



# Constitutional Bail Exception for First Degree Murder

Placed on the ballot by the legislature • Passes with 55 percent of the vote

## Amendment I proposes amending the Colorado Constitution to:

- restore the ability of judges to deny bail to people charged with first degree murder when certain criteria are met.

### What Your Vote Means

**YES** A "yes" vote on Amendment I allows judges to deny bail to a person charged with first degree murder when the judge determines that the proof is evident or presumption is great that the person committed the crime.

**NO** A "no" vote on Amendment I requires judges to set bail for all persons charged with first degree murder.

### Summary and Analysis of Amendment I

#### What is the history of bail and the death penalty in Colorado?

Since the ratification of the Colorado Constitution in 1876, a person accused of a crime has the right to bail out of county jail while awaiting trial, except under certain circumstances. One of these exceptions is for offenses for which the death penalty may be sought, which includes first degree murder, as long as the "proof is evident and the presumption is great" that the person committed the offense. This is a high legal standard used by judges after a prosecutor presents evidence at an initial hearing in a criminal case. It is a standard that is greater than the standard required for arrest but less than the standard required for a conviction in a trial.

In 2020, the General Assembly passed a law that abolished Colorado's death penalty. As a result, there is no longer an exception to the bail requirement for first degree murder, and differing interpretations emerged on whether or not judges must set bail in first degree murder cases. The Colorado Supreme Court intervened and, on June 20, 2023, ruled that all people charged with first degree murder are eligible for pretrial release and therefore judges cannot deny them bail.

#### What does the measure change?

In response to the Colorado Supreme Court ruling, the General Assembly referred Amendment I to the voters, which, if passed, amends the Colorado Constitution to again allow judges to deny bail in first degree murder cases when the proof is evident or the presumption is great that the person committed the crime.

#### What is first degree murder?

A person can be charged with first degree murder if the offense occurs as a result of any of the following:

- a premeditated intent to kill;
- showing extreme indifference to human life while engaging in conduct that could knowingly kill another person which then results in a death;
- providing a controlled substance to a child on school grounds who dies as a result; or
- a person in a position of trust knowingly causing the death of someone under 12 years old.

For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2024, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<https://coloradosos.gov/pubs/elections/Initiatives/InitiativesHome.html>

## Argument For Amendment I

- 1) The measure restores a longstanding statewide legal precedent that was inadvertently eliminated by the repeal of the death penalty. Prior to the repeal by the General Assembly in 2020, persons charged with first degree murder were not eligible for bail. Without the possibility of a death sentence, persons charged with first degree murder are now eligible for bail. In addition, the legal standard of "proof is evident or presumption is great" is high enough to provide a safeguard against judges routinely denying bail for all persons charged with first degree murder, regardless of the evidence in the case. People meeting this high standard are a danger to others if they are released.

## Argument Against Amendment I

- 1) In the United States, a person is considered innocent until proven guilty. If an individual is ultimately found not guilty at trial, a pre-trial detention means they would have spent time in jail for a crime they did not commit. This raises significant concerns about justice and fairness, as the time lost and impacts on their life cannot be undone. Therefore, a person arrested for a criminal offense should have the opportunity to be free pending trial. Judges have the discretion to set restrictive bail conditions if they believe a person is especially violent or likely to commit another offense if they are released pending trial.

## Fiscal Impact of Amendment I

**State and local spending.** Amendment I will increase workload in state trial courts, state agencies that provide representation for indigent persons, and local district attorney offices to review whether the criteria for denying bail have been met in first degree murder cases. First degree murder cases are already time intensive, and the type of hearing required by the measure is expected to occur infrequently. Thus, any workload impact under the measure will be minimal and not affect state or local spending.