



September 26, 2023

**To:** 2023 Special Committee on Elections

**From:** Leighann Thone, Research Analyst

**Re:** Voter Rolls, Advance Voting, and Voting Machines

This memorandum includes information compiled by the Kansas Legislative Research Department (KLRD) in anticipation of the 2023 Special Committee on Elections. In addition to research done by KLRD, information was provided by the Office of the Secretary of State (Secretary's Office) and the Kansas County Clerks and Election Officials Association (KCCEOA). Information provided by the KCCEOA includes survey responses provided by 70 of the 105 currently serving county clerks, which have been summarized and compiled by KLRD staff.

Topics covered in this memorandum include voter rolls and maintenance, voter registration, advance voting, advance ballots, remote ballot drop boxes, and voting machines.

## **Voter Rolls and Maintenance**

### ***Federal Regulations on Voter Roll Maintenance***

Federal law places strict limits on how states conduct voter registration list maintenance<sup>1</sup>. The National Voter Registration Act of 1993 (NVRA, or "motor voter law") requires states to conduct list maintenance in a uniform and nondiscriminatory manner in compliance with the Voting Rights Act and prohibits the conduct of list maintenance verification activities within 90 days of an election. The NVRA also limits the reasons a state can remove a voter from the rolls. States can remove a voter at the voter's request, due to a felony conviction or mental incapacity, or because a voter has moved to an address outside the voter registration agency's jurisdiction.

The NVRA specifies the following process for evaluating inactive voters:

- States must mail an address confirmation to the voter. This confirmation is nonforwardable.
- If the voter returns the card verifying they still live at the old address, no change is made to the registration record.

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1 <https://www.ncsl.org/elections-and-campaigns/voter-registration-list-maintenance>

- If the voter returns the card verifying a new address outside the jurisdiction, the old registration is canceled, and election officials often send information to the voter about how to register in the new jurisdiction.
- In many states, if the voter fails to respond within a specified period, that voter is placed on an inactive list.
- Once a voter is on the inactive list, election officials can only remove the voter from the registration list if the voter fails to vote, update their address, or engage in other election activity — such as signing a candidate or initiative petition — for a period including two federal general elections (four years).

The NVRA explicitly prohibits states from removing a voter from the registration rolls simply for failure to vote. Similarly, being listed at a registered address at which the voter no longer lives is not, by itself, sufficient to remove a voter from the voter list.

### ***Kansas Law on Voter Roll Maintenance***

Voter roll issues are resolved by each of the 105 county election officials. County election officials add voter registration applications to the voter registration list. The county election officer is required to keep the records of registration at all times, with separate registration lists for each precinct and township to be updated before each election ([KAR 7-23-2](#)). Election officers must register any person who is otherwise qualified to vote and is able to provide a residence address in enough detail to enable the election official to assign the applicant to the correct precinct ([KAR 7-23-12](#)).

If a county election officer determines that an application for voter registration does not contain the information required by law, including satisfactory evidence of United States citizenship, the county election officer must designate the application as incomplete. If an applicant submits an invalid address, local election officials reach out to the applicant to ascertain additional information to determine if the record is accurate or needs to be corrected. Voter registration records are held in pending status until the county can decide the validity of the voter registration record ([KAR 7-23-15](#)).

Each county election office must maintain a list of incomplete applications for voter registration. Applicants on this list may complete the voter registration application without submitting a new one by providing the required information within 90 days after the application was received by the county election office. If the application was designated as incomplete and the application is not completed within 90 days, the county election officer must designate the application as canceled and a new application must be submitted in order for the applicant to become registered to vote ([KAR 7-23-15](#)).

County election officers must send a confirmation notice to a registrant within 45 days of the following events:

- A notice of disposition of a voter registration application is returned as undeliverable;
- Change of address information supplied by the National Change of Address program identifies a registrant whose address may have changed;

- The United States Postal Service (USPS) provides information that a registrant has moved to a different address inside or outside the registrant’s current county of registration; or
- The registrant has no election-related activity for any four-calendar-year period ([KSA 25-2316c](#)).

“No election-related activity” means that a registrant “has not voted, attempted to vote, requested or submitted an advance ballot application, filed an updated voter registration card, signed a petition, which is required by law to be verified by the county election officer or the Secretary of State, or responded to any official election mailing transmitted by the county election office” ([KSA 25-2316c\(e\)\(5\)](#)).

Kansas law specifies that election officials can use the USPS National Change of Address (NCOA) program to check voter registrations. A check of registration records against the NCOA is required once per calendar year in Kansas, though election officials can opt to check more often ([KAR 7-38-1](#)). If the chief state election official performs the check, any discrepancies discovered must be reported to the appropriate county election officer, who must initiate the confirmation process prescribed by [KSA 25-2316c](#) within 45 days. As an alternative to the NCOA, the county election officer may conduct mass or targeted mailings to registered voters to obtain information upon which to base the confirmation mailings ([KSA 25-2354](#)).

Additionally, according to the [Secretary's Office](#), information provided by the Office of Vital Statistics, the Social Security Administration, and obituaries is consulted to remove deceased people from the voter rolls.

[2022 HB 2138, as enacted](#), established law to allow a county election officer to remove a registered voter from the registration list if such registrant has had no election-related activity for any four-calendar-year period and the confirmation notice sent by the county election officer is returned as undeliverable.

### ***Permanent Advance Voter List***

Any person having a permanent disability or illness can apply for permanent advance voting status ([KSA 25-1122](#)). County election officers prepare and maintain a list of people who have filed such applications and a separate list of those qualified for permanent advance voting status. A voter is not classified as a permanent advance voting voter unless the voter, or a person on their behalf, has completed the application, which must specify the character of the voter’s permanent disability or illness ([KAR 7-36-2](#)).

If a person on the permanent advance voting list fails to vote in four consecutive general elections, the county election officer can mail a notice to the voter informing them that their name will be removed from the permanent advance voting list unless the voter renews the application for permanent advance voting status within 30 days after the notice is mailed. If the voter fails to renew such application, the county election officer must remove the voter’s name from the permanent advance voting list. Failure to renew the application for permanent advance voting status does not result in removal of the voter’s name from the voter registration list ([KSA 25-1122](#)).

## Voter Registration Locations

Kansas law states that people can register to vote in person, by mail, through a voter registration agency, or by other delivery to a county election officer to be registered ([KSA 25-2309](#)).

Kansas law and regulations specify that county election officers can provide for additional places of registration that are deemed suitable by the county election officer as long as notice is provided to citizens ([KSA 25-2313](#)). County election officers must publish in a local newspaper and on the county election office's website notice of places and dates of registration before each election, as well as information about registering via mail ([KSA 25-2310](#)). When additional places of registration are designated, notice must be published in a local newspaper at least five days prior to the date the outpost will open with its location and the days and hours it will be open ([KAR 7-23-7](#)).

Federal law also prescribes some requirements for voter registration. Section 5 of the NVRA requires that states offer voter registration opportunities at state motor vehicle agencies. Section 6 of the NVRA requires states to offer voter registration by mail-in application; the [National Mail Voter Registration Form](#) can be used to register U.S. citizens to vote, update registration information due to a change of name, make a change of address, and register with a political party.

Section 7 of the NVRA requires that states offer voter registration opportunities at certain state and local offices, including public assistance offices, disability offices, and U.S. armed forces recruitment offices. The NVRA also requires states to make additional designations as to which agencies or offices offer voter registration. Other designations may include:

- State and local government offices;
- Public libraries;
- Public schools;
- State colleges, universities, and community colleges;
- City and county clerks offices;
- Fishing and hunting license offices;
- Government revenue offices; and
- Unemployment compensation offices.

States may also designate nongovernment offices, such as private colleges, or federal government offices as voter registration sites.

## Advance Voting

The Secretary's Office provided figures for the number of votes cast advance in person and advance by mail for the 2022, 2020, 2018, 2016, and 2014 elections:

Year	Advance Votes Cast in Person	Advance Votes Cast by Mail
2022	273,287	126,002
2020	381,755	315,443
2018	252,347	172,743
2016	336,489	179,557
2014	117,884	121,870

The following table presents votes cast on Election Day, votes cast advance in person, and votes cast advance by mail as a percentage of the total number of votes cast:

Year	Election Day	Advance in Person	Advance by Mail
2022	59%	28%	14%
2020	36%	28%	36%
2018	62%	24%	14%
2016	62%	25%	16%

## **Advance Ballots**

### ***Timing of Mailing Advance Ballots***

Kansas mails advance ballots 20 days before an election. Fourteen states begin mailing ballots to voters fewer than 30 days before an election, including Colorado (18–22 days) and Iowa (20 days)<sup>2</sup>.

Fourteen states begin mailing ballots to voters 30–45 days before an election, including Illinois (40 days), Missouri (42 days), and Nebraska (35 days).

Eleven states begin mailing ballots to voters 45 days before an election, including Oklahoma and Texas.

Ten states begin mailing ballots to voters more than 45 days before an election, including Arkansas (46 days).

### ***Grace Period for Receipt of Advance Ballots***

Kansas law specifies that all advance voting ballots received by mail by the office of the county election officer after the closing of the polls on the date of the election that are postmarked or otherwise indicated by the USPS to have been mailed on or before the closing of the polls on the date of the election will be delivered for counting with other advance voting ballots. The deadline for receipt of advance voting ballots by the office of the county election officer is the last delivery of mail by the USPS on the third day following the date of the election ([KSA 25-1132\(b\)](#)).

[*Note: [2023 Senate Sub. for HB 2053](#), as enacted, set the deadline for the receipt of advance voting ballots transmitted by mail for the presidential preference primary election held on March 19, 2024, as the close of polls on election day.*]

Three states have the same deadline as Kansas' (by the third day after the election)<sup>3</sup>.

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2 <https://www.ncsl.org/elections-and-campaigns/table-7-when-states-mail-out-absentee-mail-ballots>

3 <https://klrd.org/2023/01/25/mail-ballot-return-deadlines/>

Fourteen states have longer deadlines than Kansas', allowing for receipt of mail ballots more than three days after an election. These deadlines range from 5:00 p.m. on the fourth day following an election (Nevada) to within 14 days of an election (Illinois).

Three states require mail ballots to be received before the canvass (North Dakota, Utah, West Virginia).

Thirty-two states have deadlines shorter than Kansas', requiring mail ballots to be received on or before the day of the election or within three days following an election.

Washington state does not specify a deadline. Ballots received after an election with postmarks before the day of the election are counted.

### *KCCEOA Response*

County election officials were asked how the three-day grace period for delivery of mailed advance ballots affected their duties. Of the 70 county election officials that responded:

- 15 indicated the policy makes their work "more difficult";
- 27 indicated the policy makes their work "somewhat more difficult";
- 26 indicated the policy has little to no effect;
- 1 indicated the policy makes their work "somewhat easier"; and
- 1 indicated the policy makes their work "easier."

Election officials were also asked if, from an election procedure standpoint, they would prefer to continue the three-day grace period or adopt the deadline of 7:00 p.m. on election day. Of the 70 county election officials that responded:

- 18 indicated they would continue with the current three-day grace period;
- 40 indicated they would prefer a deadline of 7:00 p.m. on election day;
- 10 indicated they were neutral on this topic; and
- 1 suggested a one-day grace period, making the deadline 7:00 p.m. the day after the election to give some flexibility for late mail.

In their comments, several county election officials indicated they typically get very few ballots during the three-day grace period. Some respondents expressed concern that the grace period creates confusion for candidates and voters when seeing results change after election day, and an election-day deadline would allow for reporting, canvass, and audit procedures to progress more quickly. One response acknowledged these issues, but noted provisional ballots typically outnumber those that come in during the grace period, and their count also shifts vote totals after election day.

Several county election officials suggested the grace period helps account for issues with the speed of mail delivery. Two respondents said they either no longer receive mail on Tuesdays or typically receive very little mail, with Wednesday consistently being a heavier mail day. One respondent indicated they typically see ballots take 7–9 days to reach their office when mailed within the city where the county election office is located.

## Remote Ballot Drop Boxes

### *Use of Drop Boxes in Kansas*

Of the 70 counties surveyed by KCCEOA, 46 counties indicated they do use remote drop boxes and 24 counties indicated they do not. Ten counties reported having written policies for remote drop boxes. The number of drop boxes each county reported maintaining is included in the following table, representing 74 total drop boxes used among the 70 reporting counties:

Remote Drop Boxes Used	Number of Counties
0	24
1	29
2	13
3	0
4	3
5	0
6	1

## Voting Machines

In Kansas, county election officers are responsible for the procurement and use of voting equipment in each county. The initial law allowing for absentee<sup>4</sup> voters to vote on voting machines was passed in 1974 (HB 2000; [KSA 25-1122\(a\)](#)). The Secretary's Office has indicated it does not maintain comprehensive records of all voting equipment usage in the State, but provided an estimated timeline:

- In 1968, the first lever-action voting machines were used in Kansas.
- In 1974, the first optical scan tabulators were used to count paper ballots.
- In the late 1980s, the first direct recording electronic (DRE) voting equipment was used.
- In 2010, electronic poll books were introduced in Kansas.
- In 2018, the Kansas Legislature passed [HB 2539](#), which requires that any electronic or electromechanical voting system purchased, leased, or rented by a board of county commissioners must provide a paper record of each vote cast at the time the vote is cast and have the ability to be tested both before an election and prior to the canvass date ([KSA 25-4406](#)).
- In 2022, all electronic voting equipment in Kansas had a voter-verified paper audit trail. Every vote is cast on a paper ballot.

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<sup>4</sup> In 1995, the word "absentee" in much of the Kansas election law was replaced with "advance," which allowed for early voting without an excuse (1995 SB 232).

## ***Voting Machine Vendors***

Once a voting system is certified by the Secretary's Office, any county can acquire the system for use in tabulating ballots. The Secretary's Office has no role in the county process. As of November 2022, there were four vendors that have voting equipment deployed in the State:

- Clear Ballot is used in one county;
- ElectionSource, serving Dominion Voting Systems, is used in 17 counties;
- Henry M. Adkins and Son, serving Unisyn Voting Solutions, is used in 28 counties; and
- Election Systems and Software (ES&S) is used in 59 counties.

A 2007 record of vendors from the Secretary's Office indicated that, at that time, 74 counties used E&S and 26 counties used Premier Election Solutions, which was formerly known as Diebold Election Systems and was acquired by Dominion Voting Systems in 2010.

## ***Voting Machine Usability***

### *Secretary of State Response*

The Secretary's Office states it receives occasional reports from voters regarding interactions with voting machines on election day. When those reports are received, the Secretary's Office will work with the voter to determine the nature of the interaction. The Secretary's Office will ask about the polling place where the incident occurred, whether the voter reported the incident to the supervising judge at the polling place or to the county election office, and whether the voter was able to cast a vote that reflected the voter's intent. Almost every instance reported involved the voter casting a vote for the person whom they intended.

The Secretary's Office has received reports that touch-screen machines did not initially reflect the voter's intention. The Secretary's Office states this will occasionally occur when the calibration of the voting machine needs to be corrected. After the voter has made all their selections, every voting machine, regardless of vendor, produces a summary report of whom the voter selected. Each machine requires the voter to review this before casting a vote. This is when a voter must contact the supervising judge to alert the judge of the issue.

Once an issue has been reported, the supervising judge will remove the machine from the voting process until the machine can be re-calibrated and tested before being used again. The Secretary's Office always follows up with the county election office to ensure it has been made aware of the issue.

The Secretary's Office does not keep statistical information on these types of reports.



## *KCCEOA Response*

According to information provided by the KCCEOA, 32 of the 70 counties surveyed track voter reports of usability issues with voting machines, while 38 counties reported they do not keep a record of such complaints; 25 counties that reported not tracking these issues also indicated they have not received such complaints and therefore did not have a reason to track them.

Most counties indicated that in the event of a complaint, they would remove the machine from use, perform testing to determine issues, contact the vendor to discuss the issue, or request a technician to service the machine if needed. Of the 70 counties, 68 counties reported they would discuss voting machine issues with the vendor directly. Some counties also indicated they would follow up with the voter to discuss the issue and let them know of the solution.