

**TO:** Chair Cuffe, Senate Select Committee on Elections

**FROM:** Andria Hardin

**DATE:** August 29, 2024

**RE:** Process for obtaining a court-ordered vote recount of elections

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This memo seeks to provide an overview of the current statutory process for obtaining a vote recount of an election by court order found under Title 13, Chapter 16, Part 3 of the Montana Code Annotated.

Only two individuals can seek a recount by court order: an unsuccessful candidate for public office or an elector eligible to vote for or against an issue on the ballot. If either have grounds for a recount, they can make an application to the appropriate district court<sup>1</sup> requesting a recount.

There are several requirements for the application. First, the application must be filed in the district court within five (5) days after the completion of the canvass of election. Second, the application must specify the grounds for seeking the recount. Grounds for a recount may include but are not limited to an assertion that votes were counted incorrectly or that election judges failed to comply with the statutory vote counting process<sup>2</sup>. The application must set forth the grounds as they pertain to each county, precinct, or issue for which the applicant wants a recount of the votes (without sufficient grounds, the judge will not include those counties and/or precincts in the order for a recount). And fourth, the application must be verified, meaning it is sworn to as truthful based on the applicant's knowledge, information, and belief.

The district court must hold a hearing on the application within five (5) days of filing. If the judge finds probable cause to believe that the votes cast for the applicant or ballot issue were incorrectly counted, the judge will issue an order that the county board assemble within five (5) days of the issuance of the order for a recount. The court order shall specify the time and place of the recount, as well as the precincts, race, and/or ballot issues to be recounted.

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<sup>1</sup> 13-16-301(1)(a), MCA provides that an unsuccessful candidate can file an application in the district court of the county where the election was held, or the county where the candidate resides if the election was held in more than one county. If the applicant is an elector seeking a recount of a ballot issue, the application will be filed in the district court where the elector resides. 13-16-301(1)(b), MCA.

<sup>2</sup> If the grounds provided in the application aver that election judges failed to comply with the vote counting process outlined in 13-15-206, MCA there is a presumption of an incorrect ascertainment of the vote count. 13-16-303, MCA.