

Election Transparency Rules for North Carolina
Current as of October 28, 2020

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Overview

During voting, reporters are not permitted inside the voting enclosure, which is the room within the voting place that is used for voting. Reporters are also not allowed within the polling place buffer zone, which is no more than 50 feet from the polling place door. § 163-165(9) and § 163-166.4. After voting, the vote counting process is open to the public.

Election Day Access to Polling Locations

- **Rules concerning access to polling places generally**
 - Reporters are not allowed inside the room where voting occurs.
 - When voting is taking place, only the following people are allowed inside the “voting enclosure”: “(1) An election official. (2) An observer appointed pursuant to G.S. 163-45. (3) A runner appointed pursuant to G.S. 163-45, but only to the extent necessary to announce that runner's presence and to receive the voter list as provided in G.S. 163-45. (4) A person seeking to vote in that voting place on that day but only while in the process of voting or seeking to vote. (5) A voter in that precinct while entering or explaining a challenge pursuant to G.S. 163-87 or G.S. 163-88. (6) A person authorized under G.S. 163-166.8 to assist a voter but, except as provided in subdivision (7) of this section, only while assisting that

voter. (7) Minor children of the voter under the age of 18, or minor children under the age of 18 in the care of the voter, but only while accompanying the voter and while under the control of the voter. (8) Persons conducting or participating in a simulated election within the voting place or voting enclosure, if that simulated election is approved by the county board of elections. (9) Any other person determined by election officials to have an urgent need to enter the voting enclosure but only to the extent necessary to address that need.

- The “voting enclosure” is “the room within the voting place that is used for voting.” § 163-165(9).
- [North Carolina State Board of Elections Numbered Memo 2020-30 on Conduct at the Polls for the 2020 General Election \(revised October 12, 2020\)](#)
 - “The chief judge or one-stop site manager is responsible for ensuring voters have unimpeded access into the buffer zone and voting enclosure. They must ensure that voters are able to freely access the voting place without fear of harassment or intimidation.”
 - “If the chief judge or one-stop site manager is unable to successfully ensure voters’ unobstructed access to the polls, they shall immediately contact their county board of elections and/or law enforcement. Contact local law enforcement as soon as a situation begins to escalate beyond the ability of election officials to respond and control the situation. It is appropriate to contact law enforcement any time there is a reasonable concern for individuals’ safety or election officials believe the situation may be likely to get out of control.”
 - “It is not appropriate or permissible for law enforcement to be stationed at a voting place. In the event a county board must utilize law enforcement for parking and traffic issues at a voting site, officers must be in plain clothes. Law enforcement may periodically drive by a voting site in the event heightened security is needed. County boards of elections must be mindful that some voters find a law enforcement presence at the polls intimidating. County boards may use law enforcement as an escort outside of voting hours and should call law enforcement if an incident occurs. Law enforcement officers are permitted to vote while wearing their uniforms. If a county board uses private security, the security guards shall be unarmed and shall not be stationed inside the voting enclosure. They may wear uniforms.”
 - **Examples of Prohibited Acts**

Agency staff has prepared a non-exhaustive list of scenarios that illustrate prohibited behavior:

- *1. Individuals outside the buffer zone wear “SECURITY” insignia and inform voters that they are “monitoring” the polling place.*
 - Federal law prohibits those around the polling place from displaying badges, uniforms, or credentials that reasonable individuals would interpret to mean that the person is a law-enforcement officer. 18 U.S.C. § 241
- *2. Individuals in the parking lot physically prevent multiple cars from parking at the only parking lot in the voting place. Voters in the cars turn around and leave.*
 - It is a crime to interfere with the ability of any voter to access the voting place. G.S. § 163-274(4)
- *3. Individuals intentionally distribute misleading information about the time, date or place of an election, or about the qualifications required to vote.*
 - It is a felony to misrepresent the law to the public in any communication “where the intent and effect is to intimidate or discourage potential voters from exercising the lawful right to vote.” G.S. § 163-275(17)
- *4. A radio station is played over speakers inside the voting enclosure, and the broadcast includes political discussion or commentary.*
 - No person may engage in election-related activity within the buffer zone. G.S. § 163-166.4(a)
- *5. An observer in the polling place threatens to choke and kill the precinct official because they have a disagreement about whether a voter is eligible to vote the assigned ballot. The observer also curses and tells the precinct official to get out of the room.*
 - It is a crime for any person to intimidate any chief judge, judge of election or other election officer in the discharge of his duties in the registration of voters or in conducting any primary or election. G.S. § 163-275(11)

- *6. Individuals outside the buffer zone threaten a voter with physical harm if the voter does not vote for or against a particular candidate or party.*
 - It is a federal crime to intimidate, threaten, or coerce anyone in order to interfere with an individual's right to vote or not vote in an election; this includes conduct intended to force prospective voters to vote against their preferences. This crime requires proof that the actor intended to force voters to act against their will by placing them in fear of losing something of value. 18 U.S.C. § 594.

- **Rules for poll observers**

- “To reduce the risk of transmission of COVID-19 at the polls, all observers shall wear masks when inside the voting enclosure. Social distancing is in place in all voting places and observers shall also abide by social distancing requirements as outlined in [Numbered Memo 2020-18](#). The county board may place a marker, chair, or other designation to assist with social distancing of observers. Observers who refuse to wear a mask or abide by social distancing will be required to leave.” [North Carolina State Board of Elections Numbered Memo 2020-30 on Conduct at the Polls for the 2020 General Election \(revised October 12, 2020\)](#)
- No more than two observers from the same political party may be in the voting enclosure at any time. § 163-45.
- The chair of each political party can appoint 2 poll observers for each polling place. For each county, each political party may also appoint 10 people to be observers at-large in the county where they reside. The chair of each political party can also appoint up to 100 at-large observers who may attend any voting place in the State. § 163-45.
- Poll observers must be registered voters and of “good moral character.” The chief justice may reject any appointee for “good cause” and require that another be appointed. § 163-45.
- Observers may not electioneer at the voting place, impede the voting process or interfere or communicate with any voter in casting a ballot. § 163-45.
- Observers shall not observe any voter in casting a ballot except with permission of the chief judge or judges of elections. § 163-45.
- Three or more times throughout Election Day with intervals no shorter than one hour apart, each poll observer is entitled to a list of everyone who has voted in the precinct so far. § 163-45.

- **Rules for election challengers**

- On Election Day, any registered voter of the county — or the chief judge, judge, or assistant — may challenge a person. “The chief judge, judge, or assistant appointed under G.S. 163-41 or 163-42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.” § 163-87

- A person can be challenged for one or more of the following reasons:

- Reasons listed under § 163-85 (these reasons can also be used to challenge a person after Election Day):

- (1) That a person is not a resident of the State of North Carolina, or
- (2) That a person is not a resident of the county in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or
- (3) That a person is not a resident of the precinct in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or
- (4) That a person is not 18 years of age, or if the challenge is made within 60 days before a primary, that the person will not be 18 years of age by the next general election, or
- (5) That a person has been adjudged guilty of a felony and is ineligible to vote under G.S. 163-55(2), or
- (7a) That a person is dead, or
- (8) That a person is not a citizen of the United States, or
- (10) That the person is not who he or she represents himself or herself to be.

- § 163-87. Challenges allowed on day of primary or election

- (1) One or more of the reasons listed in G.S. 163-85(c). *See the above list.*
- (2) That the person has already voted in that primary or election.

- (3) If the challenge is made with respect to voting in a partisan primary, that the person is a registered voter of another political party.
 - (5) The registered voter does not present photo identification in accordance with G.S. 163-166.16.
- **Rules concerning exit polling or newsgathering at polling places**
 - Journalists and other news media organizations are not granted any special access to the polling places.
- **Rules concerning the taking of photographs at or near polling places**
 - No person shall photograph, videotape, or otherwise record the image of any voter within the voting enclosure, except with the permission of both the voter and the chief judge of the precinct. If the voter is a candidate, only the permission of the voter is required. § G.S. 163-166.3(b).
 - The “voting enclosure” is “the room within the voting place that is used for voting.” § 163-165(9).
 - Additionally, “[n]o person shall photograph, videotape, or otherwise record the image of a voted official ballot for any purpose not otherwise permitted under law.” § G.S. 163-166.3(c)
- **Rules concerning privacy/identification of voters and voting officials at polling places**
 - See above regarding access to polling places.
- **Content restrictions on speech at or near polling places**
 - No electioneering in buffer zones near polling places.
 - The buffer zones, which extend no more than 50 feet from a polling place’s door, are defined by county board of elections and publicly disclosed at least 30 days before the election. They are measured from the voting place entrance door. The county board of elections shall also provide an area adjacent to the buffer zone for each voting place in which persons or groups of persons may distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity. § 163-166.4.
 - No later than 30 days before each election, the county board of elections shall make available to the public the following information concerning each voting place: (1) The door from which the buffer zone is measured. (2) The distance the buffer zone extends from that door. (3) Any available

information concerning where political activity, including sign placement, is permitted beyond the buffer zone. § 163-166.4.

- **Who controls physical access to a polling place?**
 - The chief judge of each precinct. § 163-182.3 and § 163-47.
- **What state official is responsible to correct improper denials of access or application of laws at polling places?**
 - Responsibility for resolving issues at the polling place escalates from the chief judge to the county board of elections, and then to the state board of elections. § 163-182.17.

Access to Vote Count & Tabulation Process

- 1. Rules concerning access/transparency at locations where votes are counted or vote counts aggregated**
 - Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots. § 163-182.2.
- 2. Rules concerning observation of the vote count for news reporting purposes**
 - The vote count is open to the public (see above).
- 3. Rules concerning the taking of photographs of the vote counting process.**
 - The statute does not specify.
- 4. Rules concerning access to ballots during or after the vote count**
 - Individual ballots are accessible through court order. Voted ballots and records of individual voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots or paper or electronic records of individual voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots and paper and electronic records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise. § 163-165.1.

Voting Day Basics

- **When do the polls open, when do they close?**
 - Polls open at 6:30 A.M. and close at 7:30 P.M. “If the polls are delayed in opening for more than 15 minutes, or are interrupted for more than 15 minutes after opening, the State Board of Elections may extend the closing time by an equal number of minutes.” § 163-166.01.
- **Must voters in line when polls close be allowed to vote?**
 - Yes. If any voter is in line to vote at the time the polls are closed, that voter shall be permitted to vote. No voter shall be permitted to vote who arrives at the voting place after the closing of the polls. § 163-166.01.
- **Who do you call when something goes wrong at a polling location?**

North Carolina State Board of Elections (NCSBE)

(919) 814-0700

(919) 715-0135 (Fax)

 - NCSBE also has the authority to hear and decide appeals from decisions of county boards of elections in election protests. § 163-182.11.
- **What kind of voting machines are being used?**
 - It varies by county. The State Board of Elections says that systems from two vendors — ES&S and Hart — will be used in the 2020 election. A county-by-county list is here:
<https://www.ncsbe.gov/voting/voting-equipment>.
- **What documents and training/procedure manuals will poll workers have access to?**
 - The most recent we have found is copyrighted 2017: [North Carolina Election Official Manual](#),
https://s3.amazonaws.com/dl.ncsbe.gov/Training/election_official/Election%20Official%20Manual/Election%20Official%20Manual4!/SSL!/Responsive_HTML5/index.htm.

- **What happens with challenged ballots?**
 - Their validity is decided by the County Board of Elections. That decision can be appealed to the Superior Court of the county in which the offices of that board are located within 10 days. § 163-90.2
 - § 163-90.2(a): When any challenge is sustained for any cause listed under G.S. 163-85(c) [see “Rules for election challengers” section above], the board shall cancel or correct the voter registration of the voter. The board shall maintain such record for at least six months and during the pendency of any appeal. The challenged ballot shall be counted for any ballot items for which the challenged voter is eligible to vote, as if it were a provisional official ballot under the provisions of G.S. 163-166.11(4).
 - (b) When any challenge made under G.S. 163-85 is overruled or dismissed, the board shall erase the word "challenged" which appears on the person's registration records.
 - (c) A decision by a county board of elections on any challenge made under the provisions of this Article shall be appealable to the Superior Court of the county in which the offices of that board are located within 10 days. Only those persons against whom a challenge is sustained or persons who have made a challenge which is overruled shall have standing to file such appeal.

Vote Counting Rules and Procedures

- **What are the rules/procedures for the vote count? Where are they located?**
 - **Initial Counting of Official Ballots § 163-182.2.**
 - A.1. “Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.
 - 2. Vote counting at the precinct shall be conducted with the participation of precinct officials of all political parties then present. Vote counting at the county board of elections shall be conducted in the presence or under the supervision of board members of all political parties then present.
 - 3. Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.”

- o (i) was registered in the county as provided in 163-82.1,
 - o (ii) voted in the proper precinct under G.S. 163-55 and G.S. 163-57, and
 - o (iii) was otherwise eligible to vote.
 - The provisional official ballots shall also be counted if the county board finds that the individual--
 - o (i) did not vote in the proper precinct under G.S. 163-55 and G.S. 163-57,
 - o (ii) is not registered in the county as provided in G.S. 163-82.1, or
 - o (iii) is otherwise not eligible to vote, the ballot shall not be counted.
 - If a voter was properly registered to vote in the election by the county board, no mistake of an election official in giving the voter a ballot or in failing to comply with G.S. 163-82.15 [regarding changes of address] or G.S. 163-166.11 [regarding casting provisional ballots] shall serve to prevent the counting of the vote on any ballot item the voter was eligible by registration and qualified by residency to vote.
- 5. Precinct officials shall provide a preliminary report of the vote counting on election day to the county board of elections as quickly as possible. The preliminary report shall be unofficial, has no binding effect upon the official county canvass to follow, and shall include the number of provisional ballots cast in that precinct.
- 6. In counties that use any certified mechanical or electronic voting system . . . a board of elections shall rely in its canvass on the mechanical or electronic count of the vote rather than the full hand-to-eye count of the paper ballots or records. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count or recount, the hand-to-eye count or recount shall control
- B. The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines: . . .

- 2. For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper ballots of a sampling of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. . . . The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier. . . . In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted. The sample count need not be done on election night.

- **What are the recount rules?**

- Rules for Conducting Recounts. § 163-182.7(d)
 - The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:
 - (1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered as provided by G.S. 163-182.7A.
 - (2) The rules shall provide guidance in interpretation of the voter's choice.
 - (3) The rules shall specify how the goals of bipartisan participation, opportunity for public observation, and good order shall be balanced.
 - According to [Numbered Memo 2016-28](#) (*updated in 2016*; seems to be the latest guidance from the North Carolina State Board of Elections), in the event of a recount, notice is required--
 - “Prepare and publish notice of meeting. We will provide a survey for you to provide your recount times and this information will be provided to any statewide candidates involved in the recount.
 - Provide notice to at least the following:

- Media - all outlets
 - Recount requestor (if you have a local recount request)
 - Recount designees (if you have a local recount request)
 - Apparent winner (if you have a local recount request)
 - Legal counsel
 - County party chairs
 - Other interested parties
- Public Observance
 - Any person may attend the recount. This includes the candidates, their representatives or legal counsel, media representatives, and any other interested persons. These persons may observe the counting process, but may not observe individual ballots. The bipartisan counting teams, members of the county board staff or the county board members are the only persons who may handle and touch the ballots and other election materials.
 - The county board of elections shall exercise reasonable control over the conduct of the recount to assure that the bipartisan counting teams do not experience interference from any person observing the recount. All persons who are not under the supervision of the county board of elections are considered observers and are subject to the observer rules established by the North Carolina State Board of Elections. All observers shall wear badges or nametags identifying themselves and their role (candidate, media, etc.)
 - The county board of elections shall mark observer areas and ask that observers remain within those areas unless otherwise permitted by the board of elections. If there is not sufficient room for all observers to view the election materials, preference shall be given to candidates or their representatives. The use of video or still cameras inside the recount room is permitted, but it is not permissible to photograph or videotape an individual ballot and if it is not disruptive or interfere with the recount proceedings. The board of elections may enforce reasonable restrictions on items brought into the recount room such as telephones, food, or drink.
 - If any observer engages in disruptive behavior that in the opinion of the board of elections threatens the orderly conduct of the recount, the board of elections shall issue a warning and

if the observer does not cease the offending conduct, order the observer's removal.”

Control of the Vote Count Process

- **Who controls the vote count process?**
 - The chief judge and judges count the votes cast in their precincts. § 163-47.
 - The county board of elections counts absentee and provisional ballots. § 163-182.2.
- **What level of access to voter registration is there?**
 - A list of registered voters is available upon request to County Board of Elections. § 163-82.10(c). Additionally, “the county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. No list produced under this section shall contain a voter's date of birth. However, lists may be produced according to voters' ages. . . .”

Mail-in Ballot Transparency and Control

- **Mail-in ballot basics**
 - Any registered voter may request a mail-in ballot. Ballots must be postmarked by Election Day and received by 5 p.m. on Nov. 12, according to a recent consent judgment available here: <https://s3.amazonaws.com/dl.ncsbe.gov/Requests/Joint%20Motion%20for%20Entry%20of%20Consent%20Judgment.pdf> (but note that the Trump campaign is challenging it. <https://www.courtlistener.com/recap/gov.uscourts.nced.182691/gov.uscourts.nced.182691.3.0.pdf>). The consent judgment requires the state to notify voters if their ballot is deficient and allow voters to cure the problem by certification, which must be received by 5 p.m. on Nov. 12.
- **Who collects mail-in ballots?**
 - The County Board of Elections. § 163-234

- **Where are they stored?**
 - All absentee ballots returned to the County Board of Elections in the container-return envelopes shall be retained by the board to be counted by the board. § 163-234.
- **When are they counted?**
 - Boards may begin approving absentee ballots starting on Sept. 29. Once approved, a ballot is stored until counting begins on Election Day. § 163-230.1
 - The boards must begin counting at 5 p.m. on Election Day, but may start earlier in the day if they pass a resolution at least two weeks in advance. § 163-234.
 - To begin the count, a majority of the board must be present and at least one board member from each political party must be present. § 163-234.
- **Where are they counted?**
 - Mail-in ballots are counted in the County Board of Elections office or other public location in the county.
- **Who releases mail-in results?**
 - The County Board of Elections.
- **When are mail-in results released?**
 - Not before 7:30 p.m. on Election Day. § 163-234.
- **What data is generated on mail-in ballots and by whom?**
 - The North Carolina State Board creates an official register where the County Boards of Elections record the following data: (1) Name of voter for whom application and ballots are being requested, and, if applicable, the name and address of the voter's near relative or verifiable legal guardian who requested the application and ballots for the voter. (2) Number of assigned voter's application when issued. (3) Precinct in which the applicant is registered. (4) Address to which ballots are to be mailed. . . . (6) Date request for application for ballots is received by the county board of elections. (7) The voter's party affiliation. (8) The date the ballots were mailed or delivered to the voter. § 163-228.

- **Who confirms authenticity of mail-in ballots and how?**

- The County Board of Elections.

COVID-Related Rules

- Poll officials must wear masks, and voters are encouraged to do the same.
- The North Carolina Department of Health and Human Services encourages use of curbside voting and physical distancing in polling places:
https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-18_DHHS%20Guidance.pdf

Timing Issues

1. When must returns be made available?

- On Election Day, election results can be viewed in real time on the [North Carolina Board of Elections website](#). Past election returns are also available on the website: <https://www.ncsbe.gov/results-data/election-results>
- “After each general election, the State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after election day to complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board of Elections and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly.” § 163-182.5

Access to Information Issues

1. How can reporters access information about who voted?

- Each county’s list of absentee ballot applications and its list of issued ballots is a public record and is open to inspection by any registered voter of the county from 60 days before an election to 30 days after. G.S. § 163-228.

2. Are individual ballots accessible through FOIA or court order?

- Individual ballots are accessible through court order. Voted ballots and records of individual voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots or paper or electronic records of individual voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots and paper and electronic records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise. § 163-165.1.

3. Privacy of individual voters

- Personal information about voters is protected. “Full or partial social security numbers, dates of birth, the identity of the public agency at which the voter registered, any electronic mail address, photocopies of identification for voting, and drivers license numbers, whether held by the State Board or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Cumulative data based on those items of information may be publicly disclosed as long as information about any individual cannot be discerned from the disclosed data.” § 163-82.10(a)(1).

4. Is it possible to FOIA governmental communication regarding election security and systems breakdowns.

- Yes. “All documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received . . . in connection with the transaction of public business by any agency of North Carolina government is public record.” The North Carolina Public Records Law § 132.
- [North Carolina Sample FOIA Request](#)

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

- The statutes do not specifically address this question.