

PROVISIONAL BALLOT GUIDANCE SUMMARY

FOR VOTERS

The Help America Vote Act of 2002 established the provisional ballot as a mechanism to ensure that no eligible voter is turned away at the polls. A provisional ballot is a paper ballot that is offered to voters who believe they are registered but whose name does not appear in the poll book or on the general voter registration list.

WHO MAY VOTE BY PROVISIONAL BALLOT

- A voter who claims to be properly registered and eligible to vote at the election district but her/his name does not appear on the general voter registration list;
- A first-time voter who does not have an acceptable form of identification; or
- A voter who presents a federal or state court order to vote.

A voter whose identity or residency is challenged **may** vote a provisional ballot if the voter is unable to, or chooses not to, produce a witness to sign an affidavit affirming the voter's identity and residency. A voter who does produce such a witness is permitted to vote normally, either by paper ballot or on the machines.

PROCESS FOR THE VOTER

Poll workers should provide the voter with the ballot, a secrecy envelope, an outer provisional ballot envelope and a private, accessible place to mark the ballot.

Once the voter marks the ballot, the voter should place the ballot in the secrecy envelope, seal it and place the secrecy envelope inside the provisional ballot envelope. The outer envelope is printed with a mandatory affirmation form. The voter must sign the affirmation, affirming her/his name, date of birth, the municipality in which s/he is registered, that s/he is registered and eligible to vote in that election district and that s/he has not already cast a ballot in the election.

If a voter feels entitled to cast a provisional ballot, but is not offered one, the voter should contact the county board of elections immediately.

The Help America Vote Act (HAVA) requires that each person casting a provisional ballot be given written instructions on how to contact a "free access system" to determine whether the voter's ballot was counted. In Pennsylvania, voters who cast a provisional ballot should receive a Provisional Ballot Identification Receipt. The receipt will provide instructions on how to access the Commonwealth's free access system.

FOR POLLWORKERS

Poll workers must offer a provisional ballot to voters who fall into one of the categories itemized on page 1 of this guidance.

If a voter appears to vote and the voter's name is not in the poll book, the Department of State recommends the following:

- The poll worker should contact the county board of elections to determine if the voter is registered in the election district.
- If the voter is registered in the district but omitted from the poll book, the poll worker should write the name of the voter into the back of the poll book and permit the voter to vote normally, either by paper ballot or on the machine.
- If the voter is registered in the county but in another election district, the poll worker should tell the voter that s/he is registered in another district and direct the voter to the other polling place.
- If the voter is registered in the county at a different election district than the one in which the voter appeared to vote but insists on voting at the polling place, the poll worker should provide a provisional ballot to the voter but warn the voter that the ballot may only be partially counted.
- If the poll worker and the county Board of Elections cannot verify the voter's registration, the voter still has the right to affirm his or her belief that he/she is registered in the election district and vote a provisional ballot. **No voter should be turned away without an opportunity to cast a provisional ballot.**

For all voters who have the right to cast a provisional ballot, the poll worker should take these steps:

1. Provide the voter with a provisional ballot, a secrecy envelope and an outer provisional ballot envelope.
2. Instruct the voter on the proper procedures to mark the ballot, insert the voted ballot in the secrecy envelope, and seal and insert the envelope inside the provisional ballot envelope.
3. Instruct the voter to fill out the affirmation printed on the provisional ballot envelope. **IMPORTANT:** the voter's **signature** on the provisional ballot envelope is **MANDATORY**.
4. Provide the voter with a private place to mark the ballot.
5. After the voter has voted, the poll worker should ensure that the voter has followed the instructions, and confirm that the voter signed the affirmation on the envelope **before the voter leaves the polling place.**

6. The poll worker should ensure that the Judge of Elections and Minority Inspector also sign the affirmation as witnesses in the appropriate place on the provisional ballot envelope.
7. The Judge of Elections must affix to the envelope the sticker that notes the Provisional Ballot Identification Number, and give the receipt with the same number to the voter. The Judge of Elections must also provide instructions to the voter about how to learn whether his/her ballot was counted.

At the close of the polls, all provisional ballot envelopes must remain sealed and should be returned to the county Board of Elections in the appropriate envelope or pouch along with other election materials.

FOR COUNTY ELECTIONS OFFICIALS

The County Board of Elections has a duty to decide promptly whether a provisional ballot should be counted. The Pennsylvania Election Code requires that provisional ballots be canvassed within seven (7) days of the Election at a public meeting that the Board has publicized. The meeting may be attended by the public, the press, candidates, watchers, attorneys and others.

In preparation for the meeting, the county staff should evaluate each provisional ballot and gather the information that would permit the Board of Elections to determine:

- whether the voter was registered in the county and in the election district in which the ballot was cast;
- whether the voter has registered in another election district, in another county or at all;
- whether the voter who cast a provisional ballot did not vote in any other manner in the election; and
- whether the voter's signature is genuine.
- Whether the voter attempted to register through PennDOT or online voter registration and that attempt is verified.

At the public meeting, the Board of Elections must determine, as to each provisional ballot, whether:

- The provisional ballot is invalid because the voter cast another ballot;
- The provisional ballot should be counted in full;
- The provisional ballot should be rejected and the reason for the rejection; or
- The provisional ballot should be partially counted and the reason for the partial counting.

If the board determines that a provisional ballot should be counted, the board must verify that the voter did not cast any other ballot in the election, including an absentee ballot.

The Board of Elections, on its own, or as a result of a challenge by a candidate, watcher or attorney, may question the eligibility of the voter to vote. The board should set aside such provisional ballots for further inquiry, including a hearing. The hearing should be set as soon as practicable, but not later than seven (7) days after the date of the challenge, with notice to the voter whose ballot was challenged. The Board should promptly make a final determination about whether the challenged provisional ballots should be counted as soon as practicable after the hearing.

In making its determinations, the Board of Elections should not reject a provisional ballot because of missing information on the envelope unless such omission is material. Similarly, a missing signature of Judge of Elections or Minority Inspector on the provisional ballot envelope, standing alone, is not a reason for rejection unless there is evidence of possible fraud or other irregularity. In that case, the Board should set the ballot aside for further inquiry and possible hearing.

After the Board of Elections has decided which provisional ballots should be counted, the Board should remove the secrecy envelopes from the outer provisional ballot envelopes, commingle the sealed secrecy envelopes and then open the envelopes, remove the ballots and count them. At all times, the outer provisional ballot envelopes must be preserved.