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# Montana Statewide Recount Guide

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Elections and Government Services Division  
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## Introduction

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To ensure uniformity in the event of a statewide or state district recount, the following provides guidance to county election officials for conducting recounts. Please use this guide in conjunction with the Secretary of State's publication "2011 Title 13 Election Laws," the Election Judge Handbook, and Administrative Rules.

Portions of this guide contain procedures based on best practices, rather than statute or rule.

The Secretary of State hopes that this guide will be used to assist local election administrators in fulfilling their legal obligations under [13-15-206\(8\) MCA](#), which states that counties shall adopt policies to govern local processes for conducting vote counts, including recounts, that are consistent with the provisions of [Title 13 MCA](#).

# Types of Recounts

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Recounts are typically administrative proceedings with the scope limited to the manual recount of the ballots validly cast for the office or ballot issue and the declaration of the results. A recount is performed by the county recount board in each county, made up of three members of the county governing body. The board may appoint additional county employees or hire clerks to assist as needed. [13-16-101 MCA](#)

## Automatic Recounts

There is an automatic manual recount of votes cast for federal and state offices when:

- A tie has been certified to the election administrator or the secretary of state. [13-16-203 MCA](#)

## Discretionary Recounts

An **unsuccessful state or federal candidate** can request a manual recount of votes cast by filing a petition with the secretary of state within 5 days after the official statewide canvass when:

- The margin of defeat does not exceed  $\frac{1}{4}$  of 1% of the total votes cast. [13-16-201 MCA](#)

A **canvassing board** may petition the Secretary of State for a recount when the board finds an error in a precinct or precincts affecting the accuracy of vote totals. [13-15-403](#) and [13-16-201\(1\)\(f\) MCA](#)

An **unsuccessful state or federal candidate** can request a manual recount of votes cast by filing a petition with the secretary of state within 5 days after the official statewide canvass, and **by posting a bond** with the clerk and recorder of the county in which the candidate resides when:

- The margin of defeat exceeds  $\frac{1}{4}$  of 1% but does not exceed  $\frac{1}{2}$  of 1% of the total votes cast for all candidates for the same position. [13-16-211 MCA](#)

## Ballot Issue Recounts

Electors can request a manual recount of votes cast for a statewide ballot question by filing with the secretary of state a petition signed by not less than 100 electors of the state, representing five counties, within 5 days after the official statewide canvass when:

- The question is decided by a margin not exceeding  $\frac{1}{4}$  of 1% of the total votes cast for and against the question. [13-16-201\(1\)\(d\) MCA](#)

## **Court Ordered Recounts**

An unsuccessful state or federal candidate may within 5 days after the official statewide canvass apply to the district court of the county where the candidate resides. [13-16-301 MCA](#)

Any elector who was eligible to vote on a ballot issue and who believes that there are grounds for a recount of the votes cast for and against a ballot issue may within 5 days after the official statewide canvass apply to the district court of the county where the elector resides for an order directing a manual recount of votes cast. [13-16-301 MCA](#)

Whenever a recount is required, ordered or requested, the county recount board shall convene at the usual meeting place of the governing body without undue delay, but not later than 5 days after receiving notice of the recount from the election administrator. [13-16-204 MCA](#)

## **Costs of the Recount**

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The expense of a recount under [13-16-201 MCA](#) is a county expense. The expense of a recount under [13-16-211 MCA](#) is an expense of the candidate who petitions for the recount. Recount expenses of the secretary of state and board of state canvassers pursuant to [13-16-419 MCA](#) are a state charge. [13-16-205 MCA](#)

The expenses of a court-ordered recount are set according to [13-16-307 MCA](#).

## **Notice of the Recount**

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A recount is open to the public and notice of the date, time, and place of the recount should be given by the official in charge of the recount. Specific effort should be made to contact all interested parties and to work with any candidates involved in a recount in setting the date and the time of the recount. [13-15-206](#), [13-16-204](#), [13-16-411](#) and [Title 2, chapter 3 MCA](#)

# General Procedures of the Recount

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The recount is open to the public, including the news media. Each candidate involved in a recount may appear, personally or through a representative, and must have full opportunity to witness the entire recount process. The audience may be limited to prevent interference with the procedures. If the recount is on a ballot issue, one qualified elector favoring each side of the question may be present. [13-16-411 MCA](#)

There should be a public viewing area at each recount location. Candidates may have additional representatives in the public viewing area of the room. Cell phones and video cameras may be used in the public viewing area at the discretion of, and with permission of the election administrator, as long as their use is not disruptive. [13-15-206\(8\) MCA](#)

The scope of the recount is limited to the determination of the number of votes validly cast for the office or issue being recounted.

The county election administrator is the county official responsible for the recount process in their respective counties. [13-1-101\(9\) MCA](#) The open meeting laws set forth in [Title 2, chapter 3 MCA](#) apply to a recount. The election administrator should provide instructions both orally and in writing to all participants. The instructions should include a description of the role of all recount officials and staff, and of the sorting, counting and challenge process. The county election administrator shall:

- Notify the county recount board of the recount. [13-16-204 MCA](#)
- Publicly announce the time, place, and schedule for the recount, including start and end times, and any breaks within each day. [13-15-206\(8\)](#) and [Title 2, chapter 3 MCA](#)
- Publicly announce any change in the schedule. [13-15-206\(8\)](#) and [Title 2, chapter 3 MCA](#)
- Keep all voted ballots and any other necessary reports or materials secure until the recount. [44.3.1717](#) and [44.9.310 ARM](#)
- Arrange to have the sealed ballot containers and any other necessary materials delivered to the recount location on the designated day and at the designated time. [13-16-412\(1\) MCA](#)
- Ensure that the public has notice of the date, time and location of any activity with the sealed ballots that involves sealing or unsealing of materials. Opportunity must be given for the public to observe this process. Additionally, ensure that at least two election officials are present anytime materials are being unsealed or sealed. [13-16-411](#), [13-16-412](#), [13-16-417 MCA](#)
- Before the recount begins, review the recount process with observers, as well as provide each observer with a copy of the recount process. [13-15-206\(8\) MCA](#)

- Provide an incident log for the recount board to record any activity that they believe should be recorded. [13-15-206\(8\)](#) and [13-15-401\(4\) MCA](#)
- Provide a log for documenting any objections by a candidate or a candidate's representative to vote validity or vote counting validity. [13-15-206\(8\) MCA](#)

## Sample Instructions

*"This is an administrative recount held pursuant to [Title 13, Chapter 16, Montana Code Annotated](#), and according to Administrative Rules. It is not to determine who was eligible to vote. It is not to determine if campaign laws were violated. It is not to determine if absentee ballots were properly accepted.*

*If a difference in the vote count is discovered through this recount, please be aware that this is not unusual and that this is why Montana has a recount law.*

*I am the official in charge of the recount. No one should touch the ballots unless I specifically allow it. Please make any concern regarding the process known to me immediately. Ballots will be recounted by precinct. Absentee ballots that were originally counted separately from the polling place ballots will be counted separately in the recount, but the recount will report only one combined total for each precinct.*

*Ballots will be sorted into a pile for each candidate, and a pile for all other ballots. The candidate may challenge any ballot. Challenges may not be automatic or frivolous. The challenger must describe why they challenge the ballot. If the recount board does not agree with the challenge, they will have written on the ballot who challenged it and why and that the challenge was unsuccessful. If the recount board agrees with the challenge, they will have written on the ballot who challenged it and why, and that the challenge was successful. Each pile of ballots will be counted and the totals recorded on the Recount Report. At the completion of the recount, a report of the recount results for all precincts will be furnished to the candidates and any interested parties.*

*Ballots containers will be resealed in public view."*

The recount shall proceed according to the laws of Montana, including [Title 13 MCA](#) and the [Administrative Rules of Montana](#).

All ballots properly cast on Election Day and all accepted absentee ballots properly cast will be counted. Polling place ballots may be combined with absentee ballots to be counted for each precinct and all ballots for each precinct will be counted and reported together as one total.

## Role of Observers

The individuals entitled to appear at the recount are pursuant to [13-16-411 MCA](#). Observers, other than the candidates and/or their representative, will be directed to a public viewing area, as designated by the election administrator. Observers may observe the vote counting procedures, but there is no provision to challenge a count during the counting process, except

as provided in this Guide. If there are objections to vote validity or vote counting validity, as contemplated under [13-15-206\(8\)\(d\) MCA](#), those objections must be made without obstructing or interfering with the count process and must be recorded as provided by the election administrator's policy.

Montana law provides for contingencies or errors in counting (e.g., [13-15-206\(4\) MCA](#) for questionable votes and [13-15-209 MCA](#) for voting system error during count). Should these processes not address an observer's objection after all valid votes have been counted and the other legal requirements are met, objections concerning illegal votes or an erroneous count can be addressed in an election contest under [13-36-101 MCA](#).

## Sorting Ballots

The recount board or election administrator will, after publicly opening the sealed ballot containers, sort ballots into piles based upon the principles of voter intent outlined in [13-15-206 MCA](#) and [Title 44, chapter 3, part 24 ARM](#): one pile for each candidate involved, and one pile for all other ballots (those for other candidates, undervotes, overvotes, or otherwise disqualified ballots). All candidates involved in the recount must be able to view each ballot, but are not allowed to touch or otherwise handle a ballot, except with the consent of the election administrator in circumstances where a request to more closely examine a ballot is made. Ballots that the recount board deems are questionable, but are not challenged by a candidate, must be set aside for additional review by the recount board. [13-15-206\(2\) and \(4\) MCA](#)

Original ballots that were unable to be machine tabulated and/or certain ballots from U.S. electors (voters covered under UOCAVA) that have been duplicated to another ballot must be provided and reviewed by the recount board.

## Objections to Vote Validity or Vote Counting Validity

If, during the sorting, a candidate disagrees with the recount board's determination of for whom the ballot should be counted, the candidate may object to the decision of the board. There must be a written log maintained by the election administrator of why the decision is being objected to, and which candidate is objecting. [13-15-206\(8\) MCA](#)

Objections to vote validity may not be made for an entire precinct or group of ballots.

Objections to vote validity may not be automatic or frivolous. An example of an objection that is frivolous is if it is based upon an alleged identifying mark other than a signature or an identification number written anywhere on the ballot.

The absence of the official stamp on the ballot cannot be the basis of an objection.

In each case of an objection, whether the objection is deemed frivolous by the recount board, or it is agreed to by the recount board, or it is overruled by the recount board, the ballot shall be labeled with the precinct, the name of the candidate making the objection, the reason for the objection, and the disposition of the objection. These ballots must be recorded on the recount summary statement as part of the count the recount board determined it should be. These ballots shall be segregated and secured by the county election administrator for the precinct in a separate ballot container in case of a court challenge.

Challenges may be withdrawn at any time.

### **Counting Sorted Ballots**

After ballots for the precinct have been sorted, each pile will be counted by creating stacks of 25 ballots, which shall be cross-stacked into distinct piles – one for each candidate based on the sorting process, and a pile for all other ballots. Questionable and challenged ballots shall be set aside. The recount board will count the piles. A candidate may immediately request to have a specific stack of 25 counted a second time, but not the entire pile. Vote counts for each candidate, and all other ballots will be announced and recorded on the form provided.

Each questionable or challenged vote set aside must be reviewed by the recount board. The recount board shall evaluate each questionable or challenged vote in accordance with Montana law and administrative rules, specifically [13-15-206 MCA](#) and [44-3-2402 ARM](#), and as specified under “Determining a Valid Vote” beginning on page 10.

If the recount involves a race with write-in candidates, each questionable or challenged write-in vote set aside must be reviewed by the recount board. The recount board shall evaluate each questionable or challenged write-in vote in accordance with Montana law and administrative rules, specifically [13-15-206 MCA](#) and [44-3-2403 ARM](#) as follows and as specified under “Determining a Valid Write-in Vote” beginning on page 14.

After counting for the precinct is complete, the recount board may review questionable and challenged ballots with the candidates, who may withdraw a previously challenged ballot. If challenged ballots are withdrawn, they are added to the proper pile and the counts are adjusted and recorded as necessary.

It will be noted on each challenged ballot whether or not the challenge was successful. A label will be placed in white space on the back of the objectionable ballot that will note the precinct, the candidate who made the objection, and the reason for the objection. The objection reason format is Not\_\_\_\_\_, Is \_\_\_\_\_ (e.g., “Not Smith, is undervote” “not Jones, is identifying

mark”). Each objection will be given a sequential number that will be noted on the log, and on the ballot (Candidate A #1, Candidate B #1, etc.)

## Recount Completion and Report

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Vote totals will be recorded on the recount summary report. Challenged ballots are recorded in the appropriate candidate objection column. The original report is retained by the election administrator, a copy is immediately faxed or emailed to the Secretary of State, and a copy is provided upon request to each candidate. Other copies may be distributed at the election administrator’s discretion.

Ballots must be stored securely during breaks in the counting process, at night if the recount cannot be finished in one day, and after the counting is complete. Each member of the recount board must sign the seals placed on ballot containers, and a log of seal numbers must be kept specifically for the recount.

Challenged ballots must be sealed in a separate container from other ballots, and the container must identify the ballots as challenged ballots.

The recount results as determined by the recount board are the official election results, and are presented to the county canvass board to be certified. Upon certification by the county canvass board, results are immediately sent to the secretary of state for certification by the state canvass board. [13-16-418 MCA](#)

## Contests

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Five days or less after a candidate has been certified as nominated, any elector may contest in district court the **nomination** of any person pursuant to [13-36-101 MCA](#), if the elector believes that:

- 1) a deliberate, serious, and material violation of any provision of the law relating to nominations or elections has occurred;
- 2) the person was not, at the time of the election, eligible to be a candidate for the office;
- 3) votes were cast illegally or were counted or canvassed in an erroneous or fraudulent manner

Within one year after the day of election, any elector may contest in district court the **election** of any person pursuant to [13-36-101 MCA](#), if the elector believes that:

- 1) a deliberate, serious, and material violation of any provision of the law relating to nominations or elections has occurred;
- 2) the person was not, at the time of the election, eligible to be a candidate for the office;
- 3) votes were cast illegally or were counted or canvassed in an erroneous or fraudulent manner

## DETERMINING A VALID VOTE

### Determining a Valid Vote in Manually Counting and Recounting Paper Ballots

If an elector does not mark a candidate, judicial retention choice, or issue choice, the valid votes for other candidates or issues on the same ballot shall be counted.

(a) If a majority of the designated board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(b) If a majority of the designated board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

The following general rules shall apply in a count or recount of ballots:

(a) More than one designated voting area has been marked and at least one mark has been erased, but residue is or is not left. The election officials shall cause a vote to be counted for the designated voting area that has been marked;

Yes

No

(Erasure has been attempted.)

(b) One designated voting area is marked and at least one other designated voting area is marked with a heavy mark and no erasure has been attempted. The election officials shall cause this to be designated as an overvote;

Yes

No

(No erasure has been attempted.)

(c) The designated voting area has been marked for one candidate or ballot issue choice and a partially completed mark is made in at least one other designated voting area. The mark may or may not have some erasure, although for the purpose of this rule erasure is not required. If an erasure is present and it is not sufficient to make the intent of the elector clear, the election officials shall cause this to be designated as an overvote. If no erasure attempt is made, the election officials shall cause this to be designated as an overvote;

- Yes
- No

(Erasure may or may not have been attempted.)

(d) The designated voting area has been marked for one candidate or ballot issue choice and a hesitation mark is present within at least one other designated voting area. The election officials shall cause a vote to be counted for the designated voting area that has been marked;

- Yes
- No

(e) The designated voting area has not been marked according to instructions, but the designated voting area, candidate, or ballot issue choice is circled, underlined, checked, or otherwise clearly marked. The election officials shall cause a vote to be counted for the marked choice;

- Yes
- No

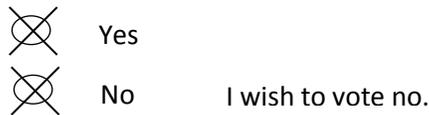
(f) The designated voting area has not been marked according to instructions, but there is a connective line or arrow between the candidate or ballot issue choice and the designated voting area to indicate the vote. The election officials shall cause a vote to be counted for the marked designated voting area;

- Yes
- No

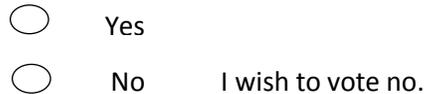
(g) More than one designated voting area has been marked, but no clear mark is used to indicate the intended candidate or ballot issue choice. This includes, but is not necessarily limited to, instances in which more than the allowable choices are marked, and an "X" has been marked in either or both of the designated voting areas. The election officials shall cause this to be designated as an overvote;



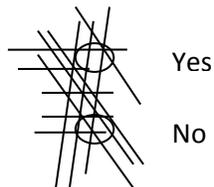
(h) More than one designated voting area has been marked, but a clear word, mark, or statement is used to indicate the intended vote. The election officials shall cause a vote to be counted for the designated voting area indicated as the intended vote;



(i) A word or statement has been used to indicate the intended vote instead of marking the designated voting area according to instructions. The election officials shall cause a vote to be counted for the designated voting area indicated as the intended vote;



(j) All of the designated voting areas are crossed out. The election officials shall cause this to be designated as an undervote;



(k) a mark is made outside the designated voting area but close enough to the designated voting area to determine voter intent, and the designated voting area is not marked. The election officials shall cause a vote to be counted for the designated voting area determined as the intended vote;

Yes  
 No

(l) a ballot is marked with different colors or types of marking instruments. The election officials shall cause votes to be counted as marked by the voter unless it is determined that the ballot is otherwise not valid.

Yes  
 No

## DETERMINING A VALID WRITE-IN VOTE

### Determining a Valid Write-In Vote in Manually Counting and Recounting Paper Ballots

(The following rules shall apply to determining a valid write-in vote in a count or recount of paper ballots, and must be read in conjunction with the requirements specified in DETERMINING A VALID VOTE)

(a) a name is written in, but the designated write-in voting area is not marked, and no other candidate is selected. The election officials shall cause this to be designated as an undervote;

- Art Jones
- Ben Smith
- Steve Johnson

(b) No candidate name or office is written in, but the designated write-in voting area is marked and no other candidate is selected. The election officials shall cause this to be designated as an undervote;

- Art Jones
- Ben Smith
- \_\_\_\_\_

(c) A printed candidate is selected by marking of the designated voting area, and no name is written in, but the designated write-in voting area is marked. The election officials shall cause a vote to be counted for the printed candidate;

- Art Jones
- Ben Smith
- \_\_\_\_\_

(d) a printed candidate is selected by marking of the designated voting area, any individual's name is written in, and the designated write-in voting area is marked. If the name written in is different from the name of the printed candidate selected, the election officials shall cause this to be designated as an overvote. If the name written in is the same as the name of the printed candidate selected, the election officials shall cause a vote to be counted for the printed candidate selected.

- Art Jones
- Ben Smith
- Art Jones

(e) The designated voting area for a printed candidate is marked and the same name is written in, but the designated write-in voting area is not marked. The election officials shall cause a vote to be counted for the marked designated voting area;

- Art Jones
- Ben Smith
- Art Jones

(f) Comments are written in which do not indicate a clear vote and no candidate is marked. The election officials shall cause this to be designated as an undervote;

- Art Jones
- Ben Smith
- I'm not sure.

(g) the designated voting area for a printed candidate is marked, a comment is written in, and the corresponding designated write-in voting area is or is not marked. The election officials shall cause this to be counted as a vote for the printed candidate unless the comment creates uncertainty about who the choice is or directs the election official not to count the vote for the printed candidate selected. In the latter case, the election officials shall cause this to be designated as an undervote.

- Art Jones
- Ben Smith
- Art is who I choose

**OR**

- Art Jones
- Ben Smith
- I'm not sure.

(h) at least one printed candidate appears as a candidate for the office and the designated voting area is not marked for any printed candidates, but a name is written in that is not the name of a declared write-in candidate and the corresponding designated write-in voting area is or is not marked. The election officials shall cause this to be designated as an undervote.

- Art Jones
- Ben Smith
- Art Jones