

HCR24-1002: Constitutional Bail Exception First Degree Murder

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

1 HCR24-1002 proposes amending the Colorado Constitution to:

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

4 What Your Vote Means

5 YES

6 A “yes” vote on HCR24-1002 allows judges
7 to deny bail to a person charged with first
8 degree murder when the judge
9 determines that the proof is evident or
10 presumption is great that the person
11 committed the crime.

12 NO

13 A “no” vote on HCR24-1002 requires
14 judges to set bail for all persons charged
15 with first degree murder regardless of the
16 facts of the case.

17 Summary and Analysis of HCR24-1002

18 Background

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

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

33 What does the measure change?

34 In response to the Colorado Supreme Court ruling, the General Assembly passed House
35 Concurrent Resolution 24-1002, which, if approved by the voters, amends the Colorado

1 Constitution to again allow judges to deny bail in first degree murder cases when the proof
2 is evident or the presumption is great that the person committed the crime.

3 **What is first degree murder?**

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

- 6 • a premeditated intent to kill;
- 7 • showing extreme indifference to human life while engaging in conduct that could
8 knowingly kill another person which then results in a death;
- 9 • providing a controlled substance to a child on school grounds who dies as a result; or
- 10 • a person in a position of trust knowingly causes the death of someone under 12 years
11 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>

12 **Argument For HCR24-1002**

- 13 1) When the General Assembly abolished the death penalty in 2020, its intent was not to
14 begin requiring judges to set bail for all persons charged with first degree murder; this
15 was an unintended and unforeseen consequence. The measure restores a longstanding
16 statewide legal precedent that was eliminated unintentionally. In addition, the legal
17 standard of "proof is evident or presumption is great" is high enough to provide a
18 safeguard against judges routinely denying bail for all persons charged with first degree
19 murder, regardless of the evidence in the case.

20 **Argument Against HCR24-1002**

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

28 **Fiscal Impact of HCR24-1002**

29 The fiscal impact will be included in the second draft.