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VOTERS' GUIDE

Colorado Amendment I would remove right to bail for first-degree murder charges

This measure would add first-degree murder to the category of cases for which a person is able to be held in jail without bail pending trial in Colorado.



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Summary

[Colorado Amendment I](#) would add first-degree murder to the category of cases for which a person is able to be held in jail without bail pending trial in Colorado.

Fiscal Impact

According to the [state's final fiscal note](#), "If approved, the resolution may increase state and local workload" and therefore calls for no appropriation. The report concludes that there will be longer bail hearings in murder cases but that the extra workload will be minimal. For a sense of scale, there were [366 murders in Colorado](#) in 2023.

Proponents' Arguments

[Proponents see this measure](#) as a simple fix to an unintended result of an unrelated law change and a way to improve public safety and help victims. In 2020, Colorado abolished the death penalty. Until then, murders were non-bail-eligible under the Colorado Constitution, meaning people accused of murders would not be allowed to get out of pretrial detention at a stage in a criminal case when people are presumed innocent.

But after the death penalty repeal, because of the wording in the constitution, murders became technically bail-eligible offenses in 2020. Because the language of the constitution used “capital offenses” to preclude murder cases from bail, the law no longer technically exempted first-degree murders after the state repealed the death penalty. Last year, a court confirmed that the law as written did not apply to first-degree murders.

In the meantime, defendants have been seeking bail determinations in some of the 500 murder cases that have been brought since. The proponents seek to “fix” the constitution to match the original intent to deny bail to first-degree murderers. They note that it is really just a restoration to the status before 2020, when all murders were non-bail-eligible.

Opponents’ Arguments

A person can only be eligible to be held without bail if “[proof is evident or presumption is great](#)” that the person would be found guilty at a subsequent trial, a [legal standard that is higher than](#) “probable cause” but lower than “beyond a reasonable doubt.” State Rep. Javier Mabrey (D-Denver) [remarked in opposition](#) to the measure:

“I felt that it could impact the principle of innocence until proven guilty. If a judge makes a determination that someone is likely guilty before the trial, I worry about the signal that could send to the jury, the prosecution and the defense.”

Discussion

This ballot amendment was sent to the voters by the legislature because the state’s constitution must be amended in order to expressly add first-degree murders to the bail exceptions. If the provisions were contained in the regular penal code of the state, this change might have been made by the legislature alone. Also, because it is a constitutional amendment, a [55% vote is required](#) for passage.

Bail is designed as a way to ensure that people return to court to answer for their alleged crimes and don’t commit more crimes before answering for the current one. [Bail](#) hearings are supposed to be a process in which a judge evaluates the risk of an accused person failing to return to court or committing additional crimes. For high-risk individuals, pretrial release should be denied, while for low-risk individuals, the pretrial release should be the decision. Bail is a tool to incentivize good behavior by individuals for whom the judge is concerned. Along with conditions of release, bail is the payment of money that is forfeited if the person doesn’t come to court or is re-arrested.

Some [jurisdictions have moved away](#) from or reduced the use of money bail because the practice can be unfair. In practice, many courts often impose bail on virtually all accused persons. Since bail costs money, it

allows people with financial means to get out of jail until their trial, while people who are poor are often consigned to jail incarceration even if they are likely to return to court and pose no danger to the community. Holding people in jail who are presumed innocent and not likely to flee or commit more crimes is fundamentally unjust. With capital crimes, the risk of flight is likely greater, and in some cases, the danger to the community is greater as well, so bail is always much more rare in such cases.

That said, in cases where the judge determines there is a low risk of flight or additional criminal behavior, bail should be available to people accused of murder and still presumed innocent to allow them to assist in their defense for a serious charge and to avoid the consequences of being unable to work and care for a family.

Nevertheless, the change here seems in line with the intent of the legislature and prior law, and the category of crime with which these people are charged (first-degree murder) is often associated with public safety risks, so this is among the population most appropriate for detention. It would be preferable to allow an individualized determination for each case rather than having a categorical exclusion, but this is a reasonable balancing of resources.

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