

First Regular Session
Seventy-second General Assembly
STATE OF COLORADO

BILL E

LLS NO. 19-0230.02 Conrad Imel x2313

SENATE BILL

SENATE SPONSORSHIP

Moreno and Priola,

HOUSE SPONSORSHIP

Kennedy and Singer, Pettersen

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING TREATMENT OF INDIVIDUALS WITH SUBSTANCE USE**
102 **DISORDERS WHO COME INTO CONTACT WITH THE CRIMINAL**
103 **JUSTICE SYSTEM, AND, IN CONNECTION THEREWITH, MAKING AN**
104 **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/>.)

Opioid and Other Substance Use Disorders Study Committee.
Section 1 of the bill requires the Colorado commission on criminal and juvenile justice to study and make recommendations concerning:

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.

- Alternatives to filing criminal charges against individuals with substance use disorders who have been arrested for drug-related offenses;
- Best practices for investigating unlawful opioid distribution in Colorado; and
- A process for automatically sealing criminal records for drug offense convictions.

Section 2 of the bill requires the department of corrections (DOC) to allow medication-assisted treatment to be provided to persons who were receiving treatment in a local jail prior to being transferred to the custody of the DOC. The DOC may enter into agreements with community agencies and organizations to assist in the development and administration of medication-assisted treatment.

Section 3 of the bill contains a legislative declaration that the substance abuse trend and response task force should formulate a response to current and emerging substance abuse problems from the criminal justice, prevention, and treatment sectors that includes the use of drop-off treatment services, mobile and walk-in crisis centers, and withdrawal management programs as an alternative to entry into the criminal justice system for offenders of low-level drug offenses.

Section 4 of the bill directs the department of health care policy and financing to seek federal authorization under the Medicaid program for treatment of substance use disorders for persons confined in jails.

Section 5 of the bill creates a simplified process for sealing convictions for level 4 drug felonies, all drug misdemeanors, and any offense committed prior to October 1, 2013, that would have been a level 4 drug felony or drug misdemeanor if committed on or after October 1, 2013. A defendant may file a motion to seal records 3 years or more after final disposition of the criminal proceedings. Conviction records may be sealed only after a hearing and upon court order.

Section 6 of the bill requires jails that receive funding through the jail-based behavioral health services program to allow medication-assisted treatment to be provided to individuals in the jail. The jail may enter into agreements with community agencies and organizations to assist in the development and administration of medication-assisted treatment.

Section 7 of the bill provides an appropriation, including for the following programs funded through the annual long appropriations act:

- Increasing from 4 to 10 the number of the law-enforcement-assisted diversion pilot programs; and
- Increasing coresponder funding for criminal justice diversion pilot programs in the office of behavioral health in the department of human services.

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

2 **SECTION 1.** In Colorado Revised Statutes, 16-11.3-103, **add**
3 (2)(h) as follows:

4 **16-11.3-103. Duties of the commission - mission - staffing -**
5 **report - definition - repeal.** (2) The commission shall have the
6 following duties:

7 (h) (I) TO STUDY AND MAKE RECOMMENDATIONS ON THE
8 FOLLOWING ISSUES CONCERNING INDIVIDUALS WITH SUBSTANCE USE
9 DISORDERS WHO COME INTO CONTACT WITH THE CRIMINAL JUSTICE
10 SYSTEM:

11 (A) ALTERNATIVES TO FILING CRIMINAL CHARGES AGAINST
12 INDIVIDUALS WITH SUBSTANCE USE DISORDERS WHO HAVE BEEN ARRESTED
13 FOR DRUG-RELATED OFFENSES;

14 (B) BEST PRACTICES FOR INVESTIGATING UNLAWFUL OPIOID
15 DISTRIBUTION IN COLORADO, INCLUDING THE POTENTIAL CREATION OF
16 BLACK MARKET OPIOID INVESTIGATORY ENTITIES AT THE STATE AND
17 LOCAL LEVELS; AND

18 (C) A PROCESS FOR AUTOMATICALLY SEALING CRIMINAL RECORDS
19 OF CONVICTIONS FOR DRUG OFFENSES.

20 (II) ON OR BEFORE JULY 1, 2020, THE COMMISSION SHALL PROVIDE
21 A REPORT WITH ITS FINDINGS AND RECOMMENDATIONS MADE PURSUANT
22 TO THIS SUBSECTION (2)(h) TO THE JUDICIARY AND THE PUBLIC HEALTH
23 CARE AND HUMAN SERVICES COMMITTEES OF THE HOUSE OF
24 REPRESENTATIVES AND THE JUDICIARY AND THE HEALTH AND HUMAN
25 SERVICES COMMITTEES OF THE SENATE, OR ANY SUCCESSOR COMMITTEES.

26 (III) THIS SUBSECTION (2)(h) IS REPEALED, EFFECTIVE JUNE 30,
27 2021.

1 **SECTION 2.** In Colorado Revised Statutes, 17-1-113.8, **add** (3)
2 as follows:

3 **17-1-113.8. Persons with serious behavioral or mental health**
4 **disorders - long-term isolated confinement - work group -**
5 **medication-assisted treatment.** (3) (a) THE DEPARTMENT SHALL ALLOW
6 MEDICATION-ASSISTED TREATMENT, AS IT IS DEFINED IN SECTION
7 23-21-803, TO BE PROVIDED TO INDIVIDUALS WHO ARE PLACED IN THE
8 CUSTODY OF THE DEPARTMENT WHO WERE RECEIVING SUCH TREATMENT
9 IN A LOCAL JAIL PRIOR TO BEING PLACED IN THE CUSTODY OF THE
10 DEPARTMENT.

11 (b) THE DEPARTMENT MAY ENTER INTO AGREEMENTS WITH
12 COMMUNITY AGENCIES, BEHAVIORAL HEALTH ORGANIZATIONS, AND
13 SUBSTANCE USE DISORDER TREATMENT ORGANIZATIONS TO ASSIST IN THE
14 DEVELOPMENT AND ADMINISTRATION OF MEDICATION-ASSISTED
15 TREATMENT PURSUANT TO THIS SECTION.

16 **SECTION 3.** In Colorado Revised Statutes, 18-18.5-101, **amend**
17 (3)(b) as follows:

18 **18-18.5-101. Legislative declaration.** (3) The general assembly,
19 therefore, determines and declares that it is necessary to change the state
20 methamphetamine task force into a substance abuse trend and response
21 task force to:

22 (b) Formulate a response to current and emerging substance ~~abuse~~
23 USE DISORDER problems from the criminal justice, prevention, and
24 treatment sectors, INCLUDING THE USE OF DROP-OFF TREATMENT SERVICES,
25 MOBILE AND WALK-IN CRISIS CENTERS, AND WITHDRAWAL MANAGEMENT
26 PROGRAMS, RATHER THAN CONTINUED CRIMINAL JUSTICE INVOLVEMENT
27 FOR OFFENDERS OF LOW-LEVEL DRUG OFFENSES; and

1 **SECTION 4.** In Colorado Revised Statutes, 25.5-4-205.5, **add** (3)
2 as follows:

3 **25.5-4-205.5. Confined persons - suspension of benefits.**

4 (3) NO LATER THAN OCTOBER 1, 2019, THE STATE DEPARTMENT SHALL
5 SEEK FEDERAL AUTHORIZATION TO PROVIDE TREATMENT FOR SUBSTANCE
6 USE DISORDERS WITH FULL FEDERAL FINANCIAL PARTICIPATION TO
7 CONFINED PERSONS. SUCH TREATMENT MUST INCLUDE
8 MEDICATION-ASSISTED TREATMENT AND WITHDRAWAL MANAGEMENT
9 PROGRAMS.

10 **SECTION 5.** In Colorado Revised Statutes, **add** 24-72-705.5 as
11 follows:

12 **24-72-705.5. Sealing of criminal conviction records**
13 **information for offenses involving possession of controlled substances**
14 **- simplified process - processing fee. (1) Sealing of conviction**

15 **records. (a) (I) SUBJECT TO THE LIMITATIONS DESCRIBED IN SUBSECTION**
16 **(3) OF THIS SECTION, A DEFENDANT MAY PETITION THE DISTRICT COURT OF**
17 **THE DISTRICT, OR THE MUNICIPAL COURT IN ANY MUNICIPALITY, IN WHICH**
18 **ANY CONVICTION RECORDS FOR CERTAIN OFFENSES INVOLVING**
19 **CONTROLLED SUBSTANCES PERTAINING TO THE DEFENDANT ARE LOCATED**
20 **FOR THE SEALING OF THE CONVICTION RECORDS, EXCEPT BASIC**
21 **IDENTIFYING INFORMATION, IF:**

22 (A) THE PETITION IS FILED THREE OR MORE YEARS AFTER THE DATE
23 OF THE FINAL DISPOSITION OF ALL CRIMINAL PROCEEDINGS AGAINST THE
24 DEFENDANT OR THE RELEASE OF THE DEFENDANT FROM SUPERVISION
25 CONCERNING A CRIMINAL CONVICTION, WHICHEVER IS LATER; AND

26 (B) THE DEFENDANT HAS NOT BEEN CHARGED OR CONVICTED FOR
27 A CRIMINAL OFFENSE IN THE THREE OR MORE YEARS SINCE THE DATE OF

1 THE FINAL DISPOSITION OF ALL CRIMINAL PROCEEDINGS AGAINST HIM OR
2 HER OR THE DATE OF THE DEFENDANT'S RELEASE FROM SUPERVISION,
3 WHICHEVER IS LATER.

4 (II) THE PETITION SHALL BE MADE BY THE DEFENDANT THROUGH
5 THE FILING OF A PETITION IN WRITING IN THE CRIMINAL CASE FOR WHICH
6 THE DEFENDANT WAS CONVICTED WITH WRITTEN NOTICE AND A COPY OF
7 THE PETITION PROVIDED TO THE PROSECUTING ATTORNEY.

8 (b) (I) UPON THE FILING OF A PETITION IN THE CRIMINAL CASE, THE
9 COURT SHALL REVIEW THE PETITION AND DETERMINE WHETHER THERE ARE
10 GROUNDS UNDER THIS SECTION TO PROCEED TO A HEARING ON THE
11 PETITION. IF THE COURT DETERMINES THAT THE PETITION ON ITS FACE IS
12 INSUFFICIENT OR IF THE COURT DETERMINES THAT, AFTER TAKING
13 JUDICIAL NOTICE OF MATTERS OUTSIDE THE PETITION, THE DEFENDANT IS
14 NOT ENTITLED TO RELIEF UNDER THIS SECTION, THE COURT SHALL ENTER
15 AN ORDER DENYING THE PETITION AND MAIL A COPY OF THE ORDER TO THE
16 DEFENDANT. THE COURT'S ORDER SHALL SPECIFY THE REASONS FOR THE
17 DENIAL OF THE PETITION.

18 (II) IF THE COURT DETERMINES THAT THE PETITION IS SUFFICIENT
19 ON ITS FACE AND THAT NO OTHER GROUNDS EXIST AT THAT TIME FOR THE
20 COURT TO DENY THE PETITION UNDER THIS SECTION, THE COURT SHALL SET
21 A DATE FOR A HEARING, AND THE COURT SHALL NOTIFY ALL PARTIES OF
22 THE DATE OF THE HEARING.

23 (c) (I) AFTER THE HEARING DESCRIBED IN SUBSECTION (1)(b)(II)
24 OF THIS SECTION IS CONDUCTED AND IF THE COURT FINDS THAT THE HARM
25 TO THE PRIVACY OF THE DEFENDANT OR THE DANGERS OF UNWARRANTED,
26 ADVERSE CONSEQUENCES TO THE DEFENDANT OUTWEIGH THE PUBLIC
27 INTEREST IN RETAINING THE CONVICTION RECORDS, THE COURT MAY

1 ORDER THE CONVICTION RECORDS, EXCEPT BASIC IDENTIFYING
2 INFORMATION, TO BE SEALED.

3 (II) IN MAKING A DETERMINATION PURSUANT TO THIS SUBSECTION
4 (1)(c), THE COURT SHALL, AT A MINIMUM, CONSIDER THE SEVERITY OF THE
5 OFFENSE THAT IS THE BASIS OF THE CONVICTION RECORDS SOUGHT TO BE
6 SEALED, THE CRIMINAL HISTORY OF THE DEFENDANT, THE NUMBER OF
7 CONVICTIONS AND DATES OF THE CONVICTIONS FOR WHICH THE
8 DEFENDANT IS SEEKING TO HAVE THE RECORDS SEALED, AND THE NEED
9 FOR THE GOVERNMENT AGENCY TO RETAIN THE RECORDS. IF THE PERSON
10 IN INTEREST HAS SUCCESSFULLY COMPLETED A VETERANS TREATMENT
11 PROGRAM ESTABLISHED PURSUANT TO SECTION 13-5-144 IN THE CASE
12 THAT IS THE SUBJECT OF THE PETITION TO SEAL OR ANY OTHER SUBSTANCE
13 USE TREATMENT PROGRAM, THE COURT SHALL CONSIDER SUCH FACTOR
14 FAVORABLY IN DETERMINING WHETHER TO ISSUE AN ORDER TO SEAL
15 RECORDS PURSUANT TO THIS SECTION.

16 (d) WHEN THE COURT SEALS CONVICTION RECORDS PURSUANT TO
17 THIS SECTION, THE COURT SHALL PROVIDE A COPY OF THE COURT ORDER
18 TO THE COLORADO BUREAU OF INVESTIGATION, AND THE DEFENDANT
19 SHALL PAY TO THE BUREAU ANY COSTS RELATED TO THE SEALING OF HIS
20 OR HER CONVICTION RECORDS IN THE CUSTODY OF THE BUREAU. THE
21 COURT SHALL ALSO PROVIDE A COPY OF THE COURT ORDER TO EACH
22 CUSTODIAN WHO MAY HAVE CUSTODY OF ANY RECORDS SUBJECT TO THE
23 ORDER. THE DEFENDANT SHALL PROVIDE TO THE COURT, IN CONJUNCTION
24 WITH THE PETITION, A LIST OF ALL AGENCY CUSTODIANS WHO MAY HAVE
25 CUSTODY OF ANY RECORDS SUBJECT TO THE ORDER. ADDITIONALLY, THE
26 DEFENDANT MAY ALSO PROVIDE A COPY OF THE ORDER TO ANY OTHER
27 CUSTODIAN OF RECORDS SUBJECT TO THE ORDER. EACH CUSTODIAN THAT

1 RECEIVES A COPY OF THE ORDER SHALL REMOVE THE RECORDS THAT ARE
2 SUBJECT TO THE ORDER FROM ITS RECORDS.

3 (e) THE PROVISIONS OF SECTION 24-72-702 (1)(d) TO (1)(g) AND
4 SECTION 24-72-702 (4) APPLY TO THIS SECTION.

5 (f) THIS SECTION DOES NOT APPLY TO RECORDS THAT ARE SUBJECT
6 TO THE PROCEDURE SET FORTH IN SECTION 18-13-122 (13).

7 (2) (a) A DEFENDANT PETITIONING TO HAVE HIS OR HER
8 CONVICTION RECORDS SEALED UNDER THIS SECTION SHALL PAY A
9 PROCESSING FEE OF SIXTY-FIVE DOLLARS TO COVER THE ACTUAL COSTS
10 RELATED TO THE SEALING OF THE CONVICTION RECORDS, WHICH MAY BE
11 WAIVED BY THE COURT UPON A DETERMINATION OF INDIGENCY.

12 (b) WHEN THE MOTION TO SEAL THE CRIMINAL CASE IS FILED IN
13 STATE COURT, THE PROCESSING FEES COLLECTED UNDER SUBSECTION
14 (2)(a) OF THIS SECTION MUST BE TRANSMITTED TO THE STATE TREASURER
15 AND CREDITED TO THE JUDICIAL STABILIZATION CASH FUND CREATED IN
16 SECTION 13-32-101 (6).

17 (c) WHEN THE MOTION TO SEAL THE CRIMINAL CASE IS FILED IN
18 MUNICIPAL COURT, THE PROCESSING FEES COLLECTED UNDER SUBSECTION
19 (2)(a) OF THIS SECTION MUST BE REPORTED AND PAID AS MUNICIPAL COSTS
20 AND MUST BE TRANSMITTED TO THE TREASURER OF THE MUNICIPALITY
21 AND DEPOSITED IN THE GENERAL FUND OF THE MUNICIPALITY PURSUANT
22 TO SECTION 13-10-115.

23 (3) **Applicability.** (a) THE PROVISIONS OF THIS SECTION APPLY
24 ONLY TO CONVICTION RECORDS PERTAINING TO JUDGMENTS OF
25 CONVICTION ENTERED FOR:

26 (I) ANY CONVICTION FOR A VIOLATION OF A PROVISION OF ARTICLE
27 18 OF TITLE 18 WHEN THE CONVICTION IS FOR A LEVEL 4 DRUG FELONY OR

1 ANY DRUG MISDEMEANOR INVOLVING THE POSSESSION OF A CONTROLLED
2 SUBSTANCE;

3 (II) ANY CONVICTION FOR A VIOLATION PRIOR TO OCTOBER 1,
4 2013, OF A PROVISION OF ARTICLE 18 OF TITLE 18 WHEN THE CONVICTION
5 IS FOR A FELONY OR MISDEMEANOR OFFENSE WHEN THE UNDERLYING
6 FACTUAL BASIS OF THE OFFENSE DEMONSTRATES THAT THE OFFENSE
7 WOULD HAVE BEEN CLASSIFIED AS A LEVEL 4 DRUG FELONY OR DRUG
8 MISDEMEANOR INVOLVING THE POSSESSION OF A CONTROLLED SUBSTANCE
9 IF THE OFFENSE HAD BEEN COMMITTED ON OR AFTER OCTOBER 1, 2013;
10 AND

11 (III) ANY CONVICTION FOR A VIOLATION OF ANY MUNICIPAL CODE
12 WHERE THE OFFENSE INVOLVES THE POSSESSION OF A CONTROLLED
13 SUBSTANCE.

14 (b) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
15 CONTRARY, MOTIONS FILED UNDER THIS SECTION ARE PROCEDURAL IN
16 NATURE, AND SEALING PURSUANT TO THIS SECTION APPLIES
17 RETROACTIVELY FOR ALL ELIGIBLE CASES.

18 (c) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO
19 CONVICTION RECORDS THAT ARE IN THE POSSESSION OF A CRIMINAL
20 JUSTICE AGENCY WHEN AN INQUIRY CONCERNING THE CONVICTION
21 RECORDS IS MADE BY ANOTHER CRIMINAL JUSTICE AGENCY.

22 **SECTION 6.** In Colorado Revised Statutes, 27-60-106, **add** (5)
23 as follows:

24 **27-60-106. Jail-based behavioral health services program -**
25 **purpose - created - funding.** (5) (a) THE OFFICE SHALL REQUIRE A
26 COUNTY JAIL THAT RECEIVES FUNDING THROUGH THE PROGRAM TO ALLOW
27 MEDICATION-ASSISTED TREATMENT, AS IT IS DEFINED IN SECTION

1 23-21-803, TO BE PROVIDED, AS NECESSARY, TO INDIVIDUALS CONFINED
2 IN THE COUNTY JAIL.

3 (b) A SHERIFF WHO IS THE CUSTODIAN OF A COUNTY JAIL OR CITY
4 AND COUNTY JAIL MAY ENTER INTO AGREEMENTS WITH COMMUNITY
5 AGENCIES, BEHAVIORAL HEALTH ORGANIZATIONS, AND SUBSTANCE USE
6 DISORDER TREATMENT ORGANIZATIONS TO ASSIST IN THE DEVELOPMENT
7 AND ADMINISTRATION OF MEDICATION-ASSISTED TREATMENT IN THE JAIL.

8 **SECTION 7. Appropriation.** (1) For the 2019-20 state fiscal
9 year, \$1,700,000 is appropriated to the department of human services for
10 use by the office of behavioral health. This appropriation is from the
11 general fund. To implement this act, the office may use this appropriation
12 for jail-based behavioral health services.

13 (2) For the 2019-20 state fiscal year, \$3,450,000 is appropriated
14 to the department of human services for use by the office of behavioral
15 health. This appropriation is from the general fund. To implement this act,
16 the office may use this appropriation for criminal justice diversion
17 programs.

18 (3) For the 2019-20 state fiscal year, \$1,450,000 is appropriated
19 to the department of human services for use by the office of behavioral
20 health. This appropriation is from the general fund. To implement this act,
21 the office may use this appropriation for criminal justice diversion
22 programs.

23 **SECTION 8. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly (August
26 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act
2 within such period, then the act, item, section, or part will not take effect
3 unless approved by the people at the general election to be held in
4 November 2020 and, in such case, will take effect on the date of the
5 official declaration of the vote thereon by the governor.