

August 2020

State-Tribal Relations Committee  
Hope Stockwell

**FINAL REPORT TO THE 67<sup>TH</sup> MONTANA LEGISLATURE**

**HJ 10: BARRIERS TO  
VOTING FOR  
AMERICAN INDIANS IN  
MONTANA**

# 2019-2020

## STATE-TRIBAL RELATIONS COMMITTEE MEMBERS

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the State-Tribal Relations Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

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## EXECUTIVE SUMMARY

This report is a summary of the work of the State-Tribal Relations Committee, specific to the committee's 2019-2020 study of barriers to voting by American Indians in Montana as outlined in House Joint Resolution 10 (2019) and the STRC's work plan. Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the STRC in reaching its conclusions. To review additional information, including audio minutes and exhibits, visit the committee website: <http://leg.mt.gov/tribal>.

# TABLE OF CONTENTS

Executive Summary .....	iv
Introduction.....	1
Access .....	2
Voting Rights Act of 1965.....	2
Tribal identification .....	3
Physical vs mailing addresses .....	3
Ballot Interference Prevention Act.....	4
County perspectives.....	5
Findings and recommendations .....	5
Appendix A: Voting basics.....	6
Voter qualifications .....	6
Voter registration.....	6
Late registration and voting.....	8
Precincts and polling places.....	9
Voter identification .....	9
Provisional ballots .....	10
Absentee ballots.....	10
Mail ballot elections .....	11

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# BARRIERS TO VOTING FOR AMERICAN INDIANS IN MONTANA

## INTRODUCTION

Debate over mail ballot election and voter identification bills in recent legislative sessions, as well as controversy over a North Dakota law that requires voters to present identification displaying a street address, not just a post office box, led in part to the passage of [House Joint Resolution 10](#). The study resolution asked for:

- examination of deadlines and procedures for Montana elections, including requirements for physical addresses and identification, and any obstacles to those requirements on reservations in Montana (see Appendix A);
- analysis of options for addressing any barriers while ensuring election security;
- review of mail ballot requirements and options, and the impact of those requirements on reservations; and
- consideration of any other matters relating to voting by American Indians in Montana that the committee deems appropriate.

The State-Tribal Relations Committee (STRC) allocated 35% of its research time to the study.

An overview of Montana's election laws, received by the STRC in November 2020, is provided in Appendix A: Voting Basics.

Discussions between committee members, stakeholders, and tribal governments revealed that primary barriers to voting for American Indians in Montana include:

- access to polling places;
- a lack of physical addresses within reservation boundaries for verification of placement in polling precincts;
- the complication of commonly shared post office boxes for mailed ballots and other elections communications; and
- the need for more education of election workers about the valid use of tribal IDs for voter identification.

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# BARRIERS TO VOTING FOR AMERICAN INDIANS IN MONTANA

## ACCESS

In Montana, distances from a tribal community to a county election office vary from 18 to 176 miles round trip. The average is 85 miles.<sup>1</sup> Distances improved on three reservations -- Fort Belknap, Crow, and Northern Cheyenne -- after the settlement in *Wandering Medicine v. McCulloch* resulted in establishment of satellite offices in Crow Agency, Busby, Fort Belknap, Hays, Lodgepole, and Lame Deer in 2015. Additionally, other counties not involved in the litigation offer satellite offices in Box Elder, Browning, Heart Butte, Elmo, Poplar, and Frazer.<sup>2</sup>

## Voting Rights Act of 1965

Section 2 of the federal Voting Rights Act of 1965 prohibits racial discrimination in voting by vote dilution or vote denial. Section 2 prohibits both acts that are intended to be racially discriminatory and those shown to have a racially discriminatory result.

### Wandering Medicine v. McCulloch

In *Wandering Medicine v. McCulloch*, 16 plaintiffs from the Fort Belknap, Northern Cheyenne, and Crow Reservations claimed unlawful discrimination by Blaine, Big Horn, and Rosebud counties because the travel time between their communities and the county seat effectively denied their right to vote. In Big Horn County, plaintiffs said tribal members traveled 189% farther to register late or vote early than did white county residents. In Rosebud County, it was 267% farther. In Blaine County, it was 322% farther. Plaintiffs also said tribal members were two to four times more likely to be in poverty and two to three times less likely to have access to a vehicle for the trip.<sup>3</sup>

Court-ordered mediation in 2014 resulted in a settlement requiring the counties to open satellite offices 2 days a week during the period of late registration and absentee voting as long as tribes made an official request by January 31 of each election year, provided a suitable ADA-compliant location with hard-wired Internet and certain security measures, and indemnified the counties for any injuries sustained because of conditions of the premises.<sup>4</sup>

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<sup>1</sup> [Barriers to election services and voting for Native Americans](#), Western Native Voice, November 2020, page 3.

<sup>2</sup> “2018 General Election Satellite/Alternate Election Office Schedule,” <https://leg.mt.gov/content/Committees/Interim/2019-2020/State-Tribal-Relations/Meetings/November-2019/satellite-offices-reservationcounties-2018.pdf>.

<sup>3</sup> Laura Sankey-Keip, attorney, Legislative Services Division, testimony to the STRC, November 11, 2020.

<sup>4</sup> Ibid.

# BARRIERS TO VOTING FOR AMERICAN INDIANS IN MONTANA

Voting rights advocates argue the satellite offices' hours of operation are too limited and still require traveling long distances and that publicly available information about their operations for the June 2020 primary was limited.<sup>5,6</sup>

## TRIBAL IDENTIFICATION

While tribal IDs are an acceptable form of voter identification under state law, the STRC heard anecdotally from advocacy groups and tribal council members that election workers can still balk at them.<sup>7</sup> The STRC asked the Secretary of State's Office (SOS) to remind county election administrators to educate their workers in advance of the June 2020 primary. At the committee's request, the SOS also amended its sample voter registration form to include tribal identification in the printed list of acceptable forms of ID.

## PHYSICAL VS. MAILING ADDRESSES

A physical address is not required by law to register to vote. But an election administrator needs to know where a voter lives to ensure the voter receives the right ballot. A residential address is required on the SOS voter registration form.

If a voter lives somewhere that doesn't have an assigned street address, other descriptions may be used. However, Western Native Voice told the STRC in November 2019 that counties have rejected voter registrations because of inconsistencies in what is considered acceptable for a physical address.<sup>8</sup>

Western Native Voice says since all tribes in Montana lack a uniform and consistent addressing system, it's not uncommon for 9-1-1 emergency systems, tribal housing authorities, and counties to have different addressing protocols. This can result in a house having multiple addresses and the resident's confusion about what the address is.<sup>9</sup>

In March 2020, the STRC heard from the Rural Utah Project about its work with the Navajo Nation to use [plus codes](#) to denote residence locations there. Plus codes are an

### Plus Code for the Montana State Capitol

Long code: 85R9HXPJ+98J

Short code: HXPJ+8J Helena, MT



<sup>5</sup> [Barriers to election services and voting for Native Americans](#), Western Native Voice, November 2020, page 3.

<sup>6</sup> [Indian People's Action, testimony](#) to the STRC, June 2020.

<sup>7</sup> CSKT Tribal Council Chairwoman Shelly Fyant, testimony to the STRC, May 7, 2020.

<sup>8</sup> [Barriers to election services and voting for Native Americans](#), Western Native Voice, November 2020, page 1.

<sup>9</sup> [Barriers to election services and voting for Native Americans](#), Western Native Voice, November 2020, page 1.

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# BARRIERS TO VOTING FOR AMERICAN INDIANS IN MONTANA

open source (free), shorthand version of existing latitudinal and longitudinal coordinates that can be used for emergency services, utilities, elections, and other purposes.

The STRC asked the SOS to investigate whether it should include plus code conversion in its upcoming voter registration database update. Dana Corson, SOS elections director, explained in May 2020 that the new system will be flexible. It can use the Next Generation 9-1-1 geolocating system and allow a voter with no street address to "drop a pin" on an electronic map to derive the GPS data needed to determine the voter's polling precinct. The STRC didn't opt to pursue the use of plus codes further.

Ensuring the deliverability of a mailed ballot is a different story. There's limited opportunity for residential mail delivery on reservations, so many tribal members receive their mail via post office box. Often, dwellings are shared by more than one family. But only one post office box can be assigned per residence.<sup>10</sup> The STRC heard anecdotes about one person picking up another house member's mail but failing to deliver it in a timely fashion. Traveling to the post office box can also be a barrier for those without a vehicle or with little money to buy gas.

Western Native Voice reports that while the number of tribal members on reservations requesting absentee ballots increased 16% between 2012 and 2018, the return rate of those ballots declined 18% in the same time period.<sup>11</sup>

In the June 2020 primary, held by mailed ballots in response to COVID-19, Indian People's Action told the STRC that eight of the nine counties with the lowest turnout contained tribal lands within their boundaries.<sup>12</sup>

## BALLOT INTERFERENCE PREVENTION ACT

Montana voters passed the Ballot Interference Prevention Act (BIPA) in 2018. It bans the collection of ballots except by a caregiver, family or household member, acquaintance, postal service worker, or election official. Also, only a postal worker or an election official may collect more than six ballots. Each unlawfully collected ballot can result in a fine of \$500.<sup>13</sup>

Advocacy groups told the STRC that BIPA prevents them from organizing ballot drop-off locations and is a barrier for already disenfranchised tribal communities where it's not uncommon for one community member to pick up and deliver 10 to 20 ballots.<sup>14</sup> The STRC didn't take action to amend BIPA, but two lawsuits filed in March 2020 (*Western Native Voice v. Stapleton* and *Driscoll v. Stapleton*) resulted in court actions that prohibited enforcement of BIPA in the June 2020 primary.

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<sup>10</sup> [Barriers to election services and voting for Native Americans](#), Western Native Voice, November 2020, page 2.

<sup>11</sup> Ibid.

<sup>12</sup> [Indian People's Action](#), testimony to the STRC, June 2020.

<sup>13</sup> 13-35-703, MCA.

<sup>14</sup> [Barriers to election services and voting for Native Americans](#), Western Native Voice, November 2020, page 4.

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# BARRIERS TO VOTING FOR AMERICAN INDIANS IN MONTANA

On July 7, 2020, Judge Jessica Fehr in the Thirteenth Judicial District granted a preliminary injunction continuing to prohibit the enforcement of BIPA, finding the Act "will significantly suppress voter turnout by disproportionately harming rural communities, especially individual Native Americans in rural tribal communities across the seven Indian reservations located in Montana by limiting their access to the vote."<sup>15</sup>

Fehr also found that BIPA "serves no legitimate purpose; it fails to enhance the security of absentee voting; it does not make absentee voting easier or more efficient; it does not reduce the costs of conducting elections; and it does not increase voter turnout."<sup>16</sup>

A hearing on a permanent injunction is scheduled in early September 2020.

## COUNTY PERSPECTIVES

The STRC met with election administrators from Big Horn, Rosebud, Blaine, and Lake counties over the course of the interim to get their perspectives on elections in Indian Country. They discussed implementation of the *Wandering Medicine* settlement, how budget and staffing limits affect satellite office hours and other election operations, use of the Next Generation 9-1-1 geolocating system to correctly assign voters to precincts, training for election workers regarding verification of voter identification and other procedures, BIPA, and the impact of COVID-19 on the execution of the June 2020 primary.

## FINDINGS AND RECOMMENDATIONS

The STRC finds:

- an accurate physical description of the location where a voter resides is important to preserving the integrity of our election system by ensuring a voter is recorded in the correct polling place.
- it is incumbent that all individuals take responsibility to verify their addresses are accurately recorded in the state's voter database.

The STRC recognizes portions of Montana, including some Indian reservations, do not currently have street addressing systems. The STRC encourages affected political subdivisions to pursue the use of alternate geocoding systems, including Next Generation 9-1-1, to better serve Montana's citizens in emergency response, voting, and other essential services.

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<sup>15</sup> [Granting Pl.'s Mot. For Prelim. Injunctive Relief](#) at 7, *Western Native Voice v. Stapleton*, DV-2020-377 (Mont. 13th Dist., July 7, 2020).

<sup>16</sup> *Ibid*, at 9.

# BARRIERS TO VOTING FOR AMERICAN INDIANS IN MONTANA

## APPENDIX A: VOTING BASICS

The STRC kicked off its HJR 10 work in November 2020 with a review of current statutes, deadlines, and procedures for Montana elections. Note: this section does not include specifics pertaining to voting by service members.

### Voter qualifications

Per Article IV, section 2, of the Montana Constitution, a "qualified elector" is:

- a citizen of the United States; and
- 18 years of age or older.

Additionally, statute requires electors to have lived in Montana and in the county in which the person will vote for at least 30 days.<sup>17,18</sup>

Qualified electors exclude those serving a felony sentence in a penal institution and those of unsound mind, as determined by a court.<sup>19</sup>



### Voter registration

The primary forms of identification for voter registration are:

- the applicant's Montana driver's license number<sup>20</sup>; or
- the last four digits of the applicant's Social Security number.<sup>21</sup>

In lieu of those, an applicant may present an original of one of the following if applying in person or a copy if applying by mail:

- a current and valid photo ID with the individual's name, including but not limited to:
  - a school district or postsecondary education photo ID; or
  - a tribal photo ID, with the individual's name; or

<sup>17</sup> 13-1-111, MCA.

<sup>18</sup> There is an exception for electors who move to a different county within 30 days of an election and update their registration information.

<sup>19</sup> Article IV, section 2, Montana Constitution.

<sup>20</sup> Pursuant to 44.3.2002, ARM, "driver's license number" means a number provided by the Montana Department of Justice's Motor Vehicle Division (MVD) on either an MVD driver's license or an MVD identification card.

<sup>21</sup> 13-2-110, MCA.

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# BARRIERS TO VOTING FOR AMERICAN INDIANS IN MONTANA

- a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

To register, an applicant shall provide a current street or rural address or, if neither is available, other specific geographic location information from which the applicant's residence may be easily determined.<sup>22</sup>

The Montana Secretary of State's Office (SOS) provides a standard registration form<sup>23</sup> and requires county election administrators to work with the SOS, the Department of Justice's Motor Vehicle Division, the Social Security Administration, and other agencies, as needed, to verify the applicant's information.<sup>24</sup>

## Provisional registration

If the application is sufficient to be accepted but fails to provide the necessary information to verify the applicant's identity or if the information is incorrect, the election administrator shall register the applicant as a provisionally registered elector, pending receipt and verification, at any time up to and including on election day, of the necessary information.<sup>25,26</sup>

## Office hours

Statute requires election administrators' offices to be open for registration from 8 a.m. to 5 p.m. on regular working days. The office may be kept open at other times at the discretion of the election administrator.<sup>27</sup>

## Agency-based registration

Qualified individuals must be given the opportunity to register to vote when applying for or receiving services or assistance:

- at an agency that provides public assistance;
- at or through an agency that provides state-funded programs primarily engaged in providing services to persons with disabilities; or
- at another agency designated by the secretary of state with the consent of the agency.<sup>28</sup>

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<sup>22</sup> 13-2-208, MCA.

<sup>23</sup> 13-2-110, MCA.

<sup>24</sup> 44.3.2012, ARM.

<sup>25</sup> 13-2-110, MCA.

<sup>26</sup> 44.3.2005, ARM.

<sup>27</sup> 13-2-201, MCA.

<sup>28</sup> 13-2-221, MCA.

# BARRIERS TO VOTING FOR AMERICAN INDIANS IN MONTANA

Methods of Agency-Based Registration in Montana				
	2017	2018	2019 (as of Nov. 1)	Of all currently registered voters
Motor Vehicle Division	13,425	15,314	12,155	134,296
DPHHS Office of Public Assistance	253	285	286	4,062
DPHHS Vocational Rehabilitation Services	2	0	0	12

Total registered voters in the 2018 general election = 711,844  
 Data provided by Montana Secretary of State's Office, 11/1/2019

## Late registration and voting

Statute closes regular voting registration for 30 days prior to an election.<sup>29</sup> To notify the public, election administrators shall:

- publish a notice specifying the availability of late registration options in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of regular registration; or
- broadcast a notice on radio or television using the method the election administrator believes is best suited to reach the largest number of potential electors.<sup>30</sup>

An elector may register or change the elector's registration information after the close of regular registration if the county election administrator receives and verifies the elector's information prior to the close of the polls on election day. Late registration closes from noon to 5 p.m. on the day before the election.<sup>31,32</sup>

An elector who registers or changes registration information after the close of regular registration may vote in the election if the elector obtains the ballot from the location designated by the election administrator.<sup>33</sup> The elector may return that ballot:

- before election day to a location designated by the election administrator; or
- on election day to the election office or any polling place in the county where the elector is registered to vote.<sup>34</sup>

<sup>29</sup> A registration application postmarked on or before the day regular registration closes must be accepted as a regular registration for 3 days after regular registration closes.

<sup>30</sup> 13-2-301, MCA.

<sup>31</sup> 13-2-304, MCA.

<sup>32</sup> Secretary of State Election Directive #01-06 (updated May 2010) requires new registrants registering fewer than 30 days before the election to do so at the county election administrator's office. They must also pick up their ballot in person at the election administrator's office.

<sup>33</sup> An elector who was already issued a ballot may change the elector's voter registration information only if the original voted ballot is not yet received at the county election office and if the original ballot is marked by the issuing county as void prior to the change.

<sup>34</sup> 13-2-304, MCA.

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# BARRIERS TO VOTING FOR AMERICAN INDIANS IN MONTANA

## Precincts and polling places

The county governing body shall establish a convenient number of election precincts, equalizing the number of electors in each precinct as nearly as possible.<sup>35</sup> An election district (or ward) may be divided into two or more precincts, which may be divided into two or more polling places.<sup>36</sup>

The county governing body shall designate polling places no later than 30 days before a primary. The same polling place must be used for both the primary and general elections if at all possible. Changes may be made up to 10 days before an election.<sup>37</sup>

Between 2 and 10 days before an election, the election administrator shall publish the locations of the polling places in a newspaper of general circulation in the county and indicate which ones are accessible to disabled and elderly individuals.<sup>38,39</sup>

## Voter identification

Before an elector may receive a ballot or vote, the elector shall present a current photo ID showing the elector's name. This includes but is not limited to:

- a valid driver's license;
- a school district or postsecondary education photo ID; or
- a tribal photo ID.

In lieu of those, the elector may use a current utility bill, bank statement, paycheck, voter registration confirmation notice, government check, or other government document that shows the individual's name and current address.<sup>40</sup>

Identification is presumed to be current and valid unless proved otherwise. A driver's license or ID card is presumed to be current and valid if it is issued by any motor vehicle agency, regardless of its status. Any other photo ID is sufficient if it includes the name and photo of the individual.<sup>41</sup>

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<sup>35</sup> 13-3-101, MCA.

<sup>36</sup> 13-3-104, MCA.

<sup>37</sup> 13-3-105, MCA.

<sup>38</sup> 13-3-105, MCA.

<sup>39</sup> Pursuant to 13-3-202, MCA, "disabled" means a temporary or permanent physical impairment, such as impaired vision, hearing, or mobility. "Elderly" means 65 years of age or older.

<sup>40</sup> 13-13-114, MCA.

<sup>41</sup> 44.3.2002, ARM.

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# BARRIERS TO VOTING FOR AMERICAN INDIANS IN MONTANA

## Provisional ballots

An elector may cast a provisional ballot if:

- the information provided by the elector as voter identification is insufficient to verify the elector's identity and eligibility to vote;
- the elector's name does not appear in the precinct register;
- the elector's name appears in the precinct register as provisionally registered and the provisional status cannot be resolved at the polling place;
- the elector fails or refuses to sign the precinct register book; or
- the elector is disabled and a fingerprint, an identifying mark, or a signature by a person authorized to sign by the elector is not provided.<sup>42</sup>

An elector voting provisionally by mail may enclose in the outer signature envelope a copy of a current and valid photo ID with the elector's name or a copy of a current utility bill, bank statement, paycheck, voter registration confirmation notice, government check, or other government document that shows the individual's name and current address or other information necessary to determine the elector's eligibility to vote.<sup>43</sup>

An elector voting provisionally in person shall first sign an affirmation that, to the best of the elector's knowledge, the elector is eligible to vote in the election and precinct and is aware of the penalty for false swearing. Provisional ballots voted in person must be returned to an election judge.<sup>44</sup> The elector has until 5 p.m. on the day after the election to provide valid ID or eligibility information either in person, by facsimile, by electronic means, or by mail postmarked no later than the day after the election.<sup>45</sup>

If a legally registered individual casts a provisional ballot because the individual failed to provide sufficient identification, the election administrator shall compare the signature of the individual on the affirmation to the signature on the individual's voter registration form. If the signatures match, the ballot must be counted.<sup>46</sup>

## Absentee ballots

A legally or provisionally registered elector may vote by absentee ballot in person before election day at the election administrator's office or by mailing or delivering a completed ballot to the election office, a polling place in the elector's county, the absentee election board, or an authorized election official. Regardless of the delivery method, the ballot must be received by 8 p.m. on election day to be counted.<sup>47</sup>

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<sup>42</sup> 13-13-114, MCA.

<sup>43</sup> 13-13-602, MCA.

<sup>44</sup> 13-13-601, MCA.

<sup>45</sup> 13-15-107, MCA.

<sup>46</sup> 13-15-107, MCA.

<sup>47</sup> 13-13-201, MCA.

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# BARRIERS TO VOTING FOR AMERICAN INDIANS IN MONTANA

An application for an absentee ballot must be made before noon on the day before the election.<sup>48</sup> Applications may be mailed or delivered in person to the election administrator.<sup>49</sup>

For an election conducted on a primary or general election day, ballots must be available 30 days prior for absentee voting in person, 25 days prior for mailing ballots to absentee voters, and 20 days prior for a special purpose district or school district election.<sup>50</sup>

An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote as long as the elector remains qualified to vote and resides at the address provided in the initial application. The request may be made when the individual applies for voter registration.<sup>51</sup>

An elector may ask to be removed from the absentee ballot list by notifying the election administrator in writing. This does not prevent the elector from opting to receive absentee ballots again in the future.<sup>52</sup>

## Mail ballot elections

In mail ballot elections, an election packet is mailed to each qualified, active elector 15 to 20 days before election day.<sup>53,54</sup> An elector who completes a ballot may either return it by mail or deliver it to a designated place of deposit by 8 p.m. on election day.<sup>55,56</sup>

An elector must place a completed ballot in the secrecy envelope, free of any identifying marks, and then in the signature envelope.<sup>57</sup> The signature envelope is used by election officials to determine if the ballot is from a qualified elector who has not submitted another ballot.<sup>58</sup>

Statute requires election administrators to provide instructions on the estimated amount of postage needed to return a ballot by mail or, if the elector opts to deliver it in person, where and when the elector may do so.<sup>59</sup>

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<sup>48</sup> 13-13-211, MCA.

<sup>49</sup> 13-13-213, MCA.

<sup>50</sup> 13-13-205, MCA.

<sup>51</sup> 13-13-212, MCA.

<sup>52</sup> 13-13-212, MCA.

<sup>53</sup> 13-19-206, MCA.

<sup>54</sup> 13-19-207, MCA.

<sup>55</sup> 13-19-106, MCA.

<sup>56</sup> Pursuant to 13-19-307, MCA, an election administrator may designate one or more places in the political subdivision in which the election is being conducted as a place of deposit. Prior to election day, election administrators may set the dates and times that designated places of deposit are open. On election day, each location must be open during the normal hours of operation for a polling place pursuant to 13-1-106, MCA.

<sup>57</sup> 13-19-301, MCA.

<sup>58</sup> 13-19-106, MCA.

<sup>59</sup> 13-19-205, MCA.

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# BARRIERS TO VOTING FOR AMERICAN INDIANS IN MONTANA

Election packets must be mailed so that undelivered packets are returned to the election administrator instead of being forwarded to another address.<sup>60</sup> If a mail ballot is returned, the election administrator shall attempt to contact the elector by the most expedient means available to determine the reason for the return and mail a confirmation notice if the elector cannot be contacted otherwise. The notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice.<sup>61</sup>

Late registration is allowed. Those who register on election day or the day before election day must receive the ballot and vote it at the election administrator's office.<sup>62</sup>

A qualified elector who will be absent from the county during the time the election is being conducted may vote in person in the election administrator's office as soon as ballots are available and until noon the day before the ballots are scheduled to be mailed. Or, the elector may make a written request that the ballot be mailed to an address other than the address that appears on the person's registration form. Written requests must be accepted until noon the day before the ballots are scheduled to be mailed.<sup>63</sup>

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<sup>60</sup> 13-10-206, MCA.

<sup>61</sup> 13-19-313, MCA.

<sup>62</sup> 13-19-207, MCA.

<sup>63</sup> 13-19-303, MCA.