

# Amendment I: Constitutional Bail Exception for First Degree Murder

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

- 1 **Amendment I 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 Amendment I allows  
7 judges to deny bail to a person charged  
8 with first 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 Amendment I requires  
14 judges to set bail for all persons charged  
15 with first degree murder.

## 16 **Summary and Analysis of Amendment I**

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

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

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

### 32 **What does the measure change?**

33 In response to the Colorado Supreme Court ruling, the General Assembly referred  
34 Amendment I to the voters, which, if passed, amends the Colorado Constitution to again

1 allow judges to deny bail in first degree murder cases when the proof is evident or the  
2 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 causing the death of someone under  
11 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>

## 12 **Argument For Amendment I**

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

## 22 **Argument Against Amendment I**

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

## 30 **Fiscal Impact of Amendment I**

31 **State and local spending.** Amendment I will increase workload in state trial courts, state  
32 agencies that provide representation for indigent persons, and local district attorney offices

## Legislative Council Draft

- 1 to review whether the criteria for denying bail have been met in first degree murder cases.
- 2 First degree murder cases are already time intensive, and the type of hearing required by the
- 3 measure is expected to occur infrequently. Thus, any workload impact under the measure
- 4 will be minimal and not affect state or local spending.

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# Last Draft Comments from Interested Parties

## **Amendment I Constitutional Bail Exception for First Degree Murder**

**Sonia Russo, representing herself:**

Hello!

I am writing in my personal, individual capacity only. That being said, I'm an attorney with experience in criminal law. Again, I reiterate that I'm providing this feedback in my personal, individual capacity only. My employer has not approved this feedback being provided on its behalf and the feedback is in fact not being provided on its behalf.

I strongly suggest making it clear to the voting public what "setting bail" and "denying bail" mean practically. To what your yes vote means, I would add something like "Denial of bail means that a criminal defendant will remain in jail during the pendency of the case." To what your no vote means, I would add something like, "Setting bail means that there is a possibility that the criminal defendant could be released from jail while the case is pending."

I would rephrase the fiscal impact section to read something like, "Amendment I will not affect state and local spending, and it may infrequently and minimally 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." That's a fairly long sentence, so if it makes sense to break it up into two sentences, that would be ideal.

Thanks very much,

Sonia R. Russo

**Amendment I**  
**Constitutional Bail Exception for First Degree Murder**  
**Contact List**

<b>Interested Party</b>	<b>Organization Name</b>	<b>Email Address</b>
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Sophia Mayott-Guerrero	ACLU-CO	smayott-guerrero@aclu-co.org



**Amendment I**  
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**Contact List (Cont.)**

<b>Interested Party</b>	<b>Organization Name</b>	<b>Email Address</b>
Gordon McLaughlin	8th Judicial District Attorney	mclauggp@co.larimer.co.us
N Menten	self on some issues (also a board director for the Taxpayer's Bill of Rights Foundation)	coloradoengaged@gmail.com
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Meredith Moon	Institute of Evidence-based Policymaking	meredith.moon@evidence-based.org
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Janet Tanner		tannerjj@gmail.com
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Ken		ken@dreamofgolf.com

**Amendment I**  
**Constitutional Bail Exception First Degree Murder**

1 **Ballot Title:**

2 Shall there be an amendment to the Colorado constitution concerning creating an exception to the right to bail  
3 for cases of murder in the first degree when proof is evident or presumption is great?

4 **Text of Measure:**

5 *Be It Resolved by the House of Representatives of the Seventy-fourth General Assembly of the State of Colorado, the*  
6 *Senate concurring herein:*

7 **SECTION 1.** At the election held on November 5, 2024, the secretary of state shall submit to the registered  
8 electors of the state the ballot title set forth in section 2 for the following amendment to the state constitution:

9 In the constitution of the state of Colorado, section 19 of article II, **amend** (2); and **add** (1)(d) as follows:

10 **Section 19. Right to bail - exceptions.** (1) All persons shall be bailable by sufficient sureties pending disposition  
11 of charges except:

12 (d) FOR THE OFFENSE OF MURDER IN THE FIRST DEGREE, AS DEFINED BY LAW, COMMITTED ON OR AFTER THE EFFECTIVE DATE OF THIS  
13 SUBSECTION (1)(d), WHEN PROOF IS EVIDENT OR PRESUMPTION IS GREAT.

14 (2) Except in the case of a capital offense OR MURDER IN THE FIRST DEGREE, if a person is denied bail under this section,  
15 the trial of the person shall be commenced not more than ninety days after the date on which bail is denied. If  
16 the trial is not commenced within ninety days and the delay is not attributable to the defense, the court shall  
17 immediately schedule a bail hearing and shall set the amount of the bail for the person.

18 **SECTION 2.** Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following  
19 ballot title: "Shall there be an amendment to the Colorado constitution concerning creating an exception to the  
20 right to bail for cases of murder in the first degree when proof is evident or presumption is great?"

21 **SECTION 3.** Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if at least fifty-five  
22 percent of the electors voting on the ballot title vote "Yes/For", then the amendment will become part of the  
23 state constitution.