2026 Provisional Ballot Processing Guide

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SDCL 12-20-5.1 and 12-20-13.1 through 13.4

Following Election Day, the county auditor is responsible for determining whether or not a provisional ballot meets the legal requirements to be **counted**. **DO NOT** count on election night.

To be counted, a provisional ballot must meet the following conditions:

1. The voter had fully completed a voter registration form which was in the possession of a voter registration official listed in SDCL 12-4-2 by 5:00pm (local time) on the voter registration deadline (SDCL 12-4-5); **and**
2. The residence address on the voter registration form is located in the precinct in which the provisional ballot was cast (SDCL 12-20-5.1); **and**
3. The voter is eligible to be a registered voter in that precinct (SDCL 12-1-4, 12-3-1, Art. VII § 2); **and**
4. The voter did not submit an absentee ballot by 7:00pm (local time) on election day (SDCL 12-26-8).
5. If the provisional ballot was voted because the voter's identity could not be "proven to the satisfaction of the member of the precinct election board or if the person making an application for ballots is challenged on the basis of identity" (SDCL 12-18-6.3), then the voter's identity would also have to be confirmed as being that of the registered voter.

The provisional ballot <u>will not be counted</u> if the voter's name was correctly removed from the precinct registration list in the precinct where the provisional ballot was voted because:

1. The voter had cancelled their registration in that precinct (SDCL 12-4-12); **or**
2. The voter had a disqualifying felony sentence (SDCL 12-4-18); **or**
3. The voter received a mental incompetence declaration (SDCL 12-4-18); **or**
4. The voter was deceased (SDCL 12-4-18); **or**
5. It was a duplicate registration (SDCL 12-4-40); **or**
6. Non-voting following a confirmation mailing (SDCL 12-4-19.4).

Provisional ballots that **YOU** determined <u>should be counted</u> (you do not count the provisional ballots election night):
- Appoint a provisional ballot counting board if counting the ballots by hand.
- Appoint a resolution board if counting the ballots with a tabulator.
- A minimum of three members is appointed to the board.
- The board will meet <u>one hour prior to your canvassing board meeting.</u>
  - An alternate time can be set if the provisional ballot counting board will need more time to count the ballots provided that a notice of the time and location is given to the county party chairperson of each political party in the election.
- The provisional ballot counting board or resolution board **DO NOT** <u>determine what ballots will be counted.</u> Their job is to count the ballots you've determined should be counted.
- If you determine the ballot will be counted, you **MUST** go back into **Total Vote** and **add the votes** for those candidates/ballot measures on the Returns page.
- Make sure the canvass report you send to the Secretary of State's office for the state canvass includes your provisional ballot count in the final totals, if you had any.

You are required to <u>send a notice</u>, within **ten days** after the official county canvass, to each provisional voter advising whether the provisional ballot was counted or not (SDCL 12-20-13.1 through 13.4).

5:02:05:24. **Notice of provisional ballot determination.** The notice sent to the mailing address of a person who has cast a provisional ballot shall contain:

    (1) Voter's name;
    (2) Voter's mailing address;
    (3) Election at which the ballot was cast;
    (4) Whether the ballot was counted;
    (5) If the ballot was not counted, the reason why it was not counted; and
    (6) A telephone number for further information.

A paper or electronic copy of the notice shall be maintained by the official in charge of the election for the time period defined in SDCL 12-20-31.

Certification of Provisional Ballot Count:
This is the format you will use – the top portion requires that you must provide a table with the following information – so you will want to create a spreadsheet with all the information for 1-4 below. You can then attach the spreadsheet to the certificate – they can be on separate sheets.

    (1) Precinct Name;
    (2) Name of candidate or ballot question;
    (3) Number of votes received in figures; and
    (4) Number of votes received in words.

Precinct Name	Name of Candidate or Ballot Question	Number of Votes received in figures	Number of votes received in words
Precinct 1	Steve Jones	4	Four
Precinct 4	Tom Smith	1	One

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF _____)

We (list names), appointed as the provisional ballot counting board or provisional ballot resolution board in the jurisdiction of _____ for the _____ election held on the _____ day of _____, 20 _____, hereby certify that the foregoing is a true abstract of the provisional votes which were counted for this jurisdiction.

_____

_____

_____

_____

_____

Sworn to before me this _____ day of _____, 20_____.

_____
Person in Charge of the Election

12-20-13.1. Means of counting provisional ballots--Appointment of officials. The person in charge of the election shall decide if the provisional ballots are to be counted by hand or by automated tabulating equipment. If a decision is made to count the ballots by hand, a provisional ballot counting board shall be appointed as provided in § 12-15-1. If the provisional ballots are to be counted by automated tabulating equipment, a resolution board and tabulation machine operators shall be appointed as provided in chapter 12-17B.

NOTE: If your provisional ballot counting board counts the ballot <u>by hand</u> you must follow ARSD 5:02:09:22 on what constitutes a mark:

5:02:09:22. Counting imperfectly marked optical scan ballots. A mark that touches the oval on an optical scan ballot shall be counted as a vote; any mark that does not touch the oval and is not in the oval may not be counted as a vote.

12-20-13.2. Counting provisional ballots--Certification. The provisional ballot counting board or resolution board and tabulation machine operators shall convene one hour prior to the convening of the canvassing board. The provisional ballots, which the person in charge of the election has determined are not invalid according to § 12-20-5.1, shall be counted. Upon completion of the count, the provisional ballot counting board or resolution board shall complete a certification of provisional ballot count and give the certification to the canvassing board. The certification form shall be prescribed by the State Board of Elections.

12-20-13.3. Counting provisional ballots--Alternate time. The person in charge of the election may establish an alternative time prior to the official canvass for provisional ballot counting provided that notice of the time and location is given to the county party chairperson of each political party for primary, secondary, and general elections and to each candidate for any other election.

12-20-13.4. Counting provisional ballots--Notice. Within ten days after the official county canvass each person voting by provisional ballot shall be sent by the person in charge of the election a notice advising whether the provisional ballot was counted. The notice shall be prescribed by the State Board of Elections.