

Election Transparency Rules for Georgia
Current as of October 28, 2020

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Overview

During voting, reporters are generally allowed to enter a polling place to observe, but they are not permitted inside the “enclosed space” (generally, behind a guardrail or other barrier) where each elector casts their vote. Additionally, while in the polling place, no photos or videos or other recordings may be made. § 21-2-413(e). All proceedings where votes are counted using optical scanning equipment are open to the public, whether they take place at a tabulating center or in the precincts. § 21-2-483(b).

Election Day Access to Polling Locations

- **Rules concerning access to polling places generally**
 - In selecting polling places, the superintendent of a county or the governing authority of a municipality shall select public buildings whenever practicable. § 21-2-266(a). The “polling place” means the room provided in each precinct for voting. § 21-2-2(27).
 - In the event a polling place is situated in a restricted access residential community, the statute states that the public should have “full and

complete” access to the polling place during each part of the voting process. § 21-2-266.

- Only poll workers, poll observers and people actively polling are allowed into the “enclosed space,” § 21-2-413, the area within the polling place where the voting machines are located. § 21-2-267.
- Poll managers may manage the number of persons allowed in a polling place to prevent confusion, congestion and inconvenience to voters. § 21-2-414(c)(2)

○ **Rules for election challengers**

- Any elector of the county or municipality may challenge the right of any other elector of the county or municipality, whose name appears on the list of electors, to vote in an election. Such challenge shall be in writing and specify distinctly the grounds of such challenge. Such challenge may be made at any time prior to the elector whose right to vote is being challenged voting at the elector's polling place or, if such elector cast an absentee ballot, prior to 5:00 P.M. on the day before the election; provided, however, that challenges to persons voting by absentee ballot in person at the office of the registrars or the absentee ballot clerk shall be made prior to such person's voting. § 21-2-230.

○ **Rules concerning exit polling or newsgathering at polling places**

- No exit or public opinion polling is permitted within 25 feet of the polling place building's exit. § 21-2-414(c)(1).
- The law is silent on where other newsgathering activities can take place, but no photos or videos or other recordings may be made inside a polling place. § 21-2-413(e).

● **Rules concerning the taking of photographs at or near polling places**

- No photos, recording or videos may be taken inside the polling place. § 21-2-413(e).

● **Rules concerning privacy/identification of voters and voting officials at polling places**

- Not specifically addressed in the statutes, but no photos or videos are permitted inside the polling place, § 21-2-413(e), and no reporters (or anyone else other than poll workers, observers and people actively voting) are permitted to enter into the “enclosed space” where voting occurs, § 21-2-413(f).

- **Content restrictions on speech at or near polling places**
 - No electioneering within 150 feet of the building where the polling place is, or within 25 feet of a voter standing in line. § 21-2-414(a).

- **Who controls physical access to a polling place?**
 - In order of lowest to highest authority, the following officials have physical control over access to polling places.
 - 1. Assistant poll managers can manage how many people are inside polling place, except they must allow credentialed poll watchers, poll workers, and law enforcement officers. § 21-2-414(c)(2).
 - 2. The chief poll manager is to keep order in the polling place, and to see that no more persons are admitted within the enclosed space than are permitted by this chapter. § 21-2-413(h).
 - 3. The county superintendents also have a duty to make and issue such rules, regulations, and instructions, consistent with law, including the rules and regulations promulgated by the State Election Board, as he or she may deem necessary for the guidance of poll officers, custodians, and electors in primaries and elections. § 21-2-70(7).
 - Law enforcement officers have a duty to maintain order at polling places, and failure to do so is a misdemeanor.
 - § 21-2-593: Any law enforcement officer who: (1) Willfully neglects or refuses to clear an avenue to the door of any polling place which is obstructed in such a way as to prevent electors from entering, when called upon to do so by any poll officer or elector of the precinct; (2) Willfully neglects or refuses to maintain order and quell any disturbance if such arises at any polling place upon the day of any primary or election, when called upon to do so by any poll officer or elector of the precinct; or (3) Willfully hinders or delays, or attempts to hinder or delay, any poll officer in the performance of any duty under this chapter shall be guilty of a misdemeanor.
 - No one but police officers may carry a gun within 150 feet of a polling place. § 21-2-413(i).

- **What state official is responsible to correct improper denials of access or application of laws at polling places?**
 - *See above.* The Georgia Secretary of State has ultimate authority over assistant poll managers, chief poll managers, and county / municipal superintendents.

Access to Vote Count & Tabulation Process

1. Rules concerning access/transparency at locations where votes are counted or vote counts aggregated

- All proceedings where votes are counted using optical scanning equipment are open to the public, whether they take place at a tabulating center or in the precincts. But no unauthorized person may touch any ballot or ballot container. § 21-2-483(b).

2. Rules concerning observation of the vote count for news reporting purposes

- See above.

3. Rules concerning the taking of photographs of the vote counting process

- The statutes do not address photography of the vote counting process. However, Georgia law generally permits the use of recording equipment and cameras at public events. See generally § 50-14-1(c).

4. Rules concerning access to ballots during or after the vote count

- The contents of voting machines are not open to the public. § 21-2-72.
- The statutes do not specify whether or not individual absentee ballots are available for public inspection. Individual absentee ballots may be considered “election records,” which are open to public inspection by any state elector, but the statute does not explicitly state that individual ballots are considered to be “election records.” §§ 21-2-51 & 72.
- Otherwise, “election records” held by a superintendent or municipal authority are open to public inspection by any elector of the county or municipality. § 21-2-72.
 - It is a felony for the superintendent to refuse to allow an elector to view the documents. § 21-2-585.
 - Election records held by the Secretary of State are open to inspection by any elector of the state. § 21-2-51.
 - Election records include “registration statements, nomination petitions, affidavits, certificates, tally papers, returns, accounts, contracts, reports, and other documents in official custody.” §§ 21-2-51 & 72.
- All primary and election documents on file shall be preserved for at least 24 months. § 21-2-73.

Voting Day Basics

- Georgia has 3 methods of voting: mail-in absentee ballot; in-person early voting (which is a form of absentee voting), and in-person voting on Election Day.
- **When do the polls open, when do they close?**
 - Polling places are open on Election Day from 7:00 a.m. to 7:00 p.m.
 - For early voting, “the registrars or absentee ballot clerk, as appropriate, shall provide reasonable notice to the electors of their jurisdiction of the availability of advance voting as well as the times, dates, and locations at which advance voting will be conducted.” § 21-2-385(d)(2).
- **Must voters in line when polls close be allowed to vote?**
 - Yes. § 21-2-413(g).
- **Who do you call when something goes wrong at a polling location?**
 - It seems that the Georgia Secretary of State's “[voter fraud hotline](#)” is the only state-sponsored emergency line for real time Election Day problems.
 - Independently-operated voting rights organizations created an Election Protection Hotline: 866-OUR-VOTE (866-687-8683)
 - Georgia’s COVID-19 hotline at 844-442-2681.
- **What kind of voting machines are being used?**
 - The State of Georgia has a unified voting system that uses an optical scanning voting system with ballot marking devices.
 - County Boards of Elections (CBE) may only use devices that have been approved and certified and that may be continuously reviewed for ongoing certification by the Secretary of State.
 - The State of Georgia signed a \$109 million dollar [agreement](#) with Dominion, purchasing enough voting machines to replace all of the older voting machines in each of Georgia’s 159 counties.
 - Litigants have raised a number of objections to this technology:
<https://apnews.com/article/virus-outbreak-elections-election-2020-georgia-voting-machines-67df846bacacefe8e33b31cd14258190>;
<https://www.wsj.com/articles/georgias-new-voting-machines-must-be-ready-for-2020-primary-judge-says-11565887363>

- **What documents and training/procedure manuals will poll workers have access to?**
 - [Georgia Poll Worker Manuel \(revised 8/2020\):
https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Training%20Manual.pdf](https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Training%20Manual.pdf)
- **What happens with challenged ballots?**
 - If an elector's right to vote has been challenged, the elector shall not be permitted to vote on the voting machine but shall vote by ballot. § 21-2-452(g).

Vote Counting Rules and Procedures

- **What are the rules/procedures for the vote count? Where are they located?**
 - The rules for tabulating results in each precinct that uses optical scanning voting equipment are found in § 21-2-483:
 - (a) . . . [T]he ballots shall be counted at the precinct or tabulating center under the direction of the superintendent. All persons who perform any duties at the tabulating center shall be deputized by the superintendent, and only persons so deputized shall touch any ballot, container, paper, or machine utilized in the conduct of the count or be permitted to be inside the area designated for officers deputized to conduct the count.
 - (b) All proceedings at the tabulating center and precincts shall be open to the view of the public
 - (c) At the tabulating center, the seal on each container of ballots shall be inspected, and it shall be certified that the seal has not been broken before the container is opened. The ballots and other contents of the container shall then be removed, and the ballots shall be prepared for processing by the tabulating machines. The ballots of each polling place shall be plainly identified and cannot be commingled with the ballots of other polling places.
 - (d) Upon completion of tabulation of the votes, the superintendent shall cause to be completed and signed a ballot recap form, in sufficient counterparts, showing:
 - (1) The number of valid ballots, including any that are damaged;

- (2) The number of spoiled and invalid ballots; and
 - (3) The number of unused ballots. The superintendent shall cause to be placed one copy of the recap form and the defective, spoiled, and invalid ballots, each enclosed in an envelope, in the ballot supply container.
 - . . .
 - (g)
 - (1) The central tabulator shall be programmed to reject any ballot, including absentee ballots, on which an overvote is detected and any ballot so rejected shall be manually reviewed by the vote review panel described in this Code section to determine the voter's intent as described in subsection (c) of Code Section 21-2-438.
 - (2)(A) In a partisan election, the vote review panel shall be composed of the election superintendent or designee thereof and one person appointed by the county executive committee of each political party and body having candidates whose names appear on the ballot for such election The panel shall manually review all ballots rejected by the tabulator under paragraph (1) of this subsection and shall determine by majority vote whether the elector's intent can be determined as described in subsection (c) of Code Section 21-2-438
 - (h) The official returns of the votes cast on ballots at each polling place shall be printed by the tabulating machine. The returns thus prepared shall be certified and promptly posted. The ballots, spoiled, defective, and invalid ballots, and returns shall be filed and retained as provided by law.
- The rules for the superintendent's computation of returns are found in § 21-2-493:
 - (a) The superintendent shall, at or before 12:00 Noon on the day following the primary or election, at his or her office or at some other convenient public place . . . , publicly commence the computation and canvassing of the returns and continue the same from day to day until completed. For this purpose the superintendent may organize his or her assistants into sections, each of which may simultaneously proceed with the computation and canvassing of the returns from various precincts of the county or municipality in the manner provided by this

Code section. Upon the completion of such computation and canvassing, the superintendent shall tabulate the figures for the entire county or municipality and sign, announce, and attest the same.

- **(b)** The superintendent, before computing the votes cast in any precinct, shall compare the registration figure with the certificates returned by the poll officers showing the number of persons who voted in each precinct or the number of ballots cast. If . . . it shall appear that the total vote returned for any candidate or candidates for the same office . . . exceeds the number of electors in such precinct or exceeds the total number of persons who voted in such precinct or the total number of ballots cast therein, such excess shall be deemed a discrepancy and palpable error and shall be investigated by the superintendent; and no votes shall be recorded from such precinct until an investigation shall be had. . . .
- **(j)** The superintendent shall see that the votes shown by each absentee ballot are added to the return received from the precinct of the elector casting such ballot.
- **(k)** As the returns from each precinct are read, computed, and found to be correct or corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until all the returns from the various precincts which are entitled to be counted shall have been duly recorded; then they shall be added together, announced, and attested by the assistants who made and computed the entries respectively and shall be signed by the superintendent. The consolidated returns shall then be certified by the superintendent in the manner required by this chapter. Such returns shall be certified by the superintendent not later than 5:00 P.M. on the second Friday following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State; provided, however, that such certification date may be extended by the Secretary of State in his or her discretion if necessary to complete a precertification audit as provided in Code Section 21-2-498.
- **(l)** In such case where the results of an election contest change the returns so certified, a corrected return shall be certified and filed by the superintendent which makes such corrections as the court orders.

Control of the Vote Count Process

- **Who controls the vote count process?**
 - The superintendent. § 21-2-483(a).

- **What level of access to voter registration is there?**
 - Neither the original applications for voter registration nor any copies thereof shall be open for public inspection except upon order of a court of competent jurisdiction. § 21-2-225(a).
 - All data collected and maintained on electors whose names appear on the list of electors maintained by the Secretary of State is available for public inspection, except for bank statements, the month and day of birth, the social security numbers, e-mail addresses, and driver's license numbers of the electors, and the locations at which the electors applied to register to vote. § 21-2-225(b).

Mail-in Ballot Transparency and Control

Note: Any votes that are submitted via mail are considered to be absentee ballots.

- **Who collects mail-in ballots?**
 - The board of registrars or absentee ballot clerk collects and stores them. § 21-2-386(a)(1)(A).
- **Where are they stored?**
 - See above.
- **When are they counted?**
 - Officials may begin signature-matching the signatures on the outer envelopes before Election Day. § 21-2-386(a)(1)(B). At 7 a.m. on Election Day, a county election superintendent may begin opening the inner envelopes and tabulating the results if they previously informed the Secretary of State that they intended to instart tabulating before polls closed. § 21-2-386(a)(3). Otherwise, counting may not begin until polls are closed. § 21-2-386(b).
 - The tabulating equipment may not produce any vote count until polls are closed. § 21-2-386(a)(7).
- **Where are they counted?**
 - “The tabulation center or other place designated by the superintendent.” § 21-2-386(b).
- **Who releases mail-in results?**
 - The manager in charge of the absentee ballot precinct of the county or municipality prepares the results, although it is not clear who releases them. § 21-2-386(d).

- **When are mail-in results released?**
 - Not before polls close. § 21-2-386(f).
- **What data is generated on mail-in ballots and by whom?**
 - Each board of registrars or absentee ballot clerk shall maintain for public inspection a master list, arranged by precincts, setting forth the name and residence of every elector to whom an official absentee ballot has been sent. § 21-2-384(d).
 - Absentee electors whose names appear on the master list may be challenged by any elector prior to 5:00 P.M. on the day before the primary or election. § 21-2-384(d).
- **Who confirms authenticity of mail-in ballots and how?**
 - “The registrar or clerk shall . . . compare the identifying information on the oath [on the outer envelope] with the information on file in his or her office, shall compare the signature or mark on the oath with the signature or mark on the absentee elector's voter registration card or the most recent update to such absentee elector's voter registration card and application for absentee ballot or a facsimile of said signature or mark taken from said card or application, and shall, if the information and signature appear to be valid and other identifying information appears to be correct, so certify by signing or initialing his or her name below the voter's oath.” § 21-2-386(a)(1)(B).

COVID-Related Rules

- The Secretary of State mailed absentee ballot request forms to every registered voter. [The Secretary of State also released a new online absentee ballot request portal.](#)
 - See his press release on the response to Covid: https://sos.ga.gov/index.php/elections/raffensperger_takes_unprecedented_steps_to_protect_safety_and_voter_integrity_in_georgia

Websites, Guides and Other Key Sources of Information

- LexisNexis: [Official Code of Georgia Annotated](#)
 - See Title 21. Elections
- https://sos.ga.gov/index.php/elections/georgia_code_-_lexisnexis

Timing Issues

1. When must returns be made available?

- Whenever the returns are in official custody of a superintendent, registrar, municipal governing authority, and committee of a political party or body, they shall be open to public inspection and may be inspected and copied by any elector of the county or municipality during usual business hours at any time when they are not necessarily being used by the custodian or his or her employees having duties to perform. § 21-2-72.
- “(a) Upon receiving the certified returns of any election from the various superintendents, the Secretary of State shall immediately proceed to tabulate, compute, and canvass the votes cast for all candidates described in subparagraph (a)(4)(A) of Code Section 21-2-497 and upon all questions voted for by the electors of more than one county and shall thereupon certify and file in his or her office the tabulation thereof. In the event an error is found in the certified returns presented to the Secretary of State or in the tabulation, computation, or canvassing of votes as described in this Code section, the Secretary of State shall notify the county submitting the incorrect returns and direct the county to correct and recertify such returns. Upon receipt by the Secretary of State of the corrected certified returns of the county, the Secretary of State shall issue a new certification of the results and shall file the same in his or her office.” § 21-2-499(a).
- “(b) The Secretary of State shall also, upon receiving the certified returns for presidential electors, proceed to tabulate, compute, and canvass the votes cast for each slate of presidential electors and shall immediately lay them before the Governor. Not later than 5:00 P.M. on the seventeenth day following the date on which such election was conducted, the Secretary of State shall certify the votes cast for all candidates described in subparagraph (a)(4)(A) of Code Section 21-2-497 and upon all questions voted for by the electors of more than one county and shall no later than that same time lay the returns for presidential electors before the Governor. The Governor shall enumerate and ascertain the number of votes for each person so voted and shall certify the slates of presidential electors receiving the highest number of votes. The Governor shall certify the slates of presidential electors no later than 5:00 P.M. on the eighteenth day following the date on which such election was conducted. Notwithstanding the deadlines specified in this Code section, such times may be altered for just cause by an order of a judge of superior court of this state.” § 21-2-499(b).

Access to Information Issues

1. How can reporters access information about who voted?
 - Georgia Open Records Act § 50.18.70

- <https://sos.ga.gov/OpenRecords/>
 - The statutes do not specify whether or not reporters can access a list of everyone who actually submitted a vote in a particular election. However, superintendents are required to record the number of ballot stubs, unused ballots, and cancelled ballots, and all election records are available to the public. § 21-2-294 and §§ 21-2-51 & 72.
 - The statutes also state that--
 - All data collected and maintained on electors whose names appear on the list of electors maintained by the Secretary of State is available for public inspection, except for bank statements, the month and day of birth, the social security numbers, e-mail addresses, and driver's license numbers of the electors, and the locations at which the electors applied to register to vote. § 21-2-225.
- 2. Are individual ballots accessible through FOIA or court order?
 - The statutes do not specify whether or not individual ballots can be requested via FOIA. Individual absentee ballots may be considered “election records,” which are open to public inspection by any state elector, but the statute does not explicitly state that individual ballots are considered to be “election records.” §§ 21-2-51 & 72.
- 3. Privacy of individual voters
 - Voter registration applications are not open to the public except by court order. § 21-2-225(a).
 - But data maintained on electors by the Secretary of State is open for public inspection, except for certain sensitive information like social security numbers and email addresses. § 21-2-225(b).
- 4. Is it possible to FOIA governmental communication regarding election security and systems breakdowns.
 - Yes. There should be public access to those documents according to the Georgia Open Records Act, also known as the Georgia Sunshine Laws.
 - How to [Make an Open Records Request](#)
 - Georgia [Sample FOIA Request](#)
 - Examples of successful Open Records Act requests for government communication about elections.

- i. <https://www.americanoversight.org/document/foia-to-georgia-secretary-of-state-seeking-communications-for-election-official-gabriel-sterling>
- ii. <https://www.muckrock.com/news/archives/2019/apr/15/georgia-elections/>

5. Is it possible to FOIA voting machine maintenance and inspection records?

- The statutes are not clear if machine maintenance and inspection records are available through FOIA. However, news media can be present to witness pre-election voting machine inspections in real time. § 21-2-374, § 21-2-379.25, and § 21-2-379.6.

Active Voting Litigation

- <https://www.ajc.com/news/state--regional-govt--politics/lawsuit-says-georgia-ballots-post-marked-election-day-should-count/ZcbqDAVZTF0VASq8JdmVKI/>
- <https://www.ajc.com/politics/judge-extends-georgia-deadline-to-return-absentee-ballots/OEETBUYMWJASHCW3YMVCKTPPYI/>
- <https://www.ajc.com/politics/republican-party-seeks-to-reverse-georgia-absentee-deadline-ruling/IQHNAWE5YFBNTFQGYTUEGAB5WI/>
- <https://www.foxnews.com/politics/judge-georgia-paper-pollbooks-election>