

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-0758.02 Jacob Baus x2173

SENATE BILL 21-138

SENATE SPONSORSHIP

Coleman,

HOUSE SPONSORSHIP

Sandridge,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO IMPROVE THE SUPPORT OF PERSONS IN**
102 **THE CRIMINAL JUSTICE SYSTEM WITH A BRAIN INJURY.**

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 injury support in the criminal justice system task force to develop a plan

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.

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
24 criminal justice system could significantly improve supervision outcomes

1 and reduce recidivism.

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

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

26 (2) Therefore, the general assembly declares it is in the best
27 interest of the state to increase awareness of and training surrounding

1 brain injuries for criminal justice professionals, expand screening and
2 identification for people in the criminal justice system who have been
3 identified as having a significant brain injury, and integrate the Colorado
4 brain injury model more broadly throughout the criminal justice system.

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

7 **17-40-101. Definitions.** As used in this article 40, unless the
8 context otherwise requires:

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

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

14 (1.3) "CORRECTIONAL INSTITUTION" MEANS THE CORRECTIONAL
15 FACILITIES AT CAÑON CITY, THE CORRECTIONAL FACILITIES AT BUENA
16 VISTA, OR ANY OTHER INSTITUTION ESTABLISHED FOR THE
17 REHABILITATION OF MALE OR FEMALE OFFENDERS.

18 (2) "Diagnostic services" means diagnostic examination and
19 evaluation programs, including medical and dental evaluations,
20 psychological testing, SCREENING FOR A POTENTIAL BRAIN INJURY, and
21 academic and vocational assessment. "Diagnostic services" also includes
22 identification of special needs, such as protective custody, services for
23 persons who have behavioral or mental health disorders, A BRAIN INJURY,
24 or intellectual and developmental disabilities, and special arrangements
25 for those deemed potentially disruptive to institutional safety and
26 operation.

27 **SECTION 3.** In Colorado Revised Statutes, 17-40-102, **amend**

1 (2) as follows:

2 **17-40-102. Program established.** (2) The primary function and
3 purpose of the program ~~shall be~~ IS to provide a SCREENING EVALUATION
4 AND diagnostic examination and evaluation of all offenders sentenced by
5 the courts of this state, so that each such offender may be assigned to a
6 correctional institution or a program established pursuant to article 27.7
7 of this ~~title which~~ TITLE 17 THAT has the type of security and, to the extent
8 possible, appropriate programs of education AND employment,
9 APPROPRIATE SERVICES FOR OFFENDERS ASSESSED TO HAVE A BRAIN
10 INJURY, and treatment available, which are designed to accomplish
11 maximum rehabilitation of such offender and to prepare an offender for
12 placement into as productive an employment as possible following
13 imprisonment.

14 **SECTION 4.** In Colorado Revised Statutes, **add** 17-40-108 as
15 follows:

16 **17-40-108. Brain injury pilot program - report - repeal.**

17 (1) SUBJECT TO AVAILABLE APPROPRIATIONS, THE DEPARTMENT MAY
18 IMPLEMENT THE BRAIN INJURY PILOT PROGRAM, REFERRED TO IN THIS
19 SECTION AS THE "PILOT PROGRAM". THE PURPOSE OF THE PILOT PROGRAM
20 IS TO EVALUATE OUTCOMES FOR INDIVIDUALS WITH A BRAIN INJURY WHO
21 RECEIVED SCREENING AND SUPPORT WHILE IN THE CRIMINAL JUSTICE
22 SYSTEM.

23 (2) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I) TO THE
24 CONTRARY, ON OR BEFORE JANUARY 1, 2022, AND EACH JANUARY 1
25 THEREAFTER, THE DEPARTMENT SHALL SUBMIT A REPORT TO THE
26 JUDICIARY COMMITTEES OF THE SENATE AND THE HOUSE OF
27 REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, REGARDING THE

1 IMPLEMENTATION OF THE PILOT PROGRAM. THE REPORT MUST INCLUDE, IF
2 AVAILABLE:

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

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

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

10 (d) BEST PRACTICES FOR PROVIDING ACCOMMODATIONS WITHIN
11 THE CRIMINAL JUSTICE SYSTEM TO INDIVIDUALS WHO SCREEN POSITIVE
12 FOR A BRAIN INJURY; AND

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

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

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

20 **SECTION 5.** In Colorado Revised Statutes, **add** 26-1-312 as
21 follows:

22 **26-1-312. Brain injury support in the criminal justice system**
23 **task force - duties - membership - report - repeal.** (1) THERE IS
24 CREATED IN THE STATE DEPARTMENT THE BRAIN INJURY SUPPORT IN THE
25 CRIMINAL JUSTICE SYSTEM TASK FORCE, REFERRED TO IN THIS SECTION AS
26 THE "TASK FORCE". BY AUGUST 1, 2021, THE BOARD SHALL CONVENE THE
27 TASK FORCE TO DEVELOP A PLAN TO INTEGRATE INTO THE CRIMINAL

1 JUSTICE SYSTEM A MODEL TO IDENTIFY AND SUPPORT INDIVIDUALS WITH
2 A BRAIN INJURY WHO ARE IN THE CRIMINAL JUSTICE SYSTEM. THE TASK
3 FORCE MUST MEET AT LEAST FOUR TIMES TO DEVELOP THE PLAN. AT A
4 MINIMUM, THE PLAN MUST INCLUDE:

5 (a) THE BRAIN INJURY TRAINING REQUIREMENTS FOR CRIMINAL
6 JUSTICE PROFESSIONALS;

7 (b) THE CRIMINAL JUSTICE PROFESSIONALS WHO WOULD BENEFIT
8 FROM BRAIN INJURY TRAINING;

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

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

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

16 (I) IDENTIFICATION OF SYMPTOMS TO DETERMINE DEFICITS AND
17 APPROPRIATE INDIVIDUAL SUPPORT STRATEGIES;

18 (II) REFERRAL TO A NEUROPSYCHOLOGICAL ASSESSMENT, IF
19 NECESSARY;

20 (III) IMPLEMENTATION OF ACCOMMODATIONS, AS NECESSARY;

21 AND

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

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

26 (2) THE BOARD MUST APPOINT THE FOLLOWING MEMBERS TO
27 SERVE ON THE TASK FORCE:

- 1 (a) THE DIRECTOR OF THE PROGRAM, OR HIS OR HER DESIGNEE;
- 2 (b) THE DIRECTOR OF THE DIVISION OF PROBATION SERVICES IN THE
- 3 JUDICIAL DEPARTMENT, OR HIS OR HER DESIGNEE;
- 4 (c) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
- 5 CORRECTIONS, OR HIS OR HER DESIGNEE;
- 6 (d) THE STATE PUBLIC DEFENDER, OR HIS OR HER DESIGNEE;
- 7 (e) THE DIRECTOR OF THE OFFICE OF COMMUNITY CORRECTIONS IN
- 8 THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC
- 9 SAFETY, OR HIS OR HER DESIGNEE;
- 10 (f) A SHERIFF OR JAIL ADMINISTRATOR;
- 11 (g) A MEMBER OF THE BOARD, OR HIS OR HER DESIGNEE;
- 12 (h) A MEMBER OF A CRIMINAL JUSTICE ADVOCACY ORGANIZATION;
- 13 (i) AN EXPERT IN THE RESEARCH AND EVALUATION OF BRAIN
- 14 INJURIES IN THE CRIMINAL JUSTICE SYSTEM;
- 15 (j) TWO MEMBERS WHO REPRESENT AN ORGANIZATION
- 16 SPECIALIZING IN DELIVERING BRAIN INJURY SERVICES; AND
- 17 (k) TWO MEMBERS WHO EXPERIENCED A BRAIN INJURY AND HAVE
- 18 BEEN INVOLVED IN THE CRIMINAL JUSTICE SYSTEM.
- 19 (3) TASK FORCE MEMBERS SERVE ON A VOLUNTARY BASIS
- 20 WITHOUT COMPENSATION, BUT ARE ENTITLED TO COMPENSATION FOR
- 21 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF
- 22 THE MEMBER'S DUTIES.
- 23 (4) BY JANUARY 1, 2022, THE TASK FORCE SHALL SUBMIT THE
- 24 PLAN TO THE JUDICIARY COMMITTEES OF THE SENATE AND THE HOUSE OF
- 25 REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES.
- 26 (5) THIS SECTION IS REPEALED, EFFECTIVE JUNE 30, 2024.

27 **SECTION 6. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, or safety.