegates selected should be filed on Form CEB-23 for the Democratic Party primary, and Form CEB-24 for the Republican Party primary.

At the county level, the county election board must furnish each political party chairman (upon request) a copy of the certified primary election results for candidates for local offices, political party candidates (precinct committeemen and state convention delegate), and public questions canvassed by the county election board by the deadline. (IC 3-12-4-12)

The county election board does not issue certificates of nomination to candidates from a primary election. However, they may issue certificates of election to any precinct committeeman or state convention delegate elected at the primary (CEB-14 or CEB-15). The county political party organization also may issue certificates of nomination to local candidates selected at the primary if the party wishes to do so.

At the state level, the Secretary of State is responsible for certifying the list of elected state convention delegates to each state party chair no later than noon, prevailing local time, ten (10) days after the county's deadline to certify election results to the election division. (IC 3-8-7-6.5)

Not later than noon, seventeen (17) days after the primary or seven (7) days after the completion of a primary recount, whichever occurs later, the Election Division must canvass the vote for all candidates on the primary ballot that filed declaration of candidacy (CAN-2) with the election division. (IC 3-10-1-34) No later than noon, twenty-seven (27) days after the primary, the election division certifies the canvass of election results, including the names and addresses of candidates, to the Secretary of State. The Secretary then certifies the list of candidates nominated at the primary election to the respective state party chairmen. (IC 3-8-7-6)

In a general election year (that is, an election held in an even-numbered year), the election division will send the first general election ballot certification to counties not later than noon, seventy-four (74) days before the date of the general election. This certification includes (IC 3-8-7-16):

- candidates who are required to file with the Election Division (federal, statewide, state legislative offices, judges and prosecuting attorneys);
- any Indiana Supreme Court, Court of Appeals, or Tax Court judicial retention questions;
- any statewide public question; and
- any political party device filed with the Election Division

Many candidates are nominated for ballot placement through the primary process. However, some candidates are nominated by state or county conventions and a petition of nomination containing signatures of registered voters may nominate other candidates. Candidates nominated at a state political party convention must be certified by the chairman and secretary of the state convention by noon, July 15 (in 2018, the date is transferred to noon, July 16 due to the statutory deadline falling on a weekend), and candidates nominated by petition of nomination must file their petitions of nomination and candidate consent by noon, July 15 (in 2018, the date is transferred to noon, July 16 due to the statutory deadline falling on a weekend) before the General Election. (IC 3-8-6-10; 3-8-7-8)

Candidates nominated by petition (except for school board candidates), must file their petitions of nomination with the appropriate county voter registration office for verification of signatures by noon, July 2, and must file the petitions accompanied by the candidate's consent to become a candidate form with either the Election Division or the county election board by noon, July 15 before the General Election. During some years, as in 2018, these specific June and July dates are transferred to a later date if the date specified in the statute falls on a Saturday, Sunday, or other state holiday (IC 3-8-6-10(c))

The Libertarian Party may nominate many local candidates by county convention (county offices, township offices, city offices and towns with a population greater than 3,500). In addition, in towns smaller than 3,500 that have not opted to conduct a primary, Democratic, Libertarian and Republican Parties may nominate candidates by a town convention if there is a contest for nomination within that party. Please consult the *Indiana Election Calendar (Administrator's Edition)*, published by the Indiana Election Division, for the specific dates by which these nominated candidates must be certified.

In addition to the general election ballot certification, the election division will send each county a list of write-in candidates for federal, statewide, state legislative, or judicial office, including prosecutor, if any, no later than noon, seventy-four (74) days before the general election. (Remember, write-in candidates are NOT to be printed on the ballot!) In a presidential election year (such as 2020), a second ballot certification of Presidential and Vice-Presidential candidates will be sent to the counties no later than the second Thursday in September before the general election.

If a candidate challenge concerning a candidate nominated to fill a major party ballot vacancy is pending before the Election Commission at the time of any certification, the certification will indicate that the candidate's name shall not be printed on the ballot until the challenge is resolved by the Commission or a court with jurisdiction in the matter. (IC 3-13-1-16) The ruling of the Commission on any candidate challenge will be communicated to the counties immediately with further instructions about the placement of the challenged candidate on the ballot. Special procedures and restrictions apply to challenges to a candidate for legislative office or statewide office (other than a justice or judge). (IC 3-8-8)

### **Withdrawal of Nominee**

A candidate nominated at the primary (May) election may withdraw from the general (November) election ballot. The nominee must file a notice of withdrawal in writing (CAN-24), and file it with the same person with whom a declaration of candidacy is filed. The primary election nominee's notice of withdrawal must be filed not later than noon, prevailing local time, July 15 (in 2018, the date is transferred to noon, July 16 due to the statutory deadline falling on a weekend) before a general or municipal election; or forty-five (45) days before a special election. (IC 3-8-7-28)

A candidate nominated by petition may withdraw no later than noon, July 15 (in 2018, the date is transferred to noon, July 16 due to the statutory deadline falling on a weekend) before a general election. (IC 3-8-6-13.5) A write-in candidate may withdraw no later than noon, July 15 (in 2018, the date is transferred to noon, July 16 due to the statutory deadline falling on a weekend) before a general election. (IC 3-8-2-2.7)

Special procedures and restrictions apply to a candidate for legislative office or statewide office (other than a justice or judge) who attempts to withdraw after noon, prevailing local time, sixty (60) days before the general election. (IC 3-8-8)

A notice of withdrawal (CAN-24) must be immediately filed by a candidate who has been disqualified by operation of law (IC 3-8-1-5), or who moves from the election district (IC 3-8-7-28). The withdrawal deadlines do not apply to a candidate who has been automatically disqualified or who has moved from the election district. (IC 3-8-7-28)

If a candidate does not file a notice of withdrawal but has been disqualified, has moved or is no longer an active candidate, it is still possible to remove the candidate from the ballot. To do so, the county chairman of the political party with a candidate on the ballot in the election district or another candidate for the same office may file an action in the county circuit court. The action must: (1) state that this provision applies to the candidate; and (2) name the affected candidate and public official responsible for placing names on the ballot as defendants.

After a complaint is filed, the circuit court must conduct a hearing within ten (10) days. A candidate vacancy occurs if the court finds in favor of the plaintiff. (IC 3-8-7-29) The resulting vacancy is filled in the same manner as any other early or late ballot vacancies. (IC 3-13-1; IC 3-13-2)

Please see the "Ballot (Candidate) & Elected Office Vacancies" section of this *Guide* for more details on how those offices may be filled before the general election.

### **Additional Reporting Requirements after a General (November) Election**

After the November general or municipal election, the circuit court clerk must prepare a statement to be submitted to the Election Division that identifies the number of votes received by each candidate for federal offices; statewide offices and questions; legislative offices; judge of the circuit court, superior court, probate court, or small claims court; prosecuting attorney; circuit court clerk; county recorder; county auditor; county treasurer; county sheriff; county coroner; and county surveyor.

NOTE: Should a candidate die before a general or municipal election or in the period between being elected to office and inauguration day, please read the section below ("Death of a Candidate before a Primary, General, or Municipal Election") to better understand the impacts on certifying election results.

These statements, which include the CEB-10, CEB-11, CEB-12, and CEB-13 forms, may be sent to the election division in paperless form by using the statewide voter registration system (SVRS). The statement, whether in electronic or paper form, must be sent or hand-delivered to the election division not later than noon the second Monday after election day. (IC 3-12-5-1; 3-12-5-6) In addition, the County Election Report (CEB-9) and official

summary and precinct election results must also be filed. The CEB-9 can be submitted through SVRS; election results must be hand-delivered, mailed, emailed, or faxed to the state

After the election division tabulates the results of certain races, the secretary of state must certify to the governor the candidates receiving the highest number of votes. (IC 3-12-5-7) If no errors are found by the deadline for filing for an election recount or contest, the governor must prepare a commission to each candidate elected by noon, the first Tuesday of December. The election division, no later than the second Tuesday of December, mails a commission to the candidate at the most recent address provided to the election division. (IC 3-12-5-8)

Local officeholders commissioned by the governor include Superior, Circuit, and Probate Court judge, prosecuting attorney, sheriff, circuit court clerk, auditor, recorder, treasurer, coroner, and surveyor. There is no need for the county clerk or election board to issue a certificate of election to this group of Constitutional officeholders. For all other local offices, the circuit court clerk issues a certificate of election to a candidate upon demand. (IC 3-12-5-2)

NOTE: A certificate of election may not be issued earlier than the deadline for filing for a recount or contest after the election. (IC 3-12-5-16) This seventeen-day period allows the county election board to discover and correct errors in the tabulation of the vote. If an error is discovered within this period the county election board must correct this mistake. (IC 3-12-5-14)

The circuit court clerk may issue a certificate of election to any of the following local or political offices at the request of the successful candidate. See Forms CEB-7 (County Commissioner); CEB-8 (County Council); CEB-14 (Precinct Committeemen); CEB-15 (State Convention Delegate); CEB-16 (County Assessor); CEB-17 (Township Trustee); CEB-18 (Township Board Member); CEB-19 (Township Assessor); CEB-20 (Marion County Small Claims Court Constable); CEB-21 (School Board Member); CEB-32 (Town Clerk-Treasurer); CEB-33 (Town Council Member).

For a local question, the circuit court clerk issues a certificate declaring the questions approved or rejected, upon demand of a voter entitled to ask for a recount of the public question. If a local office has an election district in more than one county, the circuit court clerk of the county with the greatest percentage of population of the election district issues a certificate of election at the request of the successful candidate. (IC 3-12-5-2(b))

Any individual elected to a public office must take and file an oath of office before assuming office. (Article 15, Section 4 of the Indiana Constitution) The circuit court clerk should send an oath of office form along with the certificate of election sent to those who have been elected to local office. The election division will include an oath of office form with the Governor's commission for those local and judicial offices that are required by law to be commissioned by the Governor.

Taking an oath of office requires two steps. First, the candidate orally, swears or affirms the oath required by the Indiana Constitution and by state law (IC 5-4-1-1) and then documents that oath in writing by signing the document before a notary public or other individual authorized to administer oaths. After it is notarized, the oath office must be filed with the appropriate office. Any elected official who also receives a commission from the governor must file their oath of office with the election division. For all other local officeholders, the oath must be filed with the circuit court clerk. (IC 5-1-4-4) All oaths of office must be filed no later than thirty (30) days after the term of office begins. (IC 5-1-4-1.2)

## Certifying Results of a Public Question

State law permits certain types of referendum elections to be conducted on the same date as a primary, general, or municipal election. In addition, a special election may be called in the “off-year” between a presidential and non-presidential election (for example, 2017 is an “off-year”). Results of the public question must be certified as follows:

- For a local public question that appears on the ballot only in one county, the county election board must tabulate the results and declare the public question approved or rejected no later than noon, prevailing local time, the second Monday after the date of a primary, general, municipal, or special election. (IC 3-12-4-9(b) Results are certified using the Statement of the Votes Cast for School Board Offices and on Local Public Questions (CEB-25)

For a local public question that appears on a ballot in more than one county, the CEB-25 must be filed no later than noon, prevailing local time, the second Monday after the date of a primary, general, municipal, or special election. (IC 3-12-4-9(b))

- For a statewide public question, the county election board must tabulate the votes cast for and against and certify the results to the election division no later than noon, prevailing local time, the second Monday after the date of a primary, general, municipal, or special election. Results are certified using the Statement of the Circuit Court Clerk of the Votes Cast For or Against the Ratification of a State Constitutional Amendment or the Retention of a Justice of the Supreme Court or a Judge of the Appellate Court (CEB-12). (IC 3-12-4-9(c) & (d))

## Death of a Candidate before Primary, General, or Municipal Election is Held

The procedures that are followed when the death of a candidate occurs before the May primary election are slightly different than the procedures for a general or municipal (November) election.

If a candidate dies after a county has printed ballots with the deceased candidate’s name included on the ballot, the candidate’s name will remain on the primary ballot. If a deceased candidate receives the most votes for a political party’s nomination in a primary, a candidate vacancy is created which the political party may fill for the general or municipal election ballot (IC 3-11-3-29.3; 3-11-3-29.4).

If a candidate dies before a general or municipal election, the county election board shall print new ballots to remove the name of the deceased candidate if: (1) the candidate’s party does not fill the vacancy by noon, five (5) days before the election; or (2) the election board votes unanimously to find that there is good cause to believe that the candidate has died. Except as provided below, the county election board must print new ballots to include the name of a successor candidate chosen by the political party.

If a candidate vacancy (due to death or disqualification) is filled after noon, five (5) days before the election, then the county election board is not required to print new ballots, whether or not the political party fills the resulting ballot vacancy.

If the political party does not fill the vacancy, the county election board may order that new ballots be printed that omit the name of the candidate and substitute the words “NO CANDIDATE” or “CANDIDATE DECEASED”. (IC 3-11-3-29.5).

## Recount & Contest Actions

There are no automatic recount or contest actions in Indiana. Instead, specific individuals may petition the courts (local office) or state recount commission (statewide, state legislative, or federal offices) to request a recount. (IC 3-12-6; IC 3-12-11) A recount reviews the election materials and ballots already cast in an election and determines which candidate received the highest number of votes; a contest action may result in a new election being called for the specific race or contest.

### Election Recount Procedures

A candidate seeking nomination or election to a judicial, local or school board office, or a candidate for election to the party office of precinct committeeman or state convention delegate may request that the votes cast for that office be recounted. (IC 3-12-6-1) Recount requests for federal, statewide, or state legislative offices are handled by the State Recount Commission; please see the "State Recount Commission" section below for those details. (IC 3-12-11-1)

A candidate requesting a recount must file a verified petition for recount in the circuit or superior court of the county no later than noon, prevailing local time, fourteen (14) days after the election. If the candidate does not do so, the candidate's political county chairman may file a recount petition no later than noon, prevailing local time, seventeen (17) days after the election. (IC 3-12-6-2) A cross-petition for a recount may be filed no later than noon, prevailing local time, twenty-one (21) days after the election. (IC 3-12-6-4)

The recount petition must state the following: (IC 3-12-6-3)

- the office for which the recount has been filed;
- the precinct(s) in which the recount is desired;
- that the petitioner was a candidate at the election for the office/ or the appropriate county chairman and that the office was voted upon in the precinct(s) specified;
- the name and addresses of the petitioner's opposing candidate(s);
- that the petitioner in good faith believes that the votes cast for the office at the election in the named precinct(s) were not correctly counted and returned; and
- that the petitioner desires a recount of all the votes cast for the office in the named precinct(s).

If the county uses optical scan ballot cards, a petitioner may request that the ballot cards cast in the specified precincts be recounted manually. (IC 3-12-6-21.5) A cross-petition contains virtually the same information. (IC 3-12-6-6)

The petitioner must pay the civil case-filing fee under IC 3-12-6-2.5 (also see IC 33-37), and also file a bond or cash deposit of at least \$100 with the court for payment of costs of the recount. For every precinct over ten to be recounted, the bond or cash amount should be increased by \$10 per precinct or \$100 per precinct, depending upon whether the candidate lost by more or less than 1%.

The court will establish the amount of the deposit, but this amount may not exceed the maximum amount specified by state law. Any cash deposit is placed in the county general fund. (IC 3-12-6-10.5) If the recount petition is successful, the petitioner's deposit or bond is refunded in full. Partial refunds may also be required, based on the outcome of the recount. (IC 3-12-6-10)

If a cross-petition is filed, the cross-petitioner must file a bond or cash deposit for the cross-petitioner's proportional share of the recount. If the recount petition is unsuccessful, a cash deposit was not made, and the costs of the recount exceed the bond amount, the petitioner or cross-petitioner must pay the difference. (IC 3-12-6-12) Any unexpended balance remaining after payment of all costs and any refund shall be deposited in the county general fund. However, if a cash deposit or bond was filed, then any other cost of the recount that

remains unpaid following the determination of the local recount commission and which cannot be recovered shall be paid from the county general fund without appropriation. (IC 3-12-6-17.5)

Once the petition is filed, the county clerk assigns the petition a cause number as a miscellaneous civil action and issues a notice of the filing and pendency of the petition to the opposing candidate(s). (IC 3-12-6-2.5) The sheriff then delivers the notice to the opposing candidate(s), to the county election board, and to the election division (if the recount relates to the office of judge or prosecuting attorney). (IC 3-12-6-9)

Upon granting the petition or cross-petition for a recount, the court appoints a three member recount commission to perform the physical recounting of the votes. One member of the commission must be a Democrat and one member must be a Republican. See IC 36-1-8-10 to determine party membership for this purpose. The judge may request the two county political party chairmen to recommend nominees to the recount commission, though is not required to do so. Except as described in the paragraph below, each member of the commission must be a registered voter of the county qualified to vote at the election. (IC 3-12-6-16)

Where only traditional hand counted paper ballots were used in the election, the remaining member must be a Democrat or Republican qualified to vote in the district of the recount. (IC 3-12-6-16) If a voting method other than hand counted paper ballots was used in the election (for example an optical scan ballot reader or direct recording electronic (DRE)), one member of the commission must be a "competent mechanic" who is familiar with the voting system used in the election. This person does not need to be a voter of the district. (IC 3-12-6-16)

Each member of a recount commission is entitled to be compensated. Each member receives a per diem not to exceed \$100 for each day actually engaged in conducting the recount. The judge of the court having jurisdiction over the recount must establish the compensation to be paid to each recount commissioner. (IC 3-12-6-17) If the deposit or bond is not sufficient to pay the compensation of the recount commission or any other recount expenses, the compensation or expenses are to be paid from the county general fund, without appropriation. (IC 3-12-6-17.5)

After the recount is ordered, the commission must immediately begin the recount. The court must fix the place and time for completing the recount. Each candidate may attend and may have a watcher attend the proceedings. The watcher has the same rights as a political party's polling place watcher. Members of the press may also attend and have the same rights as media watchers at precinct polling places. (IC 3-12-6-21)

The recount commission must adopt ballot counting rules and any other rules needed to restrict access to the ballot counting areas to authorized individuals, including candidate and media watchers. These rules must conform as closely as possible to the Guidelines adopted by the State Recount Commission. These guidelines may be found at [www.in.gov/sos/elections/voters/recount.html](http://www.in.gov/sos/elections/voters/recount.html). (IC 3-12-6-21)

The recount commission's proceedings must be performed in public under the Open Door Law, but the commission may restrict access to parts of the room where election materials are being handled or transported. The court, by order, impounds all traditional hand counted paper ballots, optical scan ballot cards, electronic voting systems, poll lists and tally sheets. These materials will be made available to the recount commission. However, a circuit court clerk or board of voter registration may copy any election materials other than the ballots under the supervision of a person designated by the court. (IC 3-12-6-19)

NOTE: A recount conducted by a local recount commission must be completed no later than the last Friday in June after a primary election or December 20 after a general election, unless the court finds good cause to extend this deadline to another specific date! When the recount is complete, the commission makes out a certificate verifying the totals and stating the candidate receiving the highest number of votes. The commission then files the certificate with the circuit court clerk, who adds this to the order book of the court and sends a

certified copy by certified mail to each opposing candidate named in the petition (and to the Indiana election division if the local recount concerned the office of circuit, superior, probate or Marion County small claims judge or prosecuting attorney). (IC 3-12-6-18; IC 3-12-6-22; IC 3-12-6-28)

After the commission files the certificate, the court that appointed the local recount commission issues an order acknowledging the filing of the certificate, discharging the commission, and releasing election materials impounded during the recount. An appeal may be taken to the court that appointed the local recount commission, but must be filed no later than 30 days after the court issues the order described in this paragraph. (IC 3-12-6-22.5)

After a recount in an election for a public office has been completed, if there is a difference between the votes shown by the recount certificate and the votes tabulated by the county election board the circuit court clerk issues a certificate setting forth the number of votes cast for each candidate in the election to the county election board if the candidate would receive a certificate of election or nomination from the board or to the Indiana election division and the governor, if the candidate would receive a commission from the governor. (IC 3-12-6-31) Candidates for precinct committeemen and state convention delegate are selected after the recount by their political party's applicable rules. (IC 3-12-6-1.5)

### Election Contest Procedures

A person who was a candidate for nomination to office in the primary, a candidate in the general election, or the county chairman of the candidate is eligible to contest an election. (IC 3-12-8-1)

An election may be contested on any of the following grounds (IC 3-12-8-2):

- A contestee (candidate) was ineligible.
- A mistake occurred in the printing or distribution of the official ballots used in the election, making it impossible to determine which candidate received the highest number of votes.
- A mistake occurred in the programming of a voting system making it impossible to determine which candidate received the highest number of votes.
- A voting system malfunctioned, making it impossible to determine which candidate received the highest number of votes.
- A deliberate act or series of actions occurred making it impossible to determine the candidate who received the highest number of votes cast in the election.

The candidate must file a contest petition with the county clerk no later than noon, prevailing local time, fourteen (14) days after the election. A county chairman wishing to contest a local election when a candidate has not filed a petition must do so no later than noon, prevailing local time, seventeen (17) days after the election. If an election district is contained within more than one county, the petition is filed with the circuit court clerk of the county that contains the greatest percentage of the population of the election district. (IC 3-12-8-5)

The contest petition must state the following (IC 3-12-8-6):

- That the petitioner desires to contest the nomination or election to an office.
- The name and address of each candidate for the office involved.
- The grounds for the contest.

If a petition for a contest alleges that it is impossible to determine which candidate received the highest number of votes, the petition must identify each precinct in which:

- ballots contained the printing or distribution mistake;
- a mistake occurred in the programming of a voting system; or
- a voting system malfunctioned.

A person who files a contest petition is responsible for paying the court filing fee. After the contest petition is filed, the county clerk collects the required filing fee under IC 33-37, and assigns the petition a cause number as a miscellaneous civil action. (IC 3-12-8-5.5)

The county clerk issues a summons to the contestee and all other persons named in the petition, and to the county election board and to the election division (if the contest concerns the office of judge or prosecuting attorney). The persons named in the petition must appear and answer such petition on a day fixed by the court. (IC 3-12-8-8) The county sheriff serves summons on persons named in the petition in the same manner as in a civil action. (IC 3-12-8-9)

All contestees must appear to answer the petition. A contestee may present any defense or answer under a general denial, file a special answer, or both. The contest petition is heard and determined by a court without a jury, subject to the Indiana Rules of Trial Procedure. The court will determine the issues raised by the petition and answer to the petition. If the court determines that a candidate was ineligible, the court must declare as elected or nominated the qualified candidate who did receive the highest number of votes: in other words, the candidate who finished second. (IC 3-12-8-17)

Unless the judgment is appealed, the court's decision is final. The circuit court clerk certifies the new results as declared by the court to the county election board. (IC 3-12-8-19) This new certification takes the place of the original, if issued. (IC 3-12-8-18)

If the court finds that a mistake occurred in the printing or distribution of the ballots or in the programming of a voting system and it is impossible to determine which candidate received the most votes, the court MUST order a special election. The special election will be conducted only in those precincts identified in the contest petition in which the court determines that a mistake occurred. (IC 3-12-8-17) After the special election, the county election board issues a corrected canvass showing the results in those precincts. A new certificate of election or commission is prepared if another candidate wins as a result of the special election. (IC 3-12-8-17.5)

### State Recount Commission

The state recount commission conducts recounts and hears contests for Presidential primaries and nominations for a federal, statewide, or state legislative office, and conducts recounts of election for federal, statewide, or state legislative offices. The state recount commission can issue orders to impound local election materials needed for state recount commission investigations and procedures. (IC 3-12-10-4; 3-12-11-16)

The procedures for recount noted above are substantially similar to the procedures to follow with the state recount commission. The significant difference is that the verified petition is filed with the Indiana Election Division, rather than a court. The state recount commission appoints an individual to serve as Recount Director. All recount work is performed with the assistance of the state board of accounts and the Indiana state police. (IC 3-12-10-8)

The recount commission has adopted these guidelines: [www.in.gov/sos/elections/voters/recount.html](http://www.in.gov/sos/elections/voters/recount.html). The orders issued by the State Recount Commission supersede any orders issued concerning a local recount conducted under IC 3-12-6.

## Resolving Tie Votes

Whenever a tie vote occurs at a primary election, a "CANDIDATE VACANCY" results. (IC 3-13-1-17) The resulting vacancy is filled through a caucus of eligible precinct committeemen, the party chairman (if the chairman has received authority from the county committee to fill candidate vacancies), or a caucus of party officers. (IC 3-13-1-6)

In a general election, a tie vote occurring in a federal, state (other than governor and lieutenant governor), or legislative office requires a special election to break the tie. (IC 3-12-9-1) A tie vote for the office of governor and lieutenant governor is resolved at a joint session of the State Senate and House of Representatives. (IC 3-12-9-2)

Whenever a circuit court clerk receives certification that a tie vote at an election for a local office or school board office has occurred, the clerk shall immediately send written notice of the tie vote to the fiscal body of the affected political subdivision. (IC 3-12-9-3)

A fiscal body notified by the circuit court clerk of a tie vote resolves the tie by electing a person to fill the office no later than December 31 following the election at which the vote occurred.

If a tie vote occurred for the election for more than one at-large seat on a legislative or fiscal body, the fiscal body shall elect the number of individuals necessary to fill each of the at-large seats for which the tie vote occurred. If one of the candidates involved in the tie vote is also an incumbent officeholder, the candidate may not cast a vote.

A fiscal body is defined in IC 36-1-2-6 for the following political subdivisions:

- County Council - for a county not having a consolidated city;
- City-County Council - for a consolidated city or a county containing a consolidated city;
- Common Council - for a second or third class city;
- Town Council - for a town;
- Township Board - for a township;
- Governing Body or Budget-Approved Body - for any other political subdivision.

The executive of the political subdivision (other than a town council president or the president of a school board) may cast the deciding vote to break a tie in a fiscal body action on a tie vote. (IC 3-12-9-4) The town clerk-treasurer breaks a tie on the town council under this provision. Until a successor is elected, the incumbent officeholder remains in office. (IC 3-12-9-5)

If the tie vote occurs among the members of a school board when attempting to break a tie vote at an election, the judge of the circuit court selects one (1) of the candidates who is certified as elected (IC 20-23-4-30).

# RETENTION OF ELECTION RECORDS

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## Election Materials

The “general rule” for all election records is to retain the record for at least twenty-two (22) months after the election for which the records were produced. (IC 3-10-1-31; IC 3-10-1-31.1; IC 3-12-4-13) Federal law provides that materials utilized in elections for federal offices must be preserved by election administrators for 22 months from the date of the election. This includes poll lists, applications for absentee ballot, ballot envelopes, tally sheets, ballots and the computer programs used to tabulate the votes.

Circuit Court Clerks or boards of voter registration are directed to unseal election materials, if necessary, in order to use the poll lists to update the voter registration records, including the voter identification numbers obtained during each election. (IC 3-10-1-31.1(e); IC 3-10-1-31.2)

**NOTE:** The circuit court clerk shall keep all election material under seal during the time allowed to file a recount or contest. In addition, if a recount or contest is filed all election material must remain sealed while a recount or contest is underway involving those materials.

After the time allowed to file a recount or contest has passed, or after a recount or contest is completed if a recount or contest is filed, all election material is available for copying and inspection under the Public Records Law, except for ballots, which remain confidential. In addition, information contained in material related to provisional ballots that identifies an individual, except for the individual’s name, address, and birth date must also remain confidential. (IC 3-10-1-31.1) Materials from elections held in 2003, or before, are not available under the Public Records Law, and must remain sealed so long as the records are retained. (IC 3-10-1-31)

Before disposing of records, the circuit court clerk or board of voter registration may be required to notify the county records commission or the State Public Records Commission at (317) 232-3380.

### Voted & Unvoted Ballots

Twenty-two (22) months after an election all voted ballots (including provisional ballots) may be disposed of under the county’s record retention policy. (IC 3-10-1-31.1)

Unvoted ballots may be destroyed after the deadline for filing a recount petition, except for one regular and one provisional ballot, which is retained and placed in the minutes. The county election board may also contract with a state educational institution to dispose of any unused ballots and have them used for election research purposes. (IC 3-12-2-12) **NOTE:** Any record concerning an issue in litigation must be retained until the controversy is resolved, subject to orders of the court.

**NEVER DESTROY THE RECORDS AND MINUTES OF THE COUNTY ELECTION BOARD  
OR COUNTY ELECTION BOARD CERTIFIED PRECINCT ELECTION RESULTS!**

Special procedures apply to the ballots, poll lists, and other documents or material produced for use at a convention of a political party to nominate candidates, or a caucus conducted by a political party to nominate candidates. These ballots, poll lists, and other documents or material are the property of the political party, and must be retained and preserved as specified by the rules of that political party. (IC 3-5-4-10)

## Retention of Voter Registration Records

The voter registration records of active or inactive voters must not be destroyed. (IC 3-7-26-7(b)) Only when the voter's registration record status is changed to "canceled" may the canceled registration records be disposed of as follows:

- Determine the date of the next general election after the cancellation of each registration record. If the general election is more than twenty-four (24) months ago, the record may be disposed of.
- Voter declination records must be retained for twenty-four (24) months.

For more information, please review the "Public Records" section of the 2018 Indiana Voter Registration Guidebook.

## Retention of Campaign Finance Records

Campaign finance reports and statements are kept four years from December 1, following the election to which they pertain. (IC 3-9-4-6) Reports and statements from candidates for judge must be kept six (6) years from December 1 following the election to which they pertain.

## Election Materials as Public Records

Except for voter registration records and information (see "Voter Registration Documents as Public Records" above), all other documents and forms used during an election are considered public records. (IC 5-14-3-3) The only further exception is regular and provisional ballots which are considered confidential records. (IC 3-10-1-31.1) Once the time allowed to file a recount or contest, or after a recount or contest is completed if a recount or contest is filed, all election material is available for copying and inspection under the Public Records Law. For more information please see the following guide from the public access counselor. [http://www.in.gov/pac/files/Public\\_access\\_to\\_election\\_records.pdf](http://www.in.gov/pac/files/Public_access_to_election_records.pdf)

# APPENDIX

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## County Election Board Forms:

CAN-1	Candidate Filing Challenge
CAN-9	Legal Notice of Primary Election
CAN-39	Legal Notice of General Election
CEB-1	Certification of Delivery of Precinct Election Materials by Inspector and Judge
CEB-6	Appointment and Oath of Office for County Election Board Member
CEB-9	County Election Report
IEC-9	Certification of Test of Electronic Voting Systems
IEC-10	Certification of Test of Optical Scan Ballot Card

County Election Administrator's Election Checklist

Sample Checklist for Public Test in Counties Using a DRE Voting Systems

Sample Checklist for Public Test in Counties Using Optical Scan Voting Systems

IC 5-3-1-4 Publication of Notice

Telephone List





# CANDIDATE FILING CHALLENGE

State Form 46437 (R12 / 7-17)  
Indiana Election Division (IC 3-8-1-2; IC 3-8-8)

(CAN-1)

**INSTRUCTIONS:** This form is used by an individual seeking to challenge the following: the eligibility of a candidate, the declaration of candidacy, the declaration of intent to be a write-in candidate, a request for ballot placement, a petition or candidate's consent to nomination, a certificate of candidate selection, or by a candidate seeking to contest the denial of certification due to insufficient signatures by filing this form under IC 3-8-1-2 or IC 3-8-8 to request a hearing before the Indiana Election Commission, the county election board or the Lake or Tippecanoe County boards of elections and registration, or a town election board.

STATE OF INDIANA  
COUNTY OF \_\_\_\_\_

## GENERAL INFORMATION

I, \_\_\_\_\_, the undersigned, certify the following:

I am (*check one box*):

a registered voter of Precinct \_\_\_\_\_ of the Township of \_\_\_\_\_,

(or of Ward, *if applicable* \_\_\_\_\_ of the City or Town of \_\_\_\_\_), County of \_\_\_\_\_, State of Indiana;

A county chairman of a major political party in which any part of the election district of the office subject to this challenge is located; OR

A candidate who submitted a petition of nomination under IC 3-8-6.

(2) My residence address is:

\_\_\_\_\_, Indiana \_\_\_\_\_  
Complete residence address must be inserted City ZIP Code

(3) My mailing address is (*if different from residence address*):

\_\_\_\_\_, Indiana \_\_\_\_\_  
Mailing address (*Write "SAME" if both addresses are identical*) City ZIP Code

(4) If I am filing this challenge as a registered voter, my voter registration address is located within the election district of the office listed below.

(5) If I am filing this challenge as a registered voter or a county political party chairman, I question the eligibility of the following individual, who is a candidate for the office:

\_\_\_\_\_  
Name of Candidate Office sought (*include District, if applicable*)

(6) The following facts are known to me and lead me to believe that the individual listed above is ineligible to be a candidate for this office (*attach additional sheets if necessary*):

(7) If I am filing this challenge as a candidate, the following facts are known to me and lead me to believe that the denial of certification of my petition of nomination due to insufficient signatures or the county voter registration office's failure to certify qualified petitioners is not in accordance with law, and I therefore request a hearing on this matter before the appropriate election authority under IC 3-8-1-2 or IC 3-8-8. (*attach additional sheets if necessary*):

## CHALLENGER OR CANDIDATE CERTIFICATION

I swear or affirm under the penalties for perjury that the foregoing statements are true, to the best of my knowledge and belief.

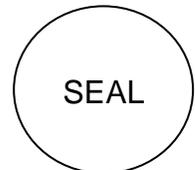
\_\_\_\_\_  
Signature Date signed (MM/DD/YY) Telephone (Day) Telephone (Evening)

COUNTY OF \_\_\_\_\_ STATE OF \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public or Other Official Administering Oath according to IC 33-42-4-1 or IC 33-42-9

My Commission expires (*applies only to Notary Public*): \_\_\_\_\_ County of Residence: \_\_\_\_\_







**LEGAL NOTICE OF PRIMARY ELECTION**

State Form 46430 (R12 / 9-17)  
Indiana Election Commission (IC 3-8-2-19)

**(CAN-9)**

**INSTRUCTIONS:** Each county election board and the Lake and Tippecanoe County Boards of Elections and Registration must publish this legal notice in accordance with IC 5-3-1.

**LEGAL NOTICE OF PRIMARY ELECTION**

The voters of \_\_\_\_\_ County are notified in accordance with Indiana Code 3-8-2-19 that a primary election will be held within the county on May \_\_, 20\_\_, with the polls open from 6:00 a.m. until 6:00 p.m., prevailing local time. I certify that based on the declarations of candidacy filed in the office of the county election board (or the Lake or Tippecanoe County Boards of Elections and Registration), and the public questions certified to me by the State of Indiana or this county's election board, the following individuals and public questions will be placed on the primary election ballot:

<b>DEMOCRATIC PARTY PRIMARY CANDIDATES</b>		
<b>Candidate name and address</b>		<b>Office sought</b>
	<b>Insert Attachment "A"</b>	

<b>REPUBLICAN PARTY PRIMARY CANDIDATES</b>		
<b>Candidate name and address</b>		<b>Office sought</b>
	<b>Insert Attachment "B"</b>	

<b>PUBLIC QUESTIONS TO BE SUBMITTED TO VOTERS</b>
<b>Insert Text of Public Questions</b>

DATED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_:

\_\_\_\_\_  
Circuit Court Clerk (or Lake County Election Director)





**LEGAL NOTICE OF GENERAL ELECTION**

**(CAN-39)**

State Form 48110 (R6 / 9-17)

Indiana Election Division (IC 3-10-2-2)

**INSTRUCTIONS:** Each circuit court clerk (or, in Lake County, the election director), or town clerk-treasurer in the towns conducting the elections, must publish this legal notice in accordance with IC 5-3-1 at least ten (10) days before the general election. A copy of the complete notice must be filed with the Indiana Election Division and in the minutes of the county election board.

**LEGAL NOTICE OF GENERAL ELECTION**

The voters of \_\_\_\_\_ County are notified by the county election board in accordance with Indiana Code 3-10-2-2 that a general election will be held in the county on November \_\_\_\_, 20\_\_\_\_\_, with the polls open for voting from 6:00 a.m. until 6:00 p.m., prevailing local time.

In accordance with the list of candidates and the public questions certified to me by the State of Indiana or this county's election board, and the certificates of candidate selection filed in the office of the circuit court clerk of this county (or the Lake County election director), candidates for the following offices will be on the general election ballot:

**OFFICES TO BE FILLED BY VOTERS AND PUBLIC QUESTIONS TO BE SUBMITTED TO VOTERS**  
*(Insert List of Offices – Note: Candidates names and addresses are optional.)*

DATED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Circuit Court Clerk (or Lake County Election Director)





**CERTIFICATION OF DELIVERY OF PRECINCT  
ELECTION MATERIALS BY INSPECTOR AND JUDGE**

**(CEB-1)**

State Form 47202 (R4/11-05)  
Indiana Election Commission (IC 3-12-2-7; 3-12-3-10; 3-12-3.5-4)

**CERTIFICATION OF DELIVERY OF  
PRECINCT ELECTION MATERIALS BY  
INSPECTOR AND JUDGE**

**INSTRUCTIONS:** All election documents, supplies, and materials must be returned to the county election board after the close of the polls by the inspector and the judge of the opposite political party from the inspector.

**NOTE:** An inspector or judge is not entitled to compensation for election day services unless this certificate is completed by the inspector or judge.

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

In Precinct \_\_\_\_\_

Township or Ward \_\_\_\_\_

City or Town \_\_\_\_\_

County of \_\_\_\_\_, Indiana

**CERTIFICATION OF INSPECTOR**

As inspector of this precinct, I certify that immediately upon the close of the polls (*and the tabulation of the vote in my precinct, if applicable*), I complied with IC 3-12-2-7, IC 3-12-3-10, or IC 3-12-3.5-4 by delivering the required election material to the county election board (*accompanied by the judge of the opposite party*). If optical scan ballots were cast and counted in this precinct, I swear (*or affirm*) that I complied with the requirements of IC 3-12-3-10(d).

\_\_\_\_\_  
Signature of Inspector

\_\_\_\_\_  
Printed Name of Inspector

**CERTIFICATION OF JUDGE**

As the judge of the opposite political party from the inspector of this precinct, I certify that immediately upon the close of the polls and the tabulation of the vote in my precinct, I complied with IC 3-12-2-7, IC 3-12-3-10, or IC 3-12-3.5-4 by delivering the required election material to the county election board (*accompanied by the inspector*).

\_\_\_\_\_  
Signature of Judge

\_\_\_\_\_  
Printed Name of Judge





**APPOINTMENT AND OATH OF OFFICE FOR  
COUNTY ELECTION BOARD MEMBER**

State Form 47857 (R4/12-03)  
Indiana Election Commission (IC 3-6-5-4)

**(CEB-6)**

**INSTRUCTIONS:** Article 15, Section 4 of the Constitution of the State of Indiana requires in part that an individual elected or appointed to any office under the State Constitution shall, before entering office, take an oath or affirmation to support the Constitution of the State of Indiana and of the United States as well as an oath of office. Indiana Code 5-4-1-4 provides that a copy of the oath taken by county officers must be filed with circuit court of the county. This form may be adapted for use by town election board members.

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

**APPOINTMENT**

I, \_\_\_\_\_, the duly elected circuit court clerk of this  
Name of Circuit Court Clerk  
County, acting in accordance with the appropriate Indiana statutes, do appoint the following individual to serve as a member of the  
County Election Board:

\_\_\_\_\_  
Name of individual being appointed to county election board

**OATH OF OFFICE**

The above named individual, being duly sworn upon the individual's oath swears or affirms the following:

I will support the Constitution of the United States and of the State of Indiana, and will faithfully, honestly, and impartially discharge my duties as a member of this County's Election Board to the best of my skill and ability.

\_\_\_\_\_  
Signature

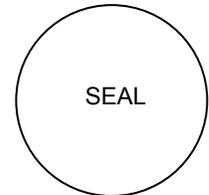
STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public or Other Official Administering Oath

My Commission expires (*applies only to Notary Public*): \_\_\_\_\_

County of Residence: \_\_\_\_\_



Filed in the office of the Circuit Court Clerk of this County, in accordance with Indiana Code 5-4-1-4 on this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_:

\_\_\_\_\_  
Signature of Circuit Court Clerk





COUNTY ELECTION REPORT

State Form 47923 (R4/10-10)
Indiana Election Commission (IC 3-6-5-17; IC 3-6-5-17.5)

(CEB-9)

INSTRUCTIONS: Each county election board shall submit a report to the Indiana Election Division after each primary, general, and special election. The report must be mailed or hand delivered to the Indiana Election Division, Indiana Government Center South, 302 West Washington Street, Room E-204, Indianapolis, IN 46204-2743 not later than 14 days after each election.

COUNTY ELECTION REPORT

FOR THE \_\_\_\_\_ ELECTION CONDUCTED ON \_\_\_\_\_, 20 \_\_\_\_\_

REGISTRATION AND TURNOUT

- 1. Number of registered voters in county at close of registration for this election: \_\_\_\_\_
2. If the election was held only in part of the county, the number of registered voters in that part of the county at close of registration for this election: \_\_\_\_\_
3. Number of voters voting in person at the polls: \_\_\_\_\_
4. Number of all voters voting absentee: \_\_\_\_\_
5. Number of Rejected Returned, Domestic Absentee Ballots: \_\_\_\_\_
6. Total number of voters who voted in this election (should equal #3 + #4): \_\_\_\_\_

#7 - #9 are for General Elections Only - Otherwise, put NA

- 7. The combined total number of absentee ballots sent by county to military and overseas voters: \_\_\_\_\_
8. Total number of ballots in #6 returned by these voters (Include any Federal Write-in Absentee Ballots returned when voter did not return an official county ballot. Please note the number of these write-in ballots (FWABs) separately, as in "120 + 3 FWABs."): \_\_\_\_\_
9. Total number of ballots in #7 counted: \_\_\_\_\_

ELECTION BUDGET AND EQUIPMENT

- 10. BUDGETED cost for this election. Estimate if necessary: \_\_\_\_\_
11. What types of voting systems did the county use in this election? (check each one that applies)
[ ] hand-counted paper ballot [ ] direct recording electronic voting unit [ ] optical scan ballot
12. Name of the vendor of each voting system the county used in this election: \_\_\_\_\_

ENCLOSURES (Please attach sheets or printouts with the following information)

- 13. Describe any malfunction or other problem with your voting system during the election.
(Attach an extra page if necessary): \_\_\_\_\_
14. Canvasser sheets (official election results by precinct).
[ ] (check box if applicable) County has provided an electronic version of the canvasser sheets to the Election Division.
15. Number of registered voters for each precinct in the county.
16. Names and mailing addresses for your county election board members and any board of voter registration officers.
17. Any sheets provided by the Election Division containing requests for additional information (including training and education survey).
18. The total number of provisional ballots cast by voters in the county in this election: \_\_\_\_\_
19. Total number of provisional ballots not counted by county election board: \_\_\_\_\_
20. Total number of provisional ballots counted by county election board: \_\_\_\_\_

Table with 3 columns: County, Signature, Title





# CERTIFICATION OF TEST OF ELECTRONIC VOTING SYSTEMS

(IEC-9)

State Form 54728 (R/10-15)  
Indiana Election Division (IC 3-11-14.5)

**INSTRUCTIONS:** A test of electronic voting systems is required in a county that will use electronic voting systems at the next election. This certificate is not required to be completed for optical scan ballot card automatic tabulating machines (*instead, use IEC-10 form for that certification*). **Transmit this completed certificate to the Indiana Election Division, Indiana Government Center South, 302 West Washington Street, Room E-204, Indianapolis, Indiana 46204-2743 or by facsimile transmission to (317) 233-6793 no later than 7 days after conducting the test.**

## CERTIFICATE OF TEST OF ELECTRONIC VOTING SYSTEMS

**To: Co-Directors, Indiana Election Division:**

**From: County Election Board of \_\_\_\_\_ County**

The undersigned members of the County Election Board or the Lake or Tippecanoe County Board of Elections and Registration (*or their designated proxies under IC 3-6*) certify the following:

1. On \_\_\_\_\_, 20\_\_\_\_, being before absentee voting started in the office of the circuit court clerk, the County Election Board randomly selected at least three (3) precincts within the county and tested the electronic voting system units to be used at those precincts on election day. Each voting system was tested to ascertain that the system will correctly count the votes cast for all candidates and on all public questions in that precinct.
2. This test included the following:
  - (A) The visual inspection of the voting system and ballot labels.
  - (B) The manual entry of a preaudited group of ballots marked so as to record a predetermined number of valid votes for each candidate and on each public question.
  - (C) At least one (1) ballot for each office that has votes in excess of the number allowed by law in order to test the ability of the electronic voting system to reject the overvotes.
3. If an error was detected during the test, the cause of the error was determined and corrected, and an errorless count was made before the use of the electronic voting system at the election is approved.
4. After completing the count, the voting system was sealed. The ballots used to conduct the test and all other election materials were sealed, retained, and disposed of as provided for paper ballots.
5. Immediately following the completion of the voting system test, the board entered the vote totals from the voting system tested into the component of the voting system used by the county election board to tabulate election results. The board determined that this component of the voting system properly tabulated the votes cast in each of the precincts tested under this chapter.
6. Public notice of the time and place of this test was given at least 48 hours before the test by publication of a public notice in accordance with IC 5-3-1-4. The test was open to representatives of political parties, candidates, the news media, and the public.
7. Not later than seven (7) days after conducting the tests, the board certified to the election division that the tests have been conducted in conformity with IC 3-11-14.5. A copy of this certification will be filed with the election returns and will be retained in the minutes of this County Election Board, or the Lake or Tippecanoe County Board of Elections and Registration.

**SO CERTIFIED, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_:**

\_\_\_\_\_  
Circuit Court Clerk or Lake County Election Director

\_\_\_\_\_  
County Election Board Member

\_\_\_\_\_  
Member of Lake or Tippecanoe County Board of Elections and Registration

\_\_\_\_\_  
County Election Board Member

\_\_\_\_\_  
Member of Lake or Tippecanoe County Board of Elections and Registration





**CERTIFICATION OF TEST OF OPTICAL SCAN BALLOT CARD  
AUTOMATIC TABULATING MACHINES**

**(IEC-10)**

State Form 47203 (R8 / 10-17)  
Indiana Election Division (IC 3-11-13-22; 3-11-13-23)

**INSTRUCTIONS:** A test of automatic tabulating equipment is required in a county that supplies optical scan ballot cards for voters. For direct recording electronic equipment, use IEC-9 form. **Transmit this completed certificate to the Indiana Election Division, Indiana Government Center South, 302 West Washington Street, Room E-204, Indianapolis, Indiana 46204-2743 or by facsimile transmission to (317) 233-6793 no later than 7 days after conducting the test.**

**CERTIFICATE OF TEST OF  
BALLOT CARD VOTING SYSTEM  
AUTOMATIC TABULATING MACHINES**

**To: Co-Directors, Indiana Election Division:**

**From: County Election Board of \_\_\_\_\_ County**

The undersigned members of the County Election Board (*or their designated proxies under IC 3-6*) certify the following:

1. On \_\_\_\_\_, 20\_\_\_\_\_, being before absentee voting started in the office of the circuit court clerk, the County Election Board conducted a test of the automatic tabulating machines to be used in this county for the counting of ballot cards for all candidates in the next primary, general or special election to ascertain that the machines will correctly count the votes cast for all candidates and on all public questions.
2. This test (A) was conducted by processing a preaudited group of ballot cards marked so as to record a predetermined number of valid votes for each candidate and on each public questions; and (B) included for each office one (1) or more ballot cards that have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating machines to reject the votes, in accordance with IC 3-11-13-24.
3. Public notice of the time and place of this test was given at least 48 hours before the test by publication of a public notice in accordance with IC 5-3-1-4. The test was open to representatives of political parties, candidates, the news media, and the public.
4. A copy of this certification will be filed with the election returns and will be retained in the Minutes of this County Election Board, or the Lake or Tippecanoe County Board of Elections and Registration.

**SO CERTIFIED, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_:**

\_\_\_\_\_  
Circuit Court Clerk or Lake County Election Director

\_\_\_\_\_  
County Election Board Member

\_\_\_\_\_  
Member of Lake or Tippecanoe County Board of Elections and Registration

\_\_\_\_\_  
County Election Board Member

\_\_\_\_\_  
Member of Lake or Tippecanoe County Board of Elections and Registration



## COUNTY ELECTION ADMINISTRATOR'S ELECTION CHECKLIST

### VOTER REGISTRATION

- \_\_\_\_\_ voter registration acknowledgment cards have been sent
- \_\_\_\_\_ all name and address changes have been completed
- \_\_\_\_\_ all additional documentation required from certain mail-in voters has been processed
- \_\_\_\_\_ press release to media concerning last day to register and first day to vote absentee
- \_\_\_\_\_ updated registration lists for county chairmen
- \_\_\_\_\_ check registration list; make sure all is in order
- \_\_\_\_\_ run poll lists or if using electronic pollbooks, conduct any necessary acceptance testing of a new pollbook or upgrade
- \_\_\_\_\_ certify number of registered voters
- \_\_\_\_\_ put certificates on cover of poll lists (unless using electronic poll books)

### CANDIDATES

- \_\_\_\_\_ prepare candidate kits (declarations, campaign finance forms and manuals, etc.)
- \_\_\_\_\_ prepare candidate folders
- \_\_\_\_\_ prepare candidate checklists (who has filed which forms?)
- \_\_\_\_\_ send notice to any candidate who has not filed campaign finance reports if required to do so

### BALLOT PREPARATION

- \_\_\_\_\_ estimate number of official, absentee, and provisional ballots
- \_\_\_\_\_ prepare ballot worksheet for each precinct
- \_\_\_\_\_ proofread worksheets
- \_\_\_\_\_ make arrangements with printer; take worksheets to printer
- \_\_\_\_\_ make corrections; have official, provisional, and sample ballots printed
- \_\_\_\_\_ proofread finished official, provisional, and sample ballots
- \_\_\_\_\_ have deputies, county election board members and county chairmen proof finished ballots
- \_\_\_\_\_ \_\_\_\_\_ have sample ballots available for distribution

### ABSENTEE VOTING

- \_\_\_\_\_ notify county chairmen of number of absentee boards to be appointed
- \_\_\_\_\_ appoint absentee voting boards (including traveling boards)
- \_\_\_\_\_ prepare absentee ballots (seal and signature stamp of clerk (using state prescribed seal if clerk is a candidate on the ballot; board member initials)
- \_\_\_\_\_ process applications
- \_\_\_\_\_ mail ballots (return postage prepaid)
- \_\_\_\_\_ provide for bipartisan security of returned ballots in the clerk's office (cabinet, box, or room with 2 locks and keys, one for each appointed member of county election board).
- \_\_\_\_\_ Provide key to county election board member of opposite party, if member requests.
- \_\_\_\_\_ arrange for ballots to be delivered to the polls on election day (unless absentee ballot central count county)

## ELECTION WORKERS

- \_\_\_\_\_ notify county chairmen to nominate workers
- \_\_\_\_\_ prepare roster sheets of nominated workers (including alternates, if any)
- \_\_\_\_\_ mail appointment letters to nominated workers
- \_\_\_\_\_ prepare sign-in sheet for election training
- \_\_\_\_\_ prepare instructions for poll workers (opening/closing polls, counting ballots); review instructions; revise to reflect recent election law changes or other new county procedures
- \_\_\_\_\_ prepare supply lists for inspectors
- \_\_\_\_\_ purchase precinct boxes and clerk's box from printer; or prepare your own
- \_\_\_\_\_ hire clerical assistants to help in canvassing of election results
- \_\_\_\_\_ prepare canvassing sheets (if not included in the clerk's box of supplies)

## ELECTION WORKER TRAINING

- \_\_\_\_\_ set date for training (county election board members should attend and assist)
- \_\_\_\_\_ arrange for large meeting room (don't forget tables and chairs if needed)
- \_\_\_\_\_ arrange for audio-visual aids as needed
- \_\_\_\_\_ prepare training sign-in sheet for precinct officials
- \_\_\_\_\_ prepare sample forms for use as training aids
- \_\_\_\_\_ provide sample ballots
- \_\_\_\_\_ prepare checklist of issues to cover at meeting
- \_\_\_\_\_ arrange for voting system to be used as a training aid
- \_\_\_\_\_ record training of inspectors (and other poll workers required to be trained by county)

## MISCELLANEOUS

- \_\_\_\_\_ prepare watcher credentials for candidate and media watchers
- \_\_\_\_\_ mail letters to polling places stating times for delivery and pick-up of voting equipment
- \_\_\_\_\_ arrange to have keys to polling places or instruct the inspectors to do so
- \_\_\_\_\_ publish legal notice of election and location of polling places in newspaper
- \_\_\_\_\_ prepare telephone logs for election day telephone calls
- \_\_\_\_\_ make election night drop-off arrangements for precinct inspectors
- \_\_\_\_\_ review election day procedures with office staff. Advise courts, attorneys and public if office is closed for non-election business (case filings, child support for example)
- \_\_\_\_\_ discuss election night security with sheriff's department. Make arrangements for at least one deputy to be available at courthouse or election central
- \_\_\_\_\_ transmit election night results to the Indiana Election Division.

## POST ELECTION

- \_\_\_\_\_ process any provisional ballots to determine validity
- \_\_\_\_\_ certify local election results (all members of the county election board must sign certificate)
- \_\_\_\_\_ certify results to the Indiana election division and return CEB-9 form
- \_\_\_\_\_ tally election statistics
- \_\_\_\_\_ review recount and contest procedures if necessary
- \_\_\_\_\_ deliver copies of canvass sheets to county chairmen and election division
- \_\_\_\_\_ prepare certificates of election, if requested by candidate or as courtesy
- \_\_\_\_\_ arrange for long-term storage and security of election documents and voting systems
- \_\_\_\_\_ process election claims (precinct statement of expenses, etc.)
- \_\_\_\_\_ update registration record for each voter

## Sample Checklist for Public Test in Counties Using a DRE Voting Systems

### STEP 1: Prepare for the Public Test

- Create ballot “test deck” of pre-audited ballots for use during the public test, which must include:
  - A vote for each candidate and each public question on the ballot in the precinct;
  - At least one (1) ballot for each office that has an overvote to confirm the machine will reject an overvoted ballot.
    - Though not required by law, some counties currently test the straight party device and at least one write-in line in a general or municipal election. (Pending legislation in 2018 will make testing the straight party device and tabulation of votes for write-in candidates required, beginning with the November 2018 general election. Please consult the 2018 Indiana Election Division Legislative Summary when it is released later this year to confirm a change in law.)
- Perform “logic and accuracy” testing using the “test desk” before the public test to ensure the systems are capturing vote totals correctly on the individual machines and the main tabulation hub.
  - Not a legal requirement, though most, if not all, vendors incorporate pre-testing to ensure coding was managed correctly.
- Identify location for public test that will accommodate the county election board, members of the public, media, and staff and has access to electricity, election management tabulation software, and any other equipment required to successfully support the public test.

### STEP 2: Publish Legal Notice of Public Test

- Notice must include date, time, and location of the public test.
- Must be published at least 48-hours in accordance with IC 5-3-1-4, which includes newspaper publication (see appendix for statutory language).

### STEP 3: Conduct the Public Test No Later Than 29-Days Before Election

- Testing may occur before the statutory deadline, if legal notice is published at least 48-hours before the test.
- Sample Testing Checklist:
  - Randomly select at least three precincts within the county
    - Three is the minimum legal requirement; counties are permitted to test more than three precincts
    - No statutory guidelines on how to or who “randomly” selects the precincts
  - Visually inspect *each* voting system unit to be used at the precinct on election day and ballot label (i.e. screen) for correct settings, proper functions, and accurate ballot information.
  - Print a “zero” tape to ensure no ballots have been recorded on the machine.
  - Use the “test deck” to enter the combination of candidate and public question selections on each ballot, making sure to attempt an overvote to ensure the system will not permit an overvoted ballot.
  - Print a “totals” tape.
  - Remove the voting system’s ballot storage media, and “upload” to the county’s computer designated for the tabulation of election results.
  - Print an “election results” report.
  - Compare results on the individual machine’s “totals” tape to the results printed from the “election results” report to the totals the county calculated from its pre-audited “test deck.”
    - If an error is detected, determine the cause and correct the error.
    - Repeat the test process then or at a later date (after recess, not adjournment of meeting) to have the errorless count. If the error cannot be corrected, and errorless

count documented, then that voting system may not be used in the election.

- Seal voting system after test of the unit is successfully completed, making sure the unit was reset to zero for use on election day or during absentee voting.
- Seal and retain all testing material and records used in the public test in the same manner as voted ballots.

**STEP 4: File signed copy of the IEC-10 Certification of Test of Election Voting Systems with the Indiana Election Division no later than seven (7) days after the public test is completed.**

## Sample Checklist for Public Test in Counties Using Optical Scan Voting Systems

### STEP 1: Prepare for the Public Test

- Create ballot “test deck” of pre-audited ballots for use during the public test, which must include:
  - A vote for each candidate and each public question on the ballot in the precinct;
  - At least one (1) ballot for each office that has an overvote to confirm the machine will reject an overvoted ballot.
    - Though not required by law, some counties currently test the straight party device and at least one write-in line in a general or municipal election. (Pending legislation in 2018 will make testing the straight party device and tabulation of votes for write-in candidates required, beginning with the November 2018 general election. Please consult the 2018 Indiana Election Division Legislative Summary when it is released later this year to confirm a change in law.)
- Perform “logic and accuracy” testing using the “test desk” before the public test to ensure the systems are capturing vote totals correctly on the individual machines and the main tabulation hub.
  - Not a legal requirement, though most, if not all, vendors incorporate pre-testing to ensure coding was managed correctly.
- Identify location for public test that will accommodate the county election board, members of the public, media, and staff and has access to electricity, election management tabulation software, and any other equipment required to successfully support the public test.

### STEP 2: Publish Legal Notice of Public Test

- Notice must include date, time, and location of the public test.
- Must be published at least 48-hours in accordance with IC 5-3-1-4, which includes newspaper publication (see appendix for statutory language).

### STEP 3: Conduct the Public Test No Later Than 29-Days Before Election

- Testing may occur before the statutory deadline, if legal notice is published at least 48-hours before the test.
- Sample Testing Checklist:
  - Randomly select at least ten percent (10%) of the automatic tabulating machines.
    - If an individual attending the public test requests that additional automatic tabulating machines be tested, then the county election board shall randomly select and test additional machines up to a maximum of fifteen percent (15%) of the machines that will be used at the next election.
    - No statutory guidelines on how to or who “randomly” selects the precincts
  - Visually inspect each voting system unit to be used at the precinct on election day for correct settings and proper functions.
  - Print a “zero” tape to ensure no ballots have been recorded on the machine.
  - Use the “test deck” to enter the combination of candidate and public question selections on each ballot, making sure to attempt an overvote to ensure the system will not permit an overvoted ballot.
  - Print a “totals” tape.
  - Remove the voting system’s ballot storage media, and “upload” to the county’s computer designated for the tabulation of election results.
  - Print an “election results” report.
  - Compare results on the individual machine’s “totals” tape to the results printed from the “election results” report to the totals the county calculated from its pre-audited “test deck.”
    - If an error is detected, determine the cause and correct the error.

- Repeat the test process then or at a later date (after recess, not adjournment of meeting) to have the errorless count. If the error cannot be corrected, and errorless count documented, then that voting system may not be used in the election.
- Seal voting system after test of the unit is successfully completed, making sure the unit was reset to zero for use on election day or during absentee voting.
- Seal and retain all testing material and records used in the public test in the same manner as voted ballots.

**STEP 4: File signed copy of the IEC-9 Certification of Test of Election Voting Systems with the Indiana Election Division no later than seven (7) days after the public test is completed.**

## Title 5, Article 3. Publication of Notices

IC 5-3-1-4 Notices by political subdivisions and school corporations; requirements; notice in multiple counties; supplementary notices

(a) Whenever officers of a political subdivision are required to publish a notice affecting the political subdivision, they shall publish the notice in two (2) newspapers published in the political subdivision.

(b) This subsection applies to notices published by county officers. If there is only one (1) newspaper published in the county, then publication in that newspaper alone is sufficient.

(c) This subsection applies to notices published by city, town, or school corporation officers. If there is only one (1) newspaper published in the municipality or school corporation, then publication in that newspaper alone is sufficient. If no newspaper is published in the municipality or school corporation, then publication of the notice shall be made in one (1) of the following:

(1) A locality newspaper that circulates within the municipality or school corporation.

(2) A newspaper published in the county in which the municipality or school corporation is located and that circulates within the municipality or school corporation.

(d) This subsection applies to notices published by officers of political subdivisions not covered by subsection (a) or (b). If there is only one (1) newspaper published in the political subdivision, then the notice shall be published in that newspaper. If no newspaper is published in the political subdivision, then publication of the notice shall be made in one (1) of the following:

(1) A locality newspaper that circulates within the municipality or school corporation.

(2) A newspaper published in the county and that circulates within the political subdivision.

(e) This subsection applies to a political subdivision, including a city, town, or school corporation. Notwithstanding any other law, if a political subdivision has territory in more than one (1) county, public notices that are required by law or ordered to be published must be given as follows:

(1) By publication in two (2) newspapers published within the boundaries of the political subdivision.

(2) If only one (1) newspaper is published within the boundaries of the political subdivision, by publication of the notice in that newspaper and in one (1) of the following:

(A) A locality newspaper that circulates within the political subdivision.

(B) In another newspaper:

(i) published in any county in which the political subdivision extends; and

(ii) that has a general circulation in the political subdivision.

(3) If no newspaper is published within the boundaries of the political subdivision, by publishing the notice in two (2) publications, consisting of either or both of the following:

(A) A locality newspaper that circulates within the political subdivision.

(B) A newspaper that:

(i) is published in any counties into which the political subdivision extends; and

(ii) has a general circulation in the political subdivision.

(4) If only one (1) newspaper is published in any of the counties into which the political subdivision extends, by publication of the notice in one (1) of the following:

(A) A locality newspaper that circulates within the political subdivision.

(B) The newspaper published in the county if the newspaper circulates within the political subdivision.

(f) A political subdivision may, in its discretion, publish public notices in a qualified publication or additional newspapers or locality newspapers to provide supplementary notification to the public. The cost of publishing supplementary notification is a proper expenditure of the political subdivision.



# TELEPHONE LIST

## STATE AGENCIES:

### INDIANA ELECTION DIVISION

Direct (317) 232-3939

Toll Free (800) 622-4941

County Election Official Hotline: (877) 240-0016

### INDIANA SECRETARY OF STATE

General Information (317) 232-6531

### INDIANA DEMOCRATIC STATE CENTRAL COMMITTEE

Toll Free 800-223-3387

Direct (317) 231-7100

Fax (317) 231-7129

### INDIANA LIBERTARIAN STATE PARTY

Direct (317) 920-1994

### INDIANA REPUBLICAN STATE CENTRAL COMMITTEE

Direct (317) 635-7561

Fax (317) 632-8510

## FEDERAL AGENCIES:

### U.S. ELECTION ASSISTANCE COMMISSION

General Information

Direct (301) 563-3919; Toll Free (866) 747-1471

Department of Justice, Civil Rights Division (202) 307-2767; (800) 253-3931

Department of Justice, Public Integrity Section, Election Crimes Branch (202) 514-1421

Department of Defense, Federal Voting Assistance Program Toll Free (800) 438-8683  
(VOTE)

Federal Communications Commission (202) 418-2120

## COUNTY ELECTION BOARD MEMBERS:

NAME: \_\_\_\_\_ NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_ PHONE: \_\_\_\_\_