



NCSL

THE CANVASS

STATES AND ELECTION REFORM®



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Compilation of election returns and validation of the outcome that forms the basis of the official results by a political subdivision.

—U.S. Election Assistance Commission: Glossary of Key Election Terminology

What is Automatic Voter Registration Anyway? What the Experts Say

Automatic voter registration is well on its way to becoming the next big policy movement in elections. But as the term begins to make its way into the collective lexicon, what exactly does it mean? Is it a new form of motor voter, where voters can register at the motor vehicle agency, or something else entirely? And for those who already have the gold standard of motor voter—should that be considered automatic voter registration?

These are questions that NCSL and other policy experts have been asking and answering (see below) since Oregon and California signed automatic voter registration into law last year. As more and more states are looking to automatic voter registration as a way of updating motor voter, the definition of the term may continue to change.

Let's start with the basics: four states have passed what sponsors have termed automatic voter registration laws: California, Oregon, Vermont and West Virginia. Oregon implemented its program beginning this year. The other three states have not yet implemented their programs, but Vermont and West Virginia will in 2017. Connecticut has announced it will implement its version of automatic voter registration through administrative rule in about two years.



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Automatic Voter Registration—the Rorschach Test of Elections?

Oregon was the first state to adopt automatic voter registration when the legislature passed House bill 2177 in March of 2015. The Beaver State set up a system by which an individual who goes to the motor vehicle agency for any official business, such as getting a driver's license, is automatically registered to vote if they are not already on the voter rolls. That voter is then mailed a voter registration card which allows them to:

- Opt-out if they do not want to be registered to vote by mailing back the form.
- Pick a party affiliation and mail back the form.
- Do nothing and remained registered as an unaffiliated voter.

Oregon has registered over 51,000 new voters through the program. Six percent of those elected to opt-out, 16 percent picked a party affiliation and 76 percent did not return the card and thus are registered as unaffiliated. The state then retroactively applied automatic voter registration to anyone who interacted with Department of Motor Vehicles in 2014 and 2015 and sent out an additional 120,000 records to Oregon counties for processing.

While Oregon was the first in the country to adopt automatic registration, subsequent states decided to adopt similar policies but adapt them into the current framework of motor voter. [The National Voter Registration Act of 1993](#) (NVRA) requires states to offer their residents the opportunity to

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(Automatic Voter Registration, cont. from page 1)

register to vote when conducting a transaction at the state motor vehicle agency. But, 23 years later, states still lag behind in the implementation and enforcement of motor voter and the NVRA.

Delaware is often held up as the gold standard of motor voter implementation. When Delaware residents go to the motor vehicle agency, its database pings the statewide voter registration database to see if that resident is registered to vote. If not, that resident is asked if they would like to register. The resident *must* answer that question, yes or no, to move forward through the process and complete their transaction. They also get to choose to affiliate with a political party at that point. There's no skipping it and it doesn't depend on the individual employee at the agency to ask the question. According to the report [Measuring Motor Voter](#) by The Pew Charitable Trusts, Delaware was able to reduce transaction times 67 percent and save approximately \$50,000 a year with this system known as eSignature. Other states that have taken a Delaware-like approach include Maryland, New Mexico and West Virginia. See NCSL's [Linking Driving Records to Voting Records](#) webinar for more details.

California was the first state to decide to weave automatic voter registration into motor voter and the three subsequent states decided to use a similar framework. Here's how it works (or will work) in California, Connecticut, Vermont and West Virginia: in the course of completing a transaction at the motor vehicle agency, an individual is informed they will be registered to vote unless they decide to opt-out. So unlike Oregon, where the opt-out opportunity comes *after* the transaction at the motor vehicle agency, now states will present the opt-out *before* a voter leaves the motor vehicle agency.

At first glance, the two processes (Delaware and California, et al.) seem different—one asks voters if they would like to register, while the other asks voters if they would like to opt-out of registering to vote. But the questions are in fact the same. Either way, voters have to make a choice about voter registration before moving through their motor vehicle agency transaction.

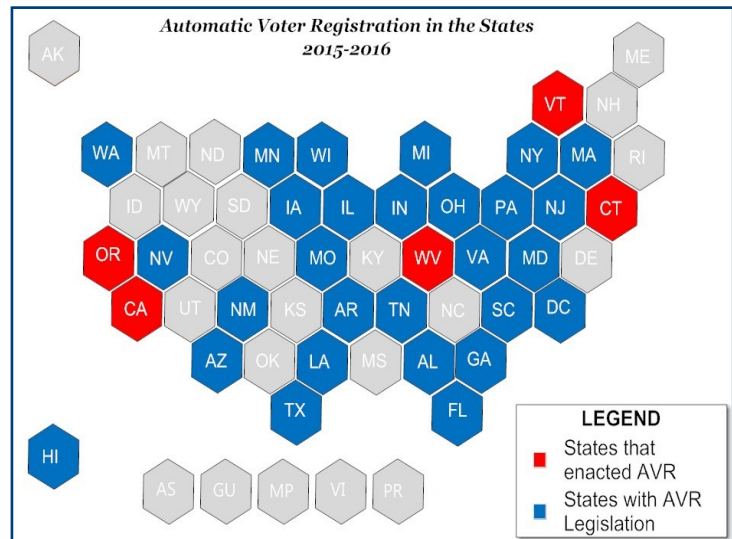
Election Experts on Motor Voter and Automatic Voter Registration

This model brings up the critical question—what is automatic voter registration anyway? Is it a new phenomenon that is poised to take off as the next big thing in elections? Or is it motor voter by another name and something a few states have had all along? NCSL asked elections experts for their thoughts.

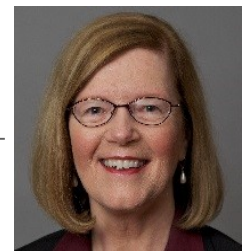


David Becker

"I think it's really hard to lump the different types of automatic voter registration all together. What Oregon is doing is different from what most other states seem to be contemplating, and what California, Vermont and West Virginia are planning to do looks very similar to what Delaware has successfully been doing since 2009."—David Becker, director of election initiatives, The Pew Charitable Trusts.



"We have seen phenomenal success with Oregon Motor Voter since it took effect at the beginning of 2016. The program is removing barriers to voting and making it simple and convenient to participate in the democratic process. I am proud that Oregon is leading the way on a pioneering policy that expands access to the ballot. With time, Oregon Motor Voter will put a ballot in the hands of nearly every eligible voter in Oregon. I am hopeful that we can set an example for other states across the nation."—Senator Diane Rosenbaum (D-Ore.).



Sen. Rosenbaum (D-Ore.)

"I think Delaware's e-signature project is better than automatic voter registration because when you leave our DMV, you are registered in the party of your choice. If you choose not to register, you have signed a declination form. There is nothing for us to mail out or for the citizen to return. The entire process is finished before you leave DMV."—Elaine Manlove, Delaware State Election Commissioner.



Elaine Manlove

"I have yet to see an automatic voter registration bill that adequately addresses the problems of including ineligible voters, such as noncitizens—illegal and legal—or preventing duplicate registrations. Automatic voter registration won't solve the problem of low voter turnout. We know that from our experience with the NVRA—it increased registration but not turnout. People don't vote because of motivational factors, not because they have trouble registering."—Hans von Spakovsky, senior legal fellow, The Heritage Foundation.



Hans von Spakovsky

(cont. on page 3)



(Automatic Voter Registration, cont. from page 2)

“Back when all voters had to be male property owners, the first voter registration was originally the responsibility of the government to ensure that all eligible voters were on the list. Along the way, that presumption was flipped to the voter and registration became the voter’s responsibility. Automatic voter registration restores the voter registration responsibility to the government.”—

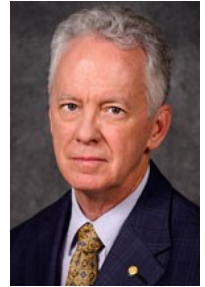
Senator Daniel Ivey-Soto (D-N.M.).



Sen. Ivey-Soto (D-N.M.)

“We felt that that the risk of fraud associated with automatic voter registration in a state like West Virginia, plus with the added ID requirements, would be minimal. When you go to the DMV odds are you’ll likely see people you know there. We certainly want to encourage people to vote who are eligible to vote. We thought it was worth the risk.”—Delegate

John Shott (R-W.V.).



Del. Shott (R-W.V.)

Then and Now: 2012 to 2016 Comparisons

From now until the November general election, we will be taking a look at one major election administration topic showing how it has changed at the legislative level from one presidential year to another.

This month: [Felon Voting Rights](#).

Amount of change: Minimal

In 2012: Twelve states and the District of Columbia automatically restored the right to vote for convicted felons after completing the term of incarceration. Thirty states automatically restored rights after completion of the full sentence, including parole and/or probation. Nine states required a gubernatorial pardon or court action for restoration of rights. Lastly, two states never took away a felon’s right to vote—Maine and Vermont. Three states overlap between gubernatorial and court action and automatic restoration upon completion of sentence depending on the crime.

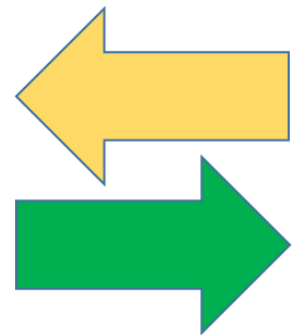
In 2016: Now 13 states and the District of Columbia automatically restore the right to vote after the completion of incarceration, and 29 states do so after completion of full sentence, including parole and/or probation. Otherwise, states remained in the same categories.

Legislative action has moved in both directions:

- In 2012, South Dakota (House bill 1247) mandated that felons on probation would not have voting rights restored. Previously, only felons Incarcerated or on parole had their voting rights suspended.
- In 2013, Delaware (House 10) eliminated the five-year waiting period before voting rights are restored.
- In 2015, Wyoming enacted [House bill 15](#) requiring the department of corrections to issue a certification of restoration of voting rights to certain non-violent felons after completion of their sentence.
- In 2016, the Maryland Legislature ([House bill 980](#)) voted to restore voting rights to individuals after completion of their term of incarceration, instead of after completion of probation/parole, overriding a gubernatorial veto.

Felon voting rights has been as much an issue for governors as it has for legislatures:

- In 2015, outgoing Kentucky Governor Steve Beshear (D) signed an [executive order](#) to automatically restore the right to vote (and to hold public office) to certain offenders, excluding those who were convicted of violent crimes, sex crimes, bribery, or treason. However the order [was reversed](#) by incoming Governor Matt Bevin (R) as one of his first acts in office.
- In 2016, Virginia Governor Terry McAuliffe announced an [executive order](#) automatically restoring voting rights to convicted felons who have completed their prison sentence and their term of supervised release (parole or probation) as of April 22. This decision has been a source of contention with the legislature and was overturned by the Virginia Supreme Court.





State Election Administration and All It's Variations

If you're a legislator who is reading this article, you've won at least one election in your time. Chances are you've had some interaction with your local election official, even if it was just to turn in the necessary paperwork for your candidacy. Then you may have looked at that local official's webpage or showed up at the office on election night as returns were coming in to watch the votes be tallied in your favor. As long as there isn't a big controversy, the increasingly complex tasks of election officials—registering voters, managing new technologies, preparing poll workers for Election Day and tabulating votes—are done quietly and efficiently in the background. In fact they like it that way; their job is well done when the winning candidates, not the election officials, make the front page.

But who are these local election officials? How are they selected? Is it just one individual managing the whole process, or are duties split? In the western states, the most common structure for local election administration is to have an elected county clerk oversee the process. But that is just one of many models for election administration. Twenty-two states have a single individual such as a county clerk, most of whom are elected, in charge of elections. In 10 states, bipartisan county election commissions or boards are in charge of elections. Further complicating things are the 18 states where local duties are divided between two or more individuals or boards. In those states the most common separation is that one office handles voter registration, while another office actually conducts the election.

On the state level things vary as well. An elected secretary of state is the most common chief election official (22 states) but a secretary of state may also be appointed by the governor (five states) or by the legislature (three states). In Utah and Alaska, the lieutenant governor is the chief election official. In nine states a board or commission in charge of elections, and in seven states duties are divided between a single individual and a board or commission.

What is the significance of all this variation and why might legislators care? First, it's just the American way: doing things in a

way that works for an individual state or local jurisdiction is one of the hallmarks of the decentralized American election system.

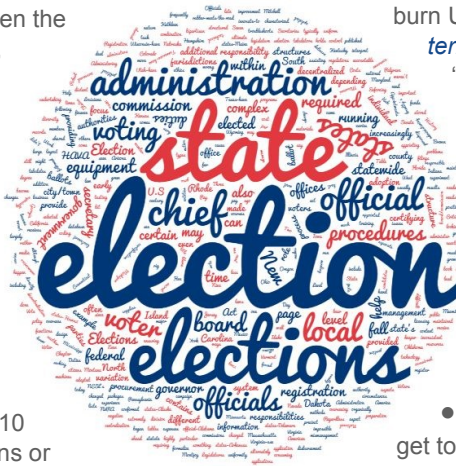
Second, decentralization has allowed innovation at the local level to thrive. Ideas can be tried out, and the good ones can quickly spread or be scaled up. In fact, throughout the public policy world, copying is common and useful.

And third, “The more we know about the institutional structure of the way we administer elections the easier it is to identify bottlenecks, pinch points, places where resources may make a difference,” says Dr. Kathleen Hale, a professor at Auburn University and one of the authors of *Administering Elections: How American Elections Work*.

"And, if you understand the administrative structure in your own state, it makes it easier to assess practices and ideas coming out of other states and how those ideas might be transported into your system."

Read more about the variation between states on NCSL's [Election Administration at State and Local Levels](#) page. Better yet get to know your local election official (or officials). Here are some questions to ask:

- What is their background and how did they get to where they are?
- Were they appointed or elected? Is their post a professional position under the county or local government?
- What are some of the issues that they face on a daily basis?
- How does legislation that you have introduced or are thinking about introduce affect them?
- Do they feel adequately supported by the legislature?
- May I take a tour of your offices to see first-hand how voter registrations are processed; poll workers recruited; and votes counted on election night?



Last call for attending NCSL's Legislative Summit, Aug. 8-11 in Chicago, Ill.

The Summit is packed with [elections and redistricting sessions](#), so don't miss out on a great opportunity to meet up with your fellow election geeks and hear from experts on a variety of topics.

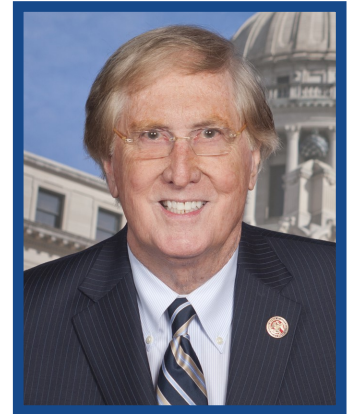


From The Chair

Representative Bill Denny chairs the Apportionment and Elections Committee in the Mississippi House. He has served in the legislature for 30 years and over half of those years as chair of the committee. He also currently serves as the co-chair of NCSL's Elections and Redistricting Standing Committee. Representative Denny spoke to The Canvass on July 28.

- "There are many diverse bills that come into my committee, but the first thing I look at is how something ties into state law, federal law and constitutional law. Would it be effective if it were to become law? Mississippi was one of the states that was 100 percent covered by the preclearance requirement under the Voting Rights Act. Even though it's not in effect any more, I'm still very conscious of being fair and balanced."
- "Online voter registration and early voting bills passed the House this year almost unanimously and I plan on bringing both bills back in the next legislative session. I'm working with the secretary of state to see what we need to get online voter registration passed."
- "One of the other bills we sent to the Senate that wasn't acted on was an omnibus bill. We went through the entire election code section by section bringing it up to date. I'm going to bring that bill back up because all it is, is a good clean-up bill to make life better for election commissioners and circuit clerks."
- "I'm proud of our excellent working relationship with the Black Caucus in the Legislature. Over the years I have worked with very closely with its members and my fellow members of the House. We don't always agree, but when it comes to getting something done I know I can go before the caucus and we respect each other."

Read the [full interview](#) with Representative Denny.



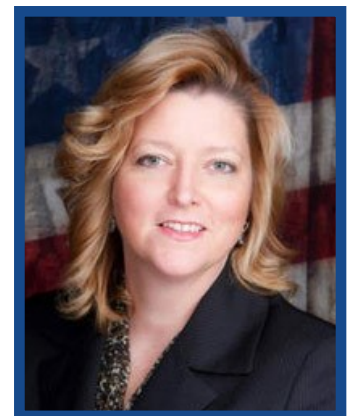
Representative Bill Denny (MS)

The Election Administrator's Perspective

Michelle Fajman is the director of the Election and Voter Registration Board in Lake County in northwest Indiana. Lake County is the second most populous county in the state and includes the city of Gary. Fajman spoke to The Canvass on July 18.

- "Elections have always been my passion. I like the exercise of democracy and the fact that it's always different. Every day has a different issue coming up, whether it be dealing with new software and technology, or coming up with new ways to get people active and to participate, or to see candidates getting involved for the first time."
- "I think in Lake County and across the nation the biggest thing we are facing right now is voter apathy. People are questioning whether their vote counts. They put their heart and soul into one candidate and if they don't win, they say their vote doesn't matter. It *does* matter. We are trying to get more and more people out to vote and to make it as easy as possible for them to vote. Let's make it easier and make it more convenient."
- "One issue has come up year after year and that's straight party voting. Specifically, eliminating straight party voting. That straight party button is giving you the option, but you can always click off the individual races if you want to not vote the party for that race. It makes things easier for voters and that's what we should be encouraging. Let's not take away the option."
- "When HAVA funds came out for new accessible equipment, we decided to take the avenue of partnering with our local agencies that provide services to those with special needs to test the voting machines and help us choose the vendor. So often people are trying to shove things down our throat, saying that the law says "do this", but we need to listen to each other and get input before we implement these laws."

Read the [full interview](#) with Fajman.



*Lake County Election and Voter Registration Board Director
Michelle Fajman*



Worth Noting

- Postmarks have been a hot topic in states as they expand the use of mail and absentee ballots. Luckily, Tammy Patrick and the Bipartisan Policy Center has a new report out on how states and the U.S. Postal Service can improve the vote-by-mail process. Check out [The New Realities of Voting By Mail in 2016](#).
- Kickstarter for campaigns? You've probably heard how websites like GoFundMe and Kickstarter allow small donors to help fund startup companies. Now the Kentucky Legislative Ethics Commission [has ruled candidates for public office can use the crowdfunding sites](#) to accept donations for political campaigns.
- More fuel to the fire about primaries versus caucuses—[Idaho's Republican presidential primary in March](#) cost the state \$1.5 million. Republicans decided to hold a primary, while Democrats elected to hold caucuses. Like many other states, the Democratic caucuses experienced delays and confusion due to high turnout and prompted the party to switch to a state-run primary.
- June 29 marked the last day of the Wisconsin Government Accountability Board and the last day for longtime Wisconsin public servant Kevin Kennedy. Kevin has been a force in elections for 37 years and we wish him all the best. Thank you for your service, Kevin!
- Looks like double voting can occur within a state as well as across state lines—the registrar of voters in Contra Costa County, Calif. [alleges that 113 people cast two ballots](#) in the state's primary election in June.
- New Jersey may soon allow [17-year-olds to vote in primaries](#) if they will be 18 by the general election. The State Assembly passed AB 3591 and it has been sent to Governor Chris Christie for his signature. New Mexico enacted a similar the change this year. See the [March issue of The Canvass](#) and a [recent webinar](#) from the International Association of Government Officials (IaOGO, formerly IACREOT and NACRC) for more information on youth engagement.
- Voter ID and the Courts (Round 1000): Strict voter ID procedures hit court-based snags in both Wisconsin and Texas this month. In [Wisconsin](#), a federal judge ruled that the state must offer an opportunity for voters who lack required ID to have the option to sign an affidavit instead. And, the 5th U.S. Circuit Court of Appeals ruled that the [Texas](#) voter ID law violates the federal Voting Rights Act. Will there be a round 1001? Probably so. Some observers believe both [Wisconsin](#) and [Texas](#) will soften their laws.
- Early voting is a convenience for voters but that convenience may come at a cost to cash-strapped local governments. Cities and towns in Massachusetts are [trying to figure out how to pay for the first year of early voting](#) in the Bay State, all while awaiting finalized regulations from the Secretary of State's office. Adding to that is a [recent veto of election funding](#) by the governor.
- "I was only there to catch a Pikachu"—campaigns have been taking advantage of the phenomenon that is Pokémon Go to lure users to political rallies, registration drives and polling places. Now it has some [questioning if using to the mobile app in such a unique way](#) violates electioneering laws.



New and updated NCSL webpages are ready for your enjoyment:

- [State Primary Election Types](#)—with new categories and details;
- [Citizens United](#)—get the latest on state responses to the controversial case;
- [Ballot Measures Database](#)—now with almost all 2016 measures.

[Amanda Buchanan](#) is the newest member of the elections team here at NCSL. She'll be working on the Elections 2020 project with the Democracy Fund and all things election technology. Welcome Amanda!

Congratulations to former NCSL elections tech guru Katy Owens Hubler in her new role overseeing the Voting Equipment Selection Committee for Lt. Gov. Spencer Cox and the state of Utah.

Browse the [most recent entries](#) from the election team on the NCSL Blog. Look for #NCSLelections on Twitter.

Thanks for reading, let us know your news and please [stay in touch](#).

—[Wendy Underhill](#), [Katy Owens Hubler](#) and [Dan Diorio](#)

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