

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 21-0758.02 Jacob Baus x2173

SENATE BILL 21-138

SENATE SPONSORSHIP

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Senate Committees

Judiciary
Appropriations

House Committees

Judiciary
Appropriations

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO IMPROVE THE SUPPORT OF PERSONS IN**
102 **THE CRIMINAL JUSTICE SYSTEM WITH A BRAIN INJURY, AND, IN**
103 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill permits, subject to available appropriations, the department of corrections to create a brain injury pilot program to determine whether a comprehensive brain injury program within the department improves outcomes for offenders.

The bill creates in the department of human services the brain

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
May 28, 2021

HOUSE
Amended 2nd Reading
May 26, 2021

SENATE
3rd Reading Unamended
May 10, 2021

SENATE
Amended 2nd Reading
May 7, 2021

injury support in the criminal justice system task force to develop a plan to integrate into the criminal justice system a model to identify and support individuals with a brain injury who are in the criminal justice system.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) According to research, an estimated twenty-five percent to
5 eighty-seven percent of inmates report having experienced a traumatic
6 brain injury, compared to approximately eight and one-half percent of the
7 general population;

8 (b) Research has demonstrated that people under criminal justice
9 supervision with a traumatic brain injury tend to have poorer outcomes,
10 including high rates of recidivism;

11 (c) Traumatic brain injury can affect a person's ability for
12 self-regulation, planning, organization, judgment, reasoning, and problem
13 solving. Additionally, there may be emotional and behavioral changes
14 after a traumatic brain injury, including increased agitation, depression,
15 and irritability. A report published in August of 2020 by the University
16 of Denver stated that these behaviors are related to a greater risk for
17 involvement in the criminal justice system. In fact, the consequences of
18 traumatic brain injury are often "linked to violence, infractions in prison,
19 poorer treatment gains, and reconviction" as well as "ongoing mental
20 health and drug and alcohol problems".

21 (d) On any given day there are over one hundred thousand people
22 involved in the criminal justice system in Colorado. More broadly
23 identifying and treating people with a brain injury who are involved in the

1 criminal justice system could significantly improve supervision outcomes
2 and reduce recidivism.

3 (e) The August of 2020 University of Denver report revealed that
4 while the average prevalence of traumatic brain injury history among
5 adults in Colorado jails and problem-solving courts was fifty-four
6 percent, it ranged from twenty-seven percent to ninety-seven percent,
7 depending on the setting. People on probation with traumatic brain injury
8 had lower rates of successful probation completion and were significantly
9 more likely to recidivate than their peers. Female probationers with
10 traumatic brain injury, who tended to have a history of multiple traumatic
11 brain injuries as a result of violent victimization, appeared especially
12 vulnerable to poor outcomes.

13 (f) The August of 2020 University of Denver report suggests there
14 are four key steps that are the basis for the Colorado traumatic brain
15 injury model that can be applied to support individuals with traumatic
16 brain injury in the criminal justice system so the individuals can
17 successfully complete incarceration or supervision, reenter the
18 community, and avoid recidivism. These steps include training criminal
19 justice staff about the prevalence and consequences of traumatic brain
20 injury; ensuring the criminal justice population is screened for traumatic
21 brain injury and screening those identified with a traumatic brain injury
22 for impairment; tailoring the management of individuals with traumatic
23 brain injury and providing specific strategies to mitigate the effects of the
24 identified impairment; and educating individuals with traumatic brain
25 injury so they may better understand how their traumatic brain injury
26 affects them and how to compensate accordingly.

27 (2) Therefore, the general assembly declares it is in the best

1 interest of the state to increase awareness of and training surrounding ==
2 brain injuries for criminal justice professionals, expand screening and
3 identification for people in the criminal justice system who have been
4 identified as having a significant brain injury, and integrate the Colorado
5 brain injury model more broadly throughout the criminal justice system.

6 **SECTION 2.** In Colorado Revised Statutes, 17-40-101, **amend**
7 (1); and **add** (1.3) as follows:

8 **17-40-101. Definitions.** As used in this article 40, unless the
9 context otherwise requires:

10 (1) ~~"Correctional institution" means the correctional facilities at~~
11 ~~Cañon City, the correctional facilities at Buena Vista, or any other~~
12 ~~institution established for the rehabilitation of male or female offenders.~~

13 "BRAIN INJURY" HAS THE SAME MEANING AS SET FORTH IN SECTION
14 26-1-301 (1.5).

15 (1.3) "CORRECTIONAL INSTITUTION" MEANS THE CORRECTIONAL
16 FACILITIES AT CAÑON CITY, THE CORRECTIONAL FACILITIES AT BUENA
17 VISTA, OR ANY OTHER INSTITUTION ESTABLISHED FOR THE
18 REHABILITATION OF MALE OR FEMALE OFFENDERS.

19 ==

20 **SECTION 3.** In Colorado Revised Statutes, **add** 17-40-108 as
21 follows:

22 **17-40-108. Brain injury pilot program - report - repeal.**

23 (1) SUBJECT TO AVAILABLE APPROPRIATIONS, THE DEPARTMENT SHALL
24 IMPLEMENT THE BRAIN INJURY PILOT PROGRAM, REFERRED TO IN THIS
25 SECTION AS THE "PILOT PROGRAM". THE PURPOSE OF THE PILOT PROGRAM
26 IS TO EVALUATE OUTCOMES FOR INDIVIDUALS WITH A BRAIN INJURY WHO
27 RECEIVED SCREENING AND SUPPORT WHILE IN THE CRIMINAL JUSTICE

1 SYSTEM. AS A PART OF THE PILOT PROGRAM, THE DEPARTMENT SHALL
2 PROVIDE A SCREENING EVALUATION FOR A BRAIN INJURY FOR ALL
3 OFFENDERS AT ONE CORRECTIONAL INSTITUTION.

4 (2) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I) TO THE
5 CONTRARY, ON OR BEFORE JANUARY 1, 2022, AND EACH JANUARY 1
6 THEREAFTER, THE DEPARTMENT SHALL SUBMIT A REPORT TO THE
7 JUDICIARY COMMITTEES OF THE SENATE AND THE HOUSE OF
8 REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, REGARDING THE
9 IMPLEMENTATION OF THE PILOT PROGRAM. THE REPORT MUST INCLUDE, IF
10 AVAILABLE:

11 (a) BEST PRACTICES FOR SCREENING INDIVIDUALS FOR A BRAIN
12 INJURY UPON INTAKE AND REENTRY;

13 (b) BEST PRACTICES FOR TRAINING STAFF ON THE SYMPTOMS AND
14 SIGNIFICANCE OF A BRAIN INJURY;

15 (c) BEST PRACTICES FOR PROVIDING THE SERVICES DESCRIBED IN
16 SECTION 26-1-304 WITHIN THE CRIMINAL JUSTICE SYSTEM TO INDIVIDUALS
17 WHO SCREEN POSITIVE FOR A BRAIN INJURY;

18 (d) BEST PRACTICES FOR PROVIDING ACCOMMODATIONS WITHIN
19 THE CRIMINAL JUSTICE SYSTEM TO INDIVIDUALS WHO SCREEN POSITIVE
20 FOR A BRAIN INJURY; AND

21 (e) IDENTIFICATION OR RECOMMENDATION OF ADDITIONAL
22 SERVICES THAT MAY BE NECESSARY TO SUPPORT INDIVIDUALS IN THE
23 CRIMINAL JUSTICE SYSTEM WHO SCREEN POSITIVE FOR A BRAIN INJURY.

24 (3) THE DEPARTMENT MAY CONTRACT WITH MEDICAL OR
25 BEHAVIORAL HEALTH PROFESSIONALS TO ADMINISTER BRAIN INJURY
26 SCREENINGS AND DELIVER THE SERVICES DESCRIBED IN SECTION 26-1-304.

27 (4) THIS SECTION IS REPEALED, EFFECTIVE JUNE 30, 2026.

1 **SECTION 4.** In Colorado Revised Statutes, **add** 26-1-312 as
2 follows:

3 **26-1-312. Brain injury support in the criminal justice system**
4 **task force - duties - membership - report - repeal.** (1) THERE IS
5 CREATED IN THE STATE DEPARTMENT THE BRAIN INJURY SUPPORT IN THE
6 CRIMINAL JUSTICE SYSTEM TASK FORCE, REFERRED TO IN THIS SECTION AS
7 THE "TASK FORCE". BY AUGUST 1, 2021, THE BOARD SHALL CONVENE THE
8 TASK FORCE TO DEVELOP A PLAN TO INTEGRATE INTO THE CRIMINAL
9 JUSTICE SYSTEM A MODEL TO IDENTIFY AND SUPPORT INDIVIDUALS WITH
10 A BRAIN INJURY WHO ARE IN THE CRIMINAL JUSTICE SYSTEM. THE TASK
11 FORCE MUST MEET AT LEAST FOUR TIMES TO DEVELOP THE PLAN. AT A
12 MINIMUM, THE PLAN MUST INCLUDE:

13 (a) THE BRAIN INJURY TRAINING REQUIREMENTS FOR CRIMINAL
14 JUSTICE PROFESSIONALS;

15 (b) THE CRIMINAL JUSTICE PROFESSIONALS WHO WOULD BENEFIT
16 FROM BRAIN INJURY TRAINING;

17 (c) THE NECESSARY TRAINING REQUIRED FOR MENTAL HEALTH
18 PROFESSIONALS PROVIDING SCREENINGS AND SUPPORT TO INDIVIDUALS
19 WHO ARE IN THE CRIMINAL JUSTICE SYSTEM;

20 (d) POLICIES AND PROCEDURES FOR PERFORMING BRAIN INJURY
21 SCREENINGS FOR INDIVIDUALS WHO ARE IN THE CRIMINAL JUSTICE SYSTEM;

22 (e) POLICIES AND PROCEDURES FOR SUPPORTING INDIVIDUALS WHO
23 SCREEN POSITIVE FOR A BRAIN INJURY, INCLUDING:

24 (I) IDENTIFICATION OF SYMPTOMS TO DETERMINE DEFICITS AND
25 APPROPRIATE INDIVIDUAL SUPPORT STRATEGIES;

26 (II) REFERRAL TO A NEUROPSYCHOLOGICAL ASSESSMENT, IF
27 NECESSARY;

1 (III) IMPLEMENTATION OF ACCOMMODATIONS, AS NECESSARY;
2 AND

3 (IV) REFERRAL TO APPROPRIATE BRAIN INJURY SERVICES OUTSIDE
4 OF THE CRIMINAL JUSTICE SYSTEM UPON THE INDIVIDUAL'S RELEASE; AND

5 (f) IDENTIFICATION OF NECESSARY CONTRACTS BETWEEN VARIOUS
6 ENTITIES TO IMPLEMENT THE RECOMMENDATIONS IN THE PLAN.

7 (2) THE BOARD MUST APPOINT THE FOLLOWING MEMBERS TO
8 SERVE ON THE TASK FORCE:

9 (a) THE DIRECTOR OF THE PROGRAM, OR HIS OR HER DESIGNEE;

10 (b) THE DIRECTOR OF THE DIVISION OF PROBATION SERVICES IN THE
11 JUDICIAL DEPARTMENT, OR HIS OR HER DESIGNEE;

12 (c) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
13 CORRECTIONS, OR HIS OR HER DESIGNEE;

14 (d) THE STATE PUBLIC DEFENDER, OR HIS OR HER DESIGNEE;

15 (e) THE DIRECTOR OF THE OFFICE OF COMMUNITY CORRECTIONS IN
16 THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC
17 SAFETY, OR HIS OR HER DESIGNEE;

18 (f) A SHERIFF OR JAIL ADMINISTRATOR;

19 (g) A MEMBER OF THE BOARD, OR HIS OR HER DESIGNEE;

20 (h) A MEMBER OF A CRIMINAL JUSTICE ADVOCACY ORGANIZATION;

21 (i) AN EXPERT IN THE RESEARCH AND EVALUATION OF BRAIN
22 INJURIES IN THE CRIMINAL JUSTICE SYSTEM;

23 (j) TWO MEMBERS WHO REPRESENT AN ORGANIZATION
24 SPECIALIZING IN DELIVERING BRAIN INJURY SERVICES; AND

25 (k) TWO MEMBERS WHO EXPERIENCED A BRAIN INJURY AND HAVE
26 BEEN INVOLVED IN THE CRIMINAL JUSTICE SYSTEM.

27 (3) TASK FORCE MEMBERS SERVE ON A VOLUNTARY BASIS

1 WITHOUT COMPENSATION, BUT ARE ENTITLED TO COMPENSATION FOR
2 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF
3 THE MEMBER'S DUTIES.

4 (4) BY JANUARY 1, 2022, THE TASK FORCE SHALL SUBMIT THE
5 PLAN TO THE JUDICIARY COMMITTEES OF THE SENATE AND THE HOUSE OF
6 REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES.

7 (5) THIS SECTION IS REPEALED, EFFECTIVE JUNE 30, 2024.

8 **SECTION 5. Appropriation.** (1) For the 2021-22 state fiscal
9 year, \$144,409 is appropriated to the department of corrections. This
10 appropriation is from the general fund. To implement this act, the
11 department may use this appropriation as follows:

12 (a) \$1,450 for use by institutions for operating expenses related to
13 the superintendents subprogram;

14 (b) \$62,859 for use by institutions for personal services related to
15 the mental health subprogram, which amount is based on an assumption
16 that the department will require an additional 0.9 FTE;

17 (c) \$9,250 for use by institutions for operating expenses related to
18 the mental health subprogram;

19 (d) \$70,000 for use by institutions for medical contract services
20 related to the mental health subprogram;

21 (e) \$450 for use by support services for operating expenses related
22 to the communications subprogram; and

23 (f) \$400 for use by support services for operating expenses related
24 to the information systems subprogram.

25 **SECTION 6. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, or safety.