



Guidance Concerning Court-ordered Recounts Under 25 P.S. §§ 3261 & 3263

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Recounts – In General

There are three types of recounts recognized under Pennsylvania law: statewide automatic recounts (SARs) ordered by the Secretary of the Commonwealth¹; recounts directed by a county board of elections (BOE recounts);² and court-ordered recounts.

Court-ordered recounts, which are the focus of this guidance, are regulated by sections 1701 and 1703 of the Election Code, 25 P.S. §§ 3261 and 3263.³

Petitions for Court-Ordered Recounts

The Election Code allows “three qualified electors of the election district” to file a petition in the Court of Common Pleas requesting an order of recount of votes cast in their election district.⁴ Such petitions are subject to a number of requirements related to timing, costs, and specificity of pleading.

Timing

Petitions for court-ordered recounts “shall be filed no later than five (5) days after the completion of the computational canvassing of all returns of the county by the county board.”⁵ If fraud or error is found during the recount, “the court shall grant the interested parties an additional five (5) days to file petitions requesting additional ballot boxes to be opened or voting machines or electronic voting systems to be recanvassed.”⁶

¹ For information on statewide automatic recounts, refer to the Department’s [Statewide Return and Recount Directive and Procedures](#).

² BOE recounts may be initiated when it “appear[s]” to the board of elections “that there is a discrepancy in the returns of any election district,” or by petition of three voters of an election district who “verif[y] by affidavit, that an error, although not apparent on the face of the returns, has been committed therein.” 25 P.S. § 3154(e). Such recounts must be done “prior to the completion of the computation of all of the returns for the county,” 25 P.S. § 3263(a)(1), and should be completed expeditiously, so that the county board of elections may meet its statutory certification deadlines.

³ Section 1702 of the Election Code, 25 P.S. § 3262, governs court-ordered recanvassing of “voting machines.” Section 1702 is inoperative since “voting machines,” as opposed to electronic voting systems (EVS), are no longer in use.

⁴ 25 P.S. § 3261.

⁵ 25 P.S. § 3263(a)(1). Though the completion of the computational canvass is usually concomitant with the signing of election returns (the first signing), the two are not synonymous. See, e.g., *Appeal of McCloskey*, 32 Pa. D. & C. 242, 243 (Pa. Com. Pl. 1938).

⁶ 25 P.S. § 3263(a)(1).



Procedural Filing Requirements

The following additional requirements apply to all petitions for court-ordered recounts:

- (a) Petitions must be filed by at least three qualified electors of the election district(s).⁷
- (b) Each petition must be verified by at least three petitioners.⁸
- (c) Each petition must be “accompanied by a deposit of cash in the amount of fifty (\$50.00) dollars, or by a bond signed by the petitioners as principals and by a corporate surety to be approved by the court, in the amount of one hundred (\$100.00) dollars. . . .”⁹ If neither fraud nor substantial error is found, the county must be reimbursed from these funds.

Specificity of Pleadings

The Supreme Court of Pennsylvania has ruled that such recount petitions can be granted in one of two circumstances:¹⁰

- (1) The petition pleads that a particular act of fraud or error occurred in the computation of ballots and also offers prima facie evidence supporting the allegation.

In this circumstance, the petition itself must include prima facie evidence that fraud or error “was committed in the computation of the votes cast for all offices or for any particular office or offices in such election district, or in the marking of the ballots, or otherwise in connection with such ballots.”¹¹ Evidence supporting these allegations must be collected by petitioners *before* filing a petition.¹² In general, prima facie evidence is “such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party’s claim or defense, and which if not rebutted or contradicted, will remain sufficient.”¹³

- (2) If a petition does not plead particular allegations of fraud or error in the computation of ballots and offer prima evidence in support, it can only be granted if it was filed in all election districts in which ballots were cast for the office in question.

⁷ 25 P.S. § 3261(a).

⁸ 25 P.S. § 3261(a).

⁹ 25 P.S. § 3261(b).

¹⁰ See *In re Recount of Berks Cnty. Gen. Election of Nov. 8, 2022*, 297 A.3d 687 (Table) (Pa. 2023) (affirming the order and rationale of Commonwealth Court’s order in *In re: Recount of Berks County General Election of November 8, 2022*, 296 A.3d 64, 76 (Pa. Cmwlth. 2023)).

¹¹ 25 P.S. § 3261.

¹² See *In re: Petitions to Open Ballot Box Pursuant to 25 P.S. § 3261(a) and for a Correct Count of the General Election*, 295 A.3d 325, 339 (Pa. Cmwlth. 2023).

¹³ *In re L.Z.*, 111 A.3d 1164, 1185 (Pa. 2015).



Conduct of Court-Ordered Recounts

The Court of Common Pleas is tasked with administering the recount. Nevertheless, courts have discretion to appoint others to conduct the recount.¹⁴ It is customary and prudent to appoint employees or agents of the county board of elections to conduct the recount, as they have working knowledge of and experience in operating the electronic voting system.

Notice and Opportunity to Be Present

Before any court-ordered recount can begin, “the court shall direct that notice of time and place of proposed recount be given, either personally or by registered mail, to each candidate for the office or offices which are to be recounted by the order of the court.”¹⁵

Each candidate for the office or offices which are to be recounted “may be present at such recount, either in person or by his attorney or by his duly authorized representative, under such regulations as the court may prescribe.”¹⁶

Method of Recount

Recounts ordered by a Court of Common Pleas can be conducted electronically, manually, or mechanically, even if petitioners have requested a manual or hand recount.¹⁷ The court may exercise discretion in determining the appropriate method of recount. Given the inaccuracy inherent in a hand count, the Department recommends utilizing automatic tabulating equipment where feasible.¹⁸

¹⁴ See, e.g., *In re Second Ward, Second Precinct of Borough of Canonsburg, Washington Cnty.*, 290 A.2d 69, 70 (Pa. 1972) (Court of Common Pleas appointed a three-person board to conduct recount).

¹⁵ 25 P.S. § 3261(c).

¹⁶ 25 P.S. § 3261(c).

¹⁷ See *In re: Petition to Open Ballot Box Pursuant to 25 P.S. §3261(a)*, No. 1489 C.D. 2022, slip op. at 16-18 (Pa. Cmwlth. Ct. July 11, 2023); *In re: Petition to Open Ballot Box Pursuant to 25 P.S. §3261(a)*, No. 1489 C.D. 2022, slip op. at 19-21 (Pa. Cmwlth. Ct. Feb. 10, 2023); *In re: Petition to Open Ballot Box Pursuant to 25 P.S. § 3261(a)*, No. 553 C.D. 2022, slip op. at 2-5 (Pa. Cmwlth. Ct. June 7, 2022).

¹⁸ *Courts concerned with technology of the tabulators used in the initial counting but wishing to avoid the human error-prone hand-counting method, may look to the recount procedures under 25 P.S. §§ 3031.18 and 3154(e)(3), which specify only that the recount be conducted using electronic devices of a “different” type than the system used in the initial tabulation.*



Recount Comparison Table

Type of Recount	Who Initiates?	Timing	Authority	Must Assert
Court-ordered recount	3 voters in each election district	Petitions must be filed in the five days after the computational canvass and before certification	25 P.S. §§ 3261 & 3263	Particular act of fraud or error in the computation of votes or in the marking of the ballots and offer prima facie evidence; OR must file for each election district in which the office appears on the ballot
BOE recount	BOE or 3 voters in an election district	Petitions must be filed prior to completion of computational canvass	25 P.S. § 3154(e)	Error, although not apparent on the face of the returns, has been committed
SAR	Secretary of the Commonwealth	Secretary must order a recount by 5 p.m. on the second Thursday following the day of the election	25 P.S. § 3154(g)	For any statewide race or question, a candidate or question was defeated by one-half of a percent or less of the votes cast for the office.

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1.0	09.23.2024	Initial document release