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ELECTIONS: VOTE BY MAIL

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I. Introduction

Voting methods in the United States have proceeded through many permutations before arriving at the system used in some form in every state today: a ballot, provided by the government, marked privately and returned to an election official, after which the contents of the ballot are disassociated from the individual voter. Colonial and early postcolonial voting was conducted in the public eye, with a voter casting his vote by voice, by show of hands, by standing in an area designated for a particular candidate, or by publicly depositing some object indicating the voter's preference in a ballot box.¹ Early paper ballots did not much improve on the privacy of other methods; they were provided by political parties and often distinctively colored so that it could easily be determined for whom the voter intended to vote.²

Massachusetts adopted the country's first Australian-ballot system, the same style of voting used for in-person balloting across the country today, in 1888.³ Thus, the first laws in the United States permitting the casting of an absentee ballot from a remote location, which were adopted for the benefit of soldiers serving in the Civil War, actually predate the adoption of modern in-person balloting practices in any state.⁴ However, the first civilian absentee voting law that allowed a voter to fill out a ballot remotely and then mail it to the appropriate polling place was not enacted until 1913 in North Dakota.⁵

This Guide provides historical background on the development of vote by mail elections from World War I to recent absentee vote by mail and universal mail delivery initiatives at the state and federal levels. The Guide includes descriptions of absentee voting by mail in Iowa and of absentee voting and vote by mail provisions and absentee voting status in other states.

Unless otherwise noted, references in this Legislative Guide to the Iowa Code are to the 2019 Iowa Code. This Guide is not intended to identify issues for consideration by the General Assembly, and nothing contained in this Guide should be interpreted as advocating a particular course of action with respect to election law in this state.

A. Historical Background

United Kingdom. In the aftermath of World War I the United Kingdom — the first nation to do so on a national level — began to allow certain voters to vote by mail in limited form, and on a temporary basis, through the passage of the Representation of the People Act of 1918. The Act required that certain naval and military voters as well as certain merchant seamen, pilots, and fishermen be allowed to vote absentee in parliamentary elections through the mail or, in some cases, through the appointment of a proxy voter.⁶ The practical importance of this change, addressing the real experiences of military voters deployed abroad during wartime and occupations that involve long absences from home, is, however, not well remembered today. While the temporary nature of the provision may in part explain why this change has been largely forgotten, it is likely that the provision has

¹ Jill Lepore, *Rock, Paper, Scissors: How We Used to Vote*, *The New Yorker*, Oct. 6, 2008, available at www.newyorker.com/magazine/2008/10/13/rock-paper-scissors (last accessed July 26, 2019).

² *Id.*

³ *Id.*

⁴ John C. Fortier and Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. Mich. J.L. Reform 483, 493-94 (2003).

⁵ *Id.* at 502.

⁶ Representation of the People Act of 1918, §23, United Kingdom, available at www.archive.org/stream/representationof00gearich/representationof00gearich_djvu.txt (last visited August 22, 2019).



simply been overshadowed by other provisions within the Act itself. The Representation of the People Act of 1918 is more often remembered today for expanding the electorate by abolishing the real property ownership qualification for men at least 21 years of age and for granting limited suffrage to women at least 30 years of age who met certain other specified qualifications.⁷ The vote by mail provision in the Act only addressed a logistical issue ahead of parliamentary elections at the end of World War I, at a time when it was clear that the election would shape the political future of the United Kingdom following the conflict. Furthermore, the provision did not extend the right to vote by mail to most nonmilitary voters, and the concept of universal mail delivery was not featured in the legislation.

The British law, by allowing naval and military service members to vote as absent electors while stationed on foreign soil, would later be replicated on the national level in the United States to provide new voting methods that allowed members of the armed forces to participate in the electoral process while serving away from their residences. These new voting methods attempted to accommodate the full participation of military personnel in the electoral process despite the logistical challenges that are posed by military service.

Toward the end of World War II, the Representation of the People Act of 1945 again extended the right to vote by mail to members of the British military on a temporary basis.⁸ It was not, however, until the passage of the Representation of the People Act of 1948 that the United Kingdom expanded the right to vote by mail to individuals who were in hospitals or were otherwise unable to vote at their designated polling place due to physical incapacity or because the nature of their occupation prohibited their appearance at their designated polling place on election day.⁹ The 1948 Act also made these provisions permanent.¹⁰

United States Approaches. Early vote by mail provisions adopted in the United States represented piecemeal attempts by state legislatures to address the local needs of a broad electorate, including individuals who would be outside of their respective counties for any reason on election day. Iowa, for example, began to allow absentee vote by mail voting as early as 1915, years before the United Kingdom's national legislation.¹¹ The experience of absentee voting by mail in elections for federal office in the United States was first developed as a means to extend the right to cast ballots to members of the armed forces and citizens otherwise unable to vote at a designated polling place on election day. Only recently has universal mail delivery been implemented in a few states.

On the federal level, the United States Congress has acted to confer the right to vote by mail through the passage of the Soldier Voting Act of 1942,¹² the Federal

⁷ Representation of the People Act of 1918, §4.

⁸ Representation of the People Act of 1945, Division III. A description of the divisions of the Act *available at* hansard.millbanksystems.com/commons/1945/mar/09/parliamentary-elections#S5CV0408P0_19450309_HOC_91 (last visited August 22, 2019).

⁹ *Id.*

¹⁰ Representation of the People Act of 1948, 11 & 12, George VI, c. 61. For a historical discussion of “postal voting” in the United Kingdom, see also the comments of Member of Parliament Rear Admiral Morgan Giles in House Committee Debate from February 12, 1965, *available at* hansard.millbanksystems.com/acts/representation-of-the-people-act-1948 (last visited August 22, 2019).

¹¹ 1915 Iowa Acts, ch. 157 *available at* [www.legis.iowa.gov/DOCS/Shelves/Acts/OCR/Iowa%20Acts%2036GA%20\(1915\).pdf](http://www.legis.iowa.gov/DOCS/Shelves/Acts/OCR/Iowa%20Acts%2036GA%20(1915).pdf) (last visited August 7, 2019).

¹² Pub. L. No. 712-561 (1942).



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Voting Assistance Act of 1955,¹³ the Overseas Citizens Voting Rights Act of 1975,¹⁴ and ultimately through passage of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA)¹⁵ and the Military and Overseas Voter Empowerment Act (MOVE), which amends UOCAVA and was enacted in 2009 as Subtitle H of the National Defense Authorization Act for Fiscal Year 2010.¹⁶ Through the adoption of this legislation, absentee voting by mail in federal elections today allows for various groups of citizens to vote in elections while abroad, including members of the armed forces and their spouses, missionaries, students studying abroad, and individuals who work overseas.¹⁷

B. Federal Law: The Uniformed and Overseas Citizens Absentee Voting Act and the Military and Overseas Voter Empowerment Act

UOCAVA, which became law in August 1986, requires that, for the purposes of federal elections, the states and territories of the United States allow certain voters to register and vote by mail. As subsequently amended by the MOVE Act in 2009 and the National Defense Authorization Act of 2010, UOCAVA provides that members of the United States armed forces or merchant marines, their eligible family members, and U.S. citizens residing outside of the United States are eligible to register and to vote by mail in federal elections.¹⁸ The statute specifically provides coverage of all primary, general, special, and runoff elections for federal office.¹⁹

Under UOCAVA, the President of the United States was required to designate the head of a federal department to take primary responsibility for the federal functions and operation of the law.²⁰ On June 6, 1988, President Ronald Reagan signed Executive Order 12642 designating that the head of the Department of Defense, then Secretary of Defense Frank Carlucci, would hold those responsibilities under the Act.²¹ The Secretary of Defense has continued to be responsible for the administration of these statutes, and the Federal Voting Assistance Program, through the Secretary of Defense's authorization, is charged with administering the federal portions of UOCAVA and acts as a resource to the states in implementation of the Act's requirements. The MOVE Act included four major policy changes: (1) requiring that voter registration and absentee ballot applications be made available through electronic means, (2) requiring that overseas voters reregister for each election cycle, (3) requiring that all military and overseas ballots be mailed to voters 45 days prior to an election, and (4) eliminating notarization requirements for voter registration submissions among UOCAVA voters.

The federal government requirements related to the conduct of elections for federal offices have impacted the conduct of elections for state and local offices that are placed on the same ballot as are elections for the federal offices. The program funding available through national defense appropriations legislation has also provided for continuing

¹³ 42 U.S.C. §§1973cc, et seq. Repealed and superseded, in part, by UOCAVA, 52 U.S.C. §§20301-20311.

¹⁴ 42 U.S.C. §§1973dd, et seq. Repealed and superseded, in part, by UOCAVA, 52 U.S.C. §§20301-20311.

¹⁵ 52 U.S.C. §§20301-20311.

¹⁶ Pub. L. No. 111-84 (2009).

¹⁷ R. Michael Alvarez and Thad E. Hall, *Military Voting and the Law: Procedural and Technological Solutions to the Ballot Transit Problem*, Voting Technology Project Working Paper #53, p. 3 (March 2007), available at: www.vote.caltech.edu/working-papers153 (last visited August 6, 2019).

¹⁸ 52 U.S.C. §20302.

¹⁹ 52 U.S.C. §20302.

²⁰ 52 U.S.C. §20301.

²¹ Executive Order 12642, available at www.archives.gov/federal-register/codification/executive-order/12642.html (last visited August 6, 2019).



technological and logistical developments related to elections administration for overseas voters. As recently as September 2013, the Department of Defense, through the Federal Voting Assistance Project, provided \$10.5 million in grants to six states and various counties and county consortiums across the country for the development of online ballot delivery tools and for establishment of single points of contact for the transmission of election materials.²²

II. Absentee Vote By Mail in Iowa

As previously noted, absentee vote by mail voting provisions have been a part of Iowa law since 1915 when the state enacted legislation to “enable electors to vote at any general, special, primary, county, city, or town election, when absent or anticipating being absent on the day of such election.”²³ The 1915 statute provided that any elector could apply to the county auditor or city clerk to vote absentee in any such election if the nature of the elector’s business would prevent him from being present in the county on the day of the election.²⁴

The Act required that the county auditor or city clerk mail ballots, postage prepaid, to qualifying electors not more than 10 days and not less than three days before the election.²⁵ The law required the elector to mark the ballot before an officer authorized to administer oaths, but the elector was required to do so in such a manner that the officer would be unable to know how the elector had marked the ballot itself.²⁶ The 1915 statute then required that the elector fold the ballot, place the ballot in an envelope, and seal the envelope in front of the officer before mailing it by registered mail to the county auditor or city clerk who issued the ballot or deliver the completed ballot in person.²⁷ In 1915, and continuing today, sending an item through registered mail created a custodial record for the various transfers of the mailed item.

Since that first absentee vote by mail statute was adopted in 1915, the state has enacted numerous amendments to make substantive and procedural changes to Iowa’s absentee vote by mail system. Currently, Iowa Code section 53.1 provides that any registered voter may vote by absentee ballot at any election when the voter expects to be absent from the voter’s precinct on election day, when the voter expects to be prevented from going to the polls on election day, or when the voter expects to be unable to go to the polls on election day. Iowa Code section 53.2 provides that any registered voter may submit a written application or may apply in person for an absentee ballot at the voter’s county commissioner of elections office or at any location designated by the county commissioner. In Iowa, the county auditor is designated as the county commissioner of elections and the Secretary of State is designated as the state commissioner of elections.²⁸

²² These grants were distributed pursuant to the Effective Absentee Systems for Elections 2 (EASE 2) research grant program, available at www.fvap.gov/eo/grants/ease-2 (last visited August 7, 2019).

²³ 1915 Iowa Acts, ch. 157, Title page, and §§1 and 2, available at [www.legis.iowa.gov/DOCS/Shelves/Acts/OCR/Iowa%20Acts%2036GA%20\(1915\).pdf](http://www.legis.iowa.gov/DOCS/Shelves/Acts/OCR/Iowa%20Acts%2036GA%20(1915).pdf) (last visited August 7, 2019).

²⁴ 1915 Iowa Acts, ch. 157, §§1 and 2.

²⁵ 1915 Iowa Acts, ch. 157, §§4 and 5.

²⁶ 1915 Iowa Acts, ch. 157, §6.

²⁷ 1915 Iowa Acts, ch. 157, §6.

²⁸ Iowa Code §§47.1 and 47.2.



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The Iowa Code allows voting by absentee ballot at county auditor offices,²⁹ at certain satellite voting stations,³⁰ or by mail.³¹ The Iowa Code, however, provides a different structure for absentee voting by a voter who is a resident or patient in a health care facility or hospital.³² Under Iowa Code section 53.22, a registered voter who is a resident or patient in a health care facility or hospital in the county in which the person is registered to vote may submit an application to receive an absentee ballot, but the ballot is required to be delivered by two special precinct election officers for primary and general elections rather than be delivered by mail. A ballot is required to be delivered by mail, however, to a registered voter who is a resident or patient in a health care facility or hospital in a county other than the county in which the person is registered to vote. In certain limited circumstances a registered voter who is a resident or patient in a health care facility or hospital in a county other than the county in which the person is registered to vote may designate a person to deliver and return the absentee ballot.

Iowa Code section 53.2 relates to applications for absentee ballots. A registered voter who wishes to apply to vote absentee may do so in person no earlier than 120 days before an election. A county commissioner who receives a written application more than 120 days before an election shall return the application to the voter with a notification of when applications will be accepted. A written application for an absentee ballot must be received no later than 5:00 p.m. on the Friday before the election.³³

Pursuant to the Iowa Code, the county commissioner of elections is required to mail an absentee ballot to an applicant within 24 hours of receiving an application and immediately after the absentee ballots are printed, but not more than 29 days before the election.³⁴ The county commissioner is further required to enclose with the absentee ballot a statement that the voter or the voter's designee may mail the absentee ballot or personally deliver the absentee ballot to the commissioner's office.³⁵ If a county commissioner receives an application so late that it is unlikely that the absentee ballot can be returned in time to be counted on election day, the commissioner is required to also include a statement to that effect with the mailed absentee ballot.³⁶ The Secretary of State further provides absent voters with the ability to track their absentee ballot requests through the Secretary of State's Internet site.³⁷

Absentee voting, in all of its forms, was used more widely in Iowa in the 2012 general election than at any other general election in the previous 10 years.³⁸ In Iowa, absentee voters accounted for 23.7 percent of cast ballots in the 2002 general election, 21.5 percent of ballots in 2006, and 32.0 percent of ballots in 2010. In recent presidential elections, absentee voters accounted for 30.7 percent of ballots in 2004, 35.7 percent of ballots in

²⁹ Iowa Code §53.10.

³⁰ Iowa Code §53.11.

³¹ Iowa Code §53.17.

³² Iowa Code §53.22.

³³ Iowa Code §53.2(1).

³⁴ Iowa Code §53.8(1).

³⁵ Iowa Code §53.8(2)(a).

³⁶ Iowa Code §53.8(2)(b).

³⁷ See "Track Your Absentee Ballot," available at sos.iowa.gov/elections/absenteeballotstatus/search.aspx (last visited August 6, 2019).

³⁸ In Iowa, absentee voting in all of its forms includes vote by mail absentee voting, in-person absentee voting at county auditor offices, and in-person absentee voting at satellite voting stations.

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2008, and 43.2 percent of ballots in 2012. The rate of absentee voting fell somewhat in 2016 to 41.4 percent, and fell again in 2018 to 40.3 percent.³⁹

III. The 50 States: A National Survey

A. Excuse and No-Excuse Absentee Vote By Mail

Although federal legislation has provided common requirements for the conduct of federal elections, the 50 states maintain a patchwork of different vote by mail election policies as individual states seek to balance issues related to voter access, the integrity of elections, and election costs. As illustrated in *Table 1* below, each of the 50 states allows individual voters to cast absentee ballots by mail under at least certain circumstances. In 18 states a voter is required to provide at least one of a number of valid excuses as to why the voter will not be able to appear in person to vote at the polls, while another 28 states allow a voter to request to vote by mail without any excuse. Four states conduct all statewide elections entirely by mail.

Table 1

Excuse and No-Excuse Absentee Vote-By-Mail ⁴⁰											
Alabama		+	Indiana		+	Nebraska	*		S. Carolina	*	
Alaska	*		Iowa	*		Nevada	*		S. Dakota	*	
Arizona	*		Kansas	*		New Hampshire		+	Tennessee		+
Arkansas		+	Kentucky		+	New Jersey	*		Texas		+
California	*		Louisiana		+	New Mexico	*		Utah	*	
Colorado	-	-	Maine	*		New York		+	Vermont	*	
Connecticut		+	Maryland	*		N. Carolina	*		Virginia		+
Delaware		+	Massachusetts		+	N. Dakota	*		Washington	-	-
Florida	*		Michigan	*		Ohio	*		W. Virginia		+
Georgia	*		Minnesota	*		Oklahoma	*		Wisconsin	*	
Hawaii	-	-	Mississippi		+	Oregon	-	-	Wyoming	*	
Idaho	*		Missouri		+	Pennsylvania		+			
Illinois	*		Montana	*		Rhode Island		+			
No-Excuse Absentee Vote by Mail: 28 Excused Vote by Mail: 18											
* An asterisk indicates a state that allows No-Excuse Absentee Voting by Mail.											
+ A plus indicates a state that allows Excused Absentee Voting by Mail.											
- Four states have adopted Universal Mail Delivery systems (Colorado, Hawaii, Oregon, and Washington).											

³⁹ For data on voting rates in Iowa, see sos.iowa.gov/elections/results/index.html (last visited August 6, 2019)

⁴⁰ National Conference of State Legislatures (NCSL), *Absentee and Early Voting*, (July 30, 2019), available at www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx (last visited August 6, 2019).



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B. Absentee Voting Status

Of the 28 states that allow no-excuse absentee voting by mail, 22 states require that a voter request to vote absentee by mail at each separate election or on a regular basis, while six jurisdictions permit permanent absentee voting status. Permanent absentee voting status provides a voter with the option to request automatic mailed delivery of absentee ballots for each subsequent federal, state, and local election.

The six jurisdictions that currently allow a form of permanent absentee voting status to all voters are Arizona, California, the District of Columbia, Montana, New Jersey, and Utah.⁴¹ In addition, several states grant some form of permanent absentee status to certain classes of voter. Only Alaska grants permanent absentee voting status to voters who live in certain remote areas.

C. Universal Mail Delivery: Vote By Mail Statutes

The states of Oregon, Washington, Colorado, and Hawaii have enacted statutory systems that result in the near universal delivery of ballots through the mail, without the voter being required to apply for a mailed ballot.⁴²

1. Oregon

The state of Oregon conducted its first universal mail delivery election, which was for a local office in 1981, and in 1996 was the first state to conduct a universal mail delivery election for a statewide election.⁴³

Oregon has established a statutory structure requiring county election officials to mail ballots to each active elector⁴⁴ no earlier than 18 days before an election and no later than 14 days before the election for all elections other than primary elections. The statute also provides that the county official may mail ballots to electors outside of the state no earlier than 29 days before an election.⁴⁵ An elector may then either return a marked ballot through the mail, personally at the county clerk's office, or to a ballot deposit location in the elector's county designated by the county clerk.⁴⁶ The statute requires the Secretary of State to adopt rules to establish criteria to be followed by county election officials for designating and operating ballot deposit locations for each election. In addition to such rules, Oregon law requires that ballot deposit locations be open for at least eight hours on election day and that all such locations be open to accept absentee ballots until at least 8:00 p.m. on election day.⁴⁷ The election personnel at these drop-off locations may provide assistance to voters who require help in voting or casting their ballots.⁴⁸

⁴¹ National Conference of State Legislatures (NCSL), Absentee and Early Voting, (July 30, 2019), *available at* www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx (last visited August 6, 2019).

⁴² Exceptions to universal mail delivery are provided to accommodate voting by persons who are homeless or others who will be unable to vote and return a ballot through regular mail delivery. See, e.g., Washington Code §29A.40.050.

⁴³ Berinsky, Adam J.; Burns, Nancy; and Traugott, Michael W. Who Votes by Mail? A Dynamic Model of the Individual-Level Consequences of Voting-By-Mail Systems, p. 180, *available at* web.mit.edu/berinsky/www/whovotesbymail.pdf (last visited August 6, 2019).

⁴⁴ Under Oregon Statutes §247.013(6) the registration of an elector shall only be considered inactive if the county clerk has received information that the elector no longer qualifies or if the elector has not voted or changed their registration in the last five years. The county clerk is also required to mail notice to the elector of the change to inactive status.

⁴⁵ Oregon Statutes §254.470(2)(a),(c).

⁴⁶ Oregon Statutes §254.470(6).

⁴⁷ Oregon Statutes §254.470(1).

⁴⁸ Oregon Statutes §254.445.



As with most states, Oregon law allows for the use of replacement ballots in instances where a mailed ballot is destroyed, spoiled, lost, or not received.⁴⁹ An elector is permitted to request a replacement ballot electronically, by telephone, in writing, in person, or by other means provided for in rule, and must complete and sign a request form in order to receive and vote a replacement ballot.⁵⁰ A county election official is not permitted to process a replacement ballot if the elector has not submitted a completed and signed request form.⁵¹

2. Washington

Since 1993, voters in Washington have been able to apply for ongoing absentee voter status for all subsequent elections.⁵² In 2005, legislation was enacted allowing each county in Washington to decide whether to conduct all elections by universal mail delivery.

In 2011, the Washington Code was amended to provide that “[e]ach active registered voter of the state, overseas voter, and service voter shall automatically be issued a mail ballot for each general election, special election, or primary.”⁵³ The statute further provides that “[e]ach active registered voter shall continue to receive a ballot by mail until the death or disqualification of the voter, cancellation of the voter’s registration, or placing the voter on inactive status.”⁵⁴ Each county auditor in the state is, with certain exceptions, required to mail ballots to each voter at least 18 days before each general, special, or primary election.⁵⁵ The law requires that the voter be instructed either to return the ballot to the county auditor no later than 8:00 p.m. on the day of the election or to mail the ballot to the county auditor with a postmark no later than the day of the election. The law permits military and overseas voters to return ballots via email or fax.⁵⁶

The law further requires that each county auditor open a voting center to allow voters to register to vote and to complete and cast ballots and to provide a ballot drop box for those voters wishing to return a completed universal mail ballot in person rather than through the mail. These voting centers are required to be open 18 days prior to an election and until at least 8:00 p.m. on the day of the election.⁵⁷ Under the law, a voter may request a ballot at a voting center after either signing a ballot declaration or showing valid photo identification. The election personnel at these offices may provide assistance to voters needing help in voting or casting their ballots.

3. Colorado

Colorado enacted a universal vote by mail system in 2013.⁵⁸ All ballots for all statewide elections, including recall elections and those triggered by a congressional vacancy, must be conducted by mail, and political subdivisions other than counties

⁴⁹ Oregon Statutes §§254.470(7) and 254.480.

⁵⁰ Oregon Statutes §254.480(1).

⁵¹ Oregon Statutes §254.480(5).

⁵² 1993 Washington Laws, chapter 418.

⁵³ Washington Code §29A.40.010.

⁵⁴ Washington Code §29A.40.010.

⁵⁵ Washington Code §29A.40.070.

⁵⁶ Washington Code §29A.40.091.

⁵⁷ Washington Code §29A.40.160.

⁵⁸ 2013 Colorado Session Laws 185.



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may choose to conduct elections by mail.⁵⁹ Like other states that conduct universal vote by mail elections, Colorado does allow voters to vote in person at certain locations, known in Colorado as “voter service and polling centers.”⁶⁰

A voter in Colorado may request a mail ballot between 45 and 32 days prior to an election.⁶¹ Between 22 and 18 days before an election, the appropriate election official must mail a ballot to each active eligible elector, or, for primary elections, each active registered elector.⁶² After completing a mailed ballot and the included self-affirmation, a voter may return the ballot to an election official, voter service and polling center, or drop-off location, give the ballot to another person for delivery, or mail the ballot.⁶³ If a voter chooses to return a ballot by mail, the voter must provide postage, and the ballot “must be in the hands” of the appropriate election official by 7:00 p.m. on the day of the election.⁶⁴ A mailed ballot received after this time but postmarked on or before the day of the election will not be counted, but the voter’s registration record will not be canceled for failure to vote in a general election.⁶⁵ If a voter deposits a ballot at a drop-off location in a county other than the county in which the voter resides by the time the polls close, the county clerk in the remote county shall return the ballot to the appropriate county, where it shall be counted.⁶⁶ A person who has not previously voted in an election in Colorado must include a copy of an appropriate form of identification when returning a ballot.⁶⁷

A voter who loses, damages, or does not receive a ballot by mail may request a replacement ballot.⁶⁸ In addition, a voter who is unable to obtain or receive a physical replacement ballot may receive an electronic ballot, which the voter must also return electronically.⁶⁹

A voter may return a ballot to a voter service and polling center prior to election day.⁷⁰ Ballot boxes from such locations must be locked and sealed each night, and are to remain sealed until the time for the counting of ballots.⁷¹ Ballot boxes containing mailed ballots are transferred to a specified mail ballot counting place, which may begin the counting of mailed ballots 15 days prior to an election.⁷²

4. Hawaii

Enacted in 2019, Hawaii’s universal vote by mail system will take effect for the 2020 primary election.⁷³ Initially enacted in 2018 for counties with a population of less than 100,000, Hawaii later expanded the law implementing vote by mail for the 2020 primary and general elections to cover the entire state.⁷⁴

⁵⁹ Colorado Statutes §1-5-401.

⁶⁰ Colorado Statutes §§1-5-401(1) and 1-5-102.9.

⁶¹ Colorado Statutes §1-7.5-107(2.7).

⁶² Colorado Statutes §1-7.5-107(3).

⁶³ Colorado Statutes §1-7.5-107(4).

⁶⁴ Colorado Statutes §1-7.5-107(4)(b)(II).

⁶⁵ Colorado Statutes §1-7.5-107(4)(b)(II).

⁶⁶ Colorado Statutes §1-7.5-107(7).

⁶⁷ Colorado Statutes §1-7.5-107(3.5).

⁶⁸ See www.sos.state.co.us/pubs/elections/FAQs/ElectionDay.html (last accessed July 10, 2019).

⁶⁹ Colorado Statutes §1-7.5-115(1)(c), (3), (4).

⁷⁰ Colorado Statutes §1-7.5-107.2(1).

⁷¹ Colorado Statutes §1-7.5-107.2(1).

⁷² Colorado Statutes §1-7.5-107.5.

⁷³ See www.hawaiitribune-herald.com/2019/05/02/hawaii-news/mail-in-voting-bill-okd/ (last accessed July 12, 2019).

⁷⁴ 2019 Hawaii Session Laws, HB 1248, §§1, 2.



Hawaii's vote by mail system largely comports with other such systems in that it provides for "voter service centers" for those persons who must or choose to vote in person.⁷⁵ Unlike other states, Hawaii does not impose firm dates by which election officials must mail a ballot package. Instead, officials are required to mail ballot packages to each registered voter in the county so that they arrive "approximately eighteen days before the election" and must give public notice prior to the date on which ballots are to be mailed.⁷⁶ Ballots must be mailed to all voters who update their voter registration address no later than 14 days before the election.⁷⁷

Hawaii allows a person who has not received a mail ballot by the fifth day before an election or a voter who needs a replacement ballot within that time period to request and receive an electronic ballot, and a voter with special needs may request and receive such a ballot at any time.⁷⁸ Included with the electronic transmission is a waiver of the voter's right to secrecy.⁷⁹ An electronic ballot may be returned electronically or by any method acceptable for returning a physical ballot (by mail or personal delivery to a place of deposit or voter service center).⁸⁰ Regardless of the method of delivery, a ballot must be received by the appropriate election official or deposited by 7:00 p.m. on election day, provided that any person in line to return a ballot at that time shall be allowed to cast a ballot.⁸¹ Counting centers may begin the tabulation of votes no sooner than the 10th day before the election.⁸²

An election official who receives a ballot with a deficiency that would prevent it from being counted shall attempt to notify the voter of the deficiency, and the voter shall have five business days after the date of the election to cure the deficiency.⁸³ Deficiencies that would prevent the counting of a ballot include a ballot returned without a signed affidavit or a signature on the affidavit that does not match the signature on record.⁸⁴

5. Limited Universal Mail Delivery

Eighteen states provide universal mail delivery in certain local elections only, as illustrated in *Table 2* below. This section also examines two states that allow counties to opt to conduct all elections by mail: Utah and California.

⁷⁵ 2019 Hawaii Session Laws, HB 1248, §2(11-I).

⁷⁶ 2019 Hawaii Session Laws, HB 1248, §2(11-B), (11-C).

⁷⁷ 2019 Hawaii Session Laws, HB 1248, §2(11-B).

⁷⁸ 2019 Hawaii Session Laws, HB 1248, §2(11-G).

⁷⁹ 2019 Hawaii Session Laws, HB 1248, §2(11-G).

⁸⁰ 2019 Hawaii Session Laws, HB 1248, §2(11-G).

⁸¹ 2019 Hawaii Session Laws, HB 1248, §2(11-D), (11-G).

⁸² 2019 Hawaii Session Laws, HB 1248, §2(11-H).

⁸³ 2019 Hawaii Session Laws, HB 1248, §2(11-F).

⁸⁴ 2019 Hawaii Session Laws, HB 1248, §2(11-F).



ELECTIONS: VOTE BY MAIL

Table 2

Limited Universal-Mail-Delivery Elections ⁸⁵									
Alabama		Hawaii	-	Massachusetts		New Mexico	*	S. Dakota	
Alaska	*	Idaho	*	Michigan		New York		Tennessee	
Arizona	*	Illinois		Minnesota	*	N. Carolina		Texas	
Arkansas	*	Indiana		Mississippi		N. Dakota	*	Utah	*
California	*	Iowa		Missouri	*	Ohio		Vermont	
Colorado	-	Kansas	*	Montana	*	Oklahoma		Virginia	
Connecticut		Kentucky		Nebraska	*	Oregon	-	Washington	-
Delaware		Louisiana		Nevada	*	Pennsylvania		W. Virginia	
Florida	*	Maine		New Hampshire		Rhode Island		Wisconsin	
Georgia		Maryland	*	New Jersey	*	S. Carolina		Wyoming	*
States That Allow: 16 States That Do Not Allow: 30									
* An asterisk indicates a state that allows Limited Universal-Mail-Delivery Elections.									
- A dash indicates states that have implemented Universal-Mail-Delivery systems for all elections.									

a. Utah

Utah allows an election officer to administer an election by absentee ballot after notifying the lieutenant governor of the officer's intention to do so.⁸⁶ An election officer who chooses to administer an election by absentee ballot must send to each active voter in the relevant precinct a ballot and return envelope, information regarding voting centers, or, if there will be no voting center, a warning that returning the absentee ballot is the only way to vote in the present election, and instructions on returning the ballot, including any relevant deadlines.⁸⁷ A voter may request that the voter not receive an absentee ballot for the next and subsequent elections, and an election officer must not send a ballot to such a voter.⁸⁸

An election officer who administers an election by absentee ballot must collect the signature of each voter in the officer's voting precinct, either by hand or from the county clerk, prior to the election.⁸⁹ These signatures are used for the purpose of comparing the signatures on record with the signatures on returned ballots.⁹⁰ A county that administers an election by absentee ballot may shorten the early voting period, normally 14 days, to no less than 4 days.⁹¹ After

⁸⁵ National Conference of State Legislatures (NCSL), All-Mail Elections, (June 27, 2019), *available at* www.ncsl.org/research/elections-and-campaigns/all-mail-elections.aspx (last visited August 26, 2019).

⁸⁶ Utah Code §20A-3-302(1).

⁸⁷ Utah Code §20A-3-302(2).

⁸⁸ Utah Code §20A-3-302(2), (8).

⁸⁹ Utah Code §20A-3-302(4).

⁹⁰ Utah Code §20A-3-308(2).

⁹¹ Utah Code §§20A-3-601, 20A-3-302(6)(d).



every election, the lieutenant governor must conduct an audit of counties that administered the election by absentee ballot.⁹²

b. California

Enacted in 2016, the California Voter's Choice Act began a staggered rollout of all-mail elections on a county-level basis.⁹³ Beginning on January 1, 2018, certain counties are permitted to conduct any election as an all-mail election, provided that they meet certain conditions.⁹⁴ This authorization is expanded to all counties beginning January 1, 2020, except that Los Angeles County must meet different conditions than other counties before what is referred to as a "vote center election," an election method unique to Los Angeles County.⁹⁵ No later than four years after conducting the first vote center election, Los Angeles County may conduct all-mail elections and may not conduct vote center elections.⁹⁶

California imposes extensive requirements governing vote centers and ballot drop-off locations that a county must meet, covering the number of vote centers, detailed criteria for the placement of vote centers, the languages in which materials must be offered, the services that vote centers must offer, the technology that vote centers must use, the contents of mail ballot packets, and studies and plans that must be formulated by the county.⁹⁷ Los Angeles County must generally comply with all requirements for all-mail elections when conducting a vote center election, except that the county must provide a larger number of vote centers and need only mail ballots to voters living certain distances from polling places.⁹⁸

⁹² Utah Code §20A-3-302(7).

⁹³ 2016 California Statutes 832 (legislative counsel's digest).

⁹⁴ 2016 California Statutes 832 (legislative counsel's digest).

⁹⁵ 2016 California Statutes 832 (legislative counsel's digest); California Elections Code §4007.

⁹⁶ California Elections Code §4007.

⁹⁷ California Elections Code §4005.

⁹⁸ California Elections Code §4007.