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# Pennsylvania Provisional Voting Guidance

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### 1 BACKGROUND

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This revised guidance addresses the issuance, voting and examination of provisional ballots under the Election Code. Provisional ballots were originally mandated by section 302 of the Help America Vote Act of 2002 (HAVA).<sup>1</sup> Provisional ballot amendments included in Act 77 of 2019 went into effect for the 2020 Primary election. Provisional ballot amendments included in Act 12 of 2020 go into effect for the first time on November 3, 2020.

Generally, if a voter is not eligible to be issued a regular ballot, that voter shall be entitled to vote provisionally at the polling place. Provisional ballots may be issued at the polling place until the close of polls on election day absent a court order extending voting hours.

#### 1.1 PROVISIONAL VOTING REASONS

A voter may be issued a provisional ballot for the reasons below:

- Voter’s name was not in the poll book or supplemental poll book
  - For example, the voter reported to the wrong precinct; or
  - The voter did not report a recent change in residence to the county election office
- Voter is required to show ID, but cannot show ID
- Voter eligibility was challenged by an election official
- Voter was issued but did not successfully vote an absentee or mail-in ballot and ballot was not surrendered at the polling place to be spoiled
- Voter returned a completed absentee or mail-in ballot that was rejected by the county board of elections and the voter believes they are eligible to vote
- Special court order with respect to the voter’s status
- Special court order related to extending the hours of voting
- Voter claims they are registered in a political party with which they are not affiliated (for primary elections only)

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<sup>1</sup> 52 U.S.C. § 21082.

## 1.2 ABSENTEE AND MAIL-IN VOTING

If the pollbook shows the voter has timely returned and voted their absentee or mail-in ballot, they are not eligible to vote by regular ballot at the polling place. These voters are not eligible to vote on the voting equipment but may vote provisionally if they believe they have not already voted and are eligible to vote. Voters who have requested an absentee ballot or mail-in ballot and are not shown on the district register as having voted the ballot and who appear on Election Day to vote can only vote provisionally at the polling place, unless they surrender their ballot and outer return envelope to be spoiled and sign the required declaration before the judge of elections.

## 2 PROCESS FOR THE VOTER

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- Voters are entitled to a provisional ballot when their eligibility to vote is uncertain.
  - A voter's eligibility is uncertain if his/her voter record cannot be located in the poll book or supplemental poll book.
  - A voter's eligibility to vote is uncertain if he/she has been issued a mail-in or absentee ballot and are not shown as having voted the ballot or do not remit the ballot and outer return envelope to be spoiled at the polling place.
- If a voter requested an absentee or mail-in ballot for the upcoming election and appears to vote at the polling place, they may only vote by provisional ballot at the polling place, unless they surrender the ballot and outer return envelope to be spoiled and sign a declaration before the judge of elections.
- If a voter has returned and successfully voted their absentee or mail-in ballot by the ballot return deadline, their vote is considered final for that election. This means they should not go to a polling place to vote. *Refer to Section 3 for guidance on processing voters whose record indicates that they have returned their ballot.*
- If a voter returned an absentee or mail-in ballot but the ballot was rejected by county election officials, and the voter believes they are eligible to vote in person, the voter may cast a provisional ballot on Election Day.
- For a voter to be issued a provisional ballot, the following must occur:
  - Before a voter can receive the ballot, they must complete the sections on the provisional envelope labeled Voter Information, Voter Affidavit for Provisional Ballot, and Current Address in front of election officials.
  - After a voter receives and marks their provisional ballot, they must seal their ballot in the secrecy envelope and then place the secrecy envelope in the provisional ballot envelope.
  - Finally, the voter must fill out the Voter Signature section on the provisional ballot envelope in front of the Judge of Elections and the Minority Inspector. The Judge of Elections and the Minority Inspector will then sign and date the envelope after noting the reason for the provisional ballot.
- County election officials must review provisional ballots within 7 days of the election and decide if they should be fully counted, partially counted, or not counted.
  - Fully counted – all contests on the ballot are counted.
  - Partially counted – some contests, but not all contests on the ballot are counted.
  - Not counted – No contests on the ballot are counted.
- Voters can check the status of their provisional ballot after the election by calling the county board of elections, checking the PA Voter Services website, or calling the PA Department of

State. Note: The online provisional ballot search will only return results for the active election and cannot be used to search provisional ballots from previous elections. Voters will need to provide their provisional ballot number or their full name and date of birth to check the status of their provisional ballots.

- Voters can find the phone number for their county election office online at [www.votespa.com/county](http://www.votespa.com/county).
- The website for PA Voter Services is [www.votespa.com/provisional](http://www.votespa.com/provisional).
- The phone number for the PA Department of State is 1-877-VOTESPA (1-877-868-3772), option 6.

### 3 PROCESS FOR POLL WORKERS

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- County election officials must ensure that poll workers are familiar with provisional voting rules.
- A county election official or poll worker must inform voters that they have a right to use a provisional ballot when they are entitled to receive one.
- Before a provisional ballot is issued, the Voter Information, Voter Affidavit for Provisional Ballot, and Current Address sections on the provisional ballot envelope must be completed by the voter.
- If a voter requested an absentee or mail-in ballot and did **not** successfully return and cast the ballot, his/her name will be found in section 1 of the poll book, and the signature line will say either **Remit Absentee Ballot or Vote Provisionally** or **Remit Mail-in Ballot or Vote Provisionally**. This advises the poll worker that there are two circumstances that may apply if one of these voters appear on Election Day.
  - If the voter has their ballot and outer envelope with them, the poll worker shall permit the voter to surrender their ballot and envelope and sign the Elector's Declaration to Surrender their Mail Ballot form. After the voter does this, the poll worker shall allow the voter to vote by regular ballot same as any voter.
  - If the voter is designated in the pollbook as having been issued an absentee or mail-in ballot but does not have the ballot and outer envelope with them, the voter may only vote by provisional ballot, and the poll worker shall offer him/her this option.
- If a voter was issued an absentee or mail-in ballot and returned and successfully voted their ballot, their name will be found in section 2 of the poll book, and the signature line will say either **Absentee – Ballot Cast/Not Eligible** or **Mail-in – Ballot Cast/Not Eligible**. Their vote is considered final at this point.
  - If the voter believes that he/she has not returned or cast the ballot successfully or otherwise contests his/her ballot status, the poll worker shall provide the voter a provisional ballot.
- If polling place hours are extended beyond 8:00 p.m. by court order on election day, all ballots shall be cast via provisional ballot only after 8 pm.

### 4 PROCESS FOR COUNTY ELECTIONS OFFICIALS

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- It is recommended counties notify parties and the public a week in advance of the date that election officials will meet to examine and reconcile provisional ballots during the post-election

official count. Under no circumstance should the county board of elections schedule the meeting without providing the notice required by the Sunshine Act, 65 Pa.C.S. 701, et seq., for public meetings.

- When determining whether to count a provisional ballot, the county board of elections must reconcile provisional ballots with ballots cast in person on election day and with returned absentee and mail-in ballots. If a voter cast an election day ballot or voted an absentee or mail-in ballot, the provisional ballot shall not be counted.
- A county board of elections can only approve a provisional ballot for counting if the voter is qualified and eligible to vote for the election.
- When researching provisional ballots during the canvassing period, the county election staff should enter the voter’s provisional voting information from the provisional envelope into the SURE system to maintain an accounting of the number of provisional ballots issued for the election.
- The county board of elections must review and make a determination on the disposition of each provisional ballot within 7 days of the election.
- If a provisional ballot is challenged during the canvass, the county board must schedule a hearing within 7 days of the challenge to consider the challenge and determine the disposition of the ballot. Additionally, notice shall be given where possible to the challenged provisional voter and to the attorney, watcher or candidate who made the challenge.
- During the official canvass, the County Board of Elections must determine, for each provisional ballot, whether:
  - The provisional ballot is invalid because the voter successfully cast another ballot;
  - The provisional ballot should be counted in full;
  - The provisional ballot should be rejected and the reason(s) for the rejection; or
  - The provisional ballot should be partially counted and the reason(s) for the partial counting.
- If a voter’s mail-in or absentee ballot was rejected for a reason unrelated to the voter’s qualifications and the voter casts a provisional ballot and meets other provisional ballot requirements, the provisional ballot shall be counted if the county determines that the voter is eligible to vote.
- Counties are prohibited from counting a provisional ballot from another county.

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Version History:

Version	Date	Description
1.0	3.5.2020	Initial document release
1.1	10.21.2020	Updated per Act 12 of 2020

**Elector's Declaration to Surrender Their Mail Ballot**

**For the Voter:**

I hereby declare that I am a qualified registered elector who was issued an absentee or mail-in ballot for this election, but that I have not mailed or cast an absentee or mail-in ballot in this election. Instead, I am hereby remitting my absentee or mail-in ballot and its declaration envelope to the judge of elections at my polling place to be spoiled. I request that my absentee or mail-in ballot be voided, and that I be permitted to sign the poll book and vote a regular ballot.

I verify that the statements made in this declaration are true and correct to the best of my knowledge and belief. I understand that false statements made herein are subject to the criminal penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

\_\_\_\_\_  
(Today's Date)

\_\_\_\_\_  
(Printed Name of Elector)

\_\_\_\_\_  
(Signature of Elector)

\_\_\_\_\_  
(Address of Elector)

**For Election Officials Only:**

I hereby declare I have received the voter's ballot and envelope containing the voter's declaration from the voter and I am spoiling it and permitting the voter to sign the poll book and vote a regular ballot.

\_\_\_\_\_  
(Printed Name of Judge of Elections)

\_\_\_\_\_  
(Judge of Elections Signature)

\_\_\_\_\_  
(Precinct)

Instructions after completion: This form should be attached to the voter's surrendered balloting material and returned in the [container] [bag] designated for spoiled ballots. Do not forget to check the "**BALLOT REMITTED?**" option next to the voter's name in the poll book.