

# EQUITY AND JUSTICE FOR PEOPLE WITH TRAUMATIC BRAIN INJURY IN MINNESOTA'S CRIMINAL JUSTICE SYSTEM

## Achieving Effectiveness, Efficiency and Equity

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Equity and justice in the criminal justice system for people living with Traumatic Brain Injury is served when people are rehabilitated and given the opportunity to rejoin society as productive members.

### Issue Statement

Traumatic Brain Injury (TBI) is a silent epidemic in Minnesota's correctional system. People with TBI in corrections have significant needs related to their TBI that are not being met. These unmet needs threaten their personal safety and the safety of others in correctional settings and society at large; and threaten their ability to maintain their status as productive members of their communities upon release, negatively affecting the well-being of entire communities.

### Understanding the Issue

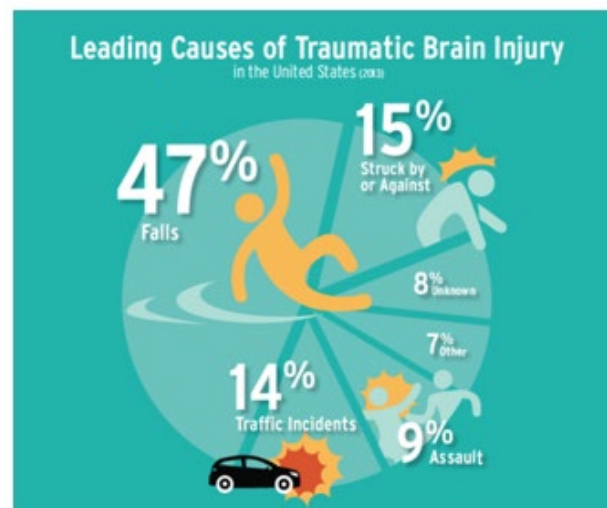
#### What is Traumatic Brain Injury (TBI)

Traumatic brain injury (TBI) is a "non-degenerative, non-congenital insult to the brain from an external ...force,"<sup>4</sup> potentially resulting in prolonged or permanent changes in a person's state of consciousness, awareness, or responsiveness.<sup>5</sup>

Causes of TBI include:

- Falls
- Vehicle-related collisions
- Violence
- Sports injuries
- Explosions
- Combat injuries<sup>5</sup> (refer to Figure 1).

Figure 1: Leading Causes of TBI



Source: Brainline.org<sup>11</sup>

#### Effects of TBI

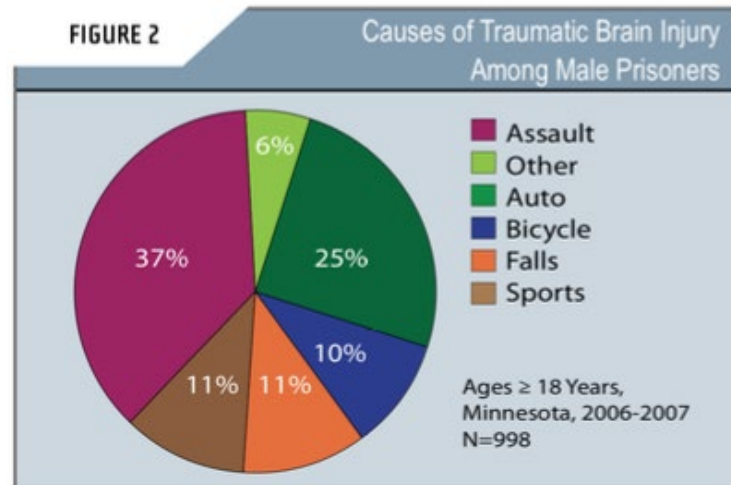
Having a TBI can result in multiple difficulties that significantly impair personal functioning and behavior.<sup>5</sup> The resulting degenerative brain disease from TBI has negative life-long implications.<sup>5</sup> All difficulties resulting from TBI create additional complexities which thwart the abilities of people with TBI in the criminal justice system to effectively rehabilitate within the nature of current systems.

## Intersection: TBI and the Criminal Justice System

Compared to the general population, inmates in the United States are approximately [3 to 8 times more likely](#) to have had a TBI, with assault being the most common cause of a TBI among male prisoners.<sup>3</sup> Refer to Figure 2 for other causes of TBI among the prison population of males 18 years and older in Minnesota

Studies have shown that when compared to peers without a TBI, people with TBI who have committed offenses:

- Have a higher lifetime prevalence of all types of arrests.<sup>10</sup>
- Commit significantly more person-to-person crime.<sup>12</sup>
- Are less engaged with treatment.<sup>10</sup>
- Have higher recidivism rates.<sup>9, 10, 12</sup>



Source: Brainline.org

The [negative consequences](#) of a TBI are particularly troublesome within a correctional setting:

- Behavioral dysregulation, attention issues, decreased ability to follow rules, challenged memory, heightened irritability and anger, slow response time, loss of inhibition, and increased aggression and impulsivity are negative behaviors that have the potential to provoke others, resulting in disciplinary action.<sup>3,15</sup>

Ultimately, these behaviors negatively compromise a person's ability to rehabilitate and lead to increased recidivism.

## TBI in the Criminal Justice System: A Nationally Recognized Problem

[By not recognizing TBI as a contributing factor to criminal behavior, the criminal justice system is denying appropriate care and treatment and victimizing those who have brain injuries.](#)<sup>2</sup>

The Center for Disease Control (CDC) recognizes the prevalence of TBI in the corrections population as a [public health problem](#). Yet, assessing for TBI is not required in the criminal justice system.<sup>2</sup> The CDC cites gaps in appropriate assessment, care and treatment for people with TBI as contributing to this challenging and ongoing social problem. Additionally, the [National Conference of State Legislatures 2019 report](#) found that “screening for TBI after the onset of criminality is not enough” (p. 2) and that “states can consider ways to prevent and intervene...before they enter the...justice system” (p. 8), suggesting that screening should occur at the first opportunity.<sup>15</sup> By not recognizing TBI as a contributing factor to criminal behavior, the criminal justice system is denying appropriate care and treatment and victimizing those who have brain injuries.<sup>2</sup>

## Policy Approaches: Assess, Intervene, Amend, Divert, and Support

**Minnesota:** Since 1996, Minnesota's Department of Correction (MDOC) has [utilized grants](#) for developing and implementing a system of assessment practices to identify people with TBI convicted of offenses. Research shows high prevalence rates of TBI within Minnesota's correctional facilities, and increased usages of institutional medical care, mental health programs and substance use treatment by this population.<sup>6</sup> Though a system is in place, current policies require screening people for TBI only *after* they have been sentenced and incarcerated.<sup>6</sup> Additionally, access to specialized TBI assessment is limited and the demand for assessment exceeds availability.<sup>6</sup>

**South Carolina, Indiana, New Zealand:** Studies affirm that early intervention is key and diversion into appropriate treatments must happen.<sup>12</sup> Many jurisdictions have used instruments such as the Ohio State University Traumatic Brain Injury Identification instrument (OSU-TBI-ID); which is capable of measuring severity of TBI. Results have been used to determine appropriate treatments.<sup>9, 13, 18</sup>

**Cassie's Law:** This proposed amendment, [Section 609.115 of the Minnesota State Statute](#), is a practical step for improving efficiency of the assessment and effective care for people with TBI in Minnesota's criminal justice system.<sup>11</sup> This bill would impact how the courts evaluate individuals who have sustained a TBI. Proposed in 2019, Cassie's Law directs the court to require an evaluation during the [presentence investigation phase](#) of a criminal case in order to provide recommendations for sentencing and rehabilitative treatment.<sup>11</sup> Implementing this policy in Minnesota will allow the criminal justice system to modify sentencing and intervention, making the corrections system more efficient.

**Criminal Mental Health Court** is an established 12 to 18-month voluntary program in Hennepin and Ramsey Counties, serving people who are charged with a criminal offense and struggling with a serious mental illness and/or co-occurring disorder. This comprehensive care model allows for a rapid response to unmet needs of participants by removing barriers and providing access to mental health services. People with TBI are eligible for this program. Providing appropriate accommodations and services to those with TBI allows individuals to cope better within the system and live healthier lives after incarceration.<sup>16</sup>

**Post-Release:** When people have appropriate support upon re-entering their community, they have lower recidivism rates and better outcomes.<sup>15</sup> These findings could "lead to improved delivery of services, increased safety for staff and offenders and reduced rates of recidivism which could lead to increased protection of the public."<sup>10</sup> Having appropriate care which both meets the needs of offenders and ensures public safety is imperative.<sup>4</sup>

**Mentally Ill Offender Community Transition Program** is a program that has been established in Washington since 1998.<sup>16</sup> Implementation of this program has resulted in decreased substance abuse relapse and fewer community corrections violations; which in turn has resulted in cost savings for the Department of Corrections (DOC) and increased public safety. The program provides a coordinated multi-disciplinary approach including pre-release planning and intensive post-release case management with mental health providers, a DOC Community correction officer, prison-based DOC staff, employment services and chemical dependency providers (when applicable). The goal is to provide crisis support, residential support, and community supervision.<sup>16</sup>

## Policy Recommendations

By addressing identified gaps in the continuum of care, Minnesota can advance the appropriate intervention of screening people for TBI's when they encounter the criminal justice system. After assessment, providing appropriate services and adequate care to people with TBI who are incarcerated or recently released is efficient, effective, and equitable for all of society.

- ❖ **Efficiency:** We recommend that Cassie's Law be passed by the Minnesota State Legislature into law. This will increase the efficiency of determining which people have TBI during the pre-sentencing period, opening the doors for all people with TBI to have access to appropriate rehabilitative care while in the criminal justice system.
- ❖ **Effectiveness:** We recommend that access to Minnesota Mental Health Courts be expanded throughout greater Minnesota to ensure demand for appropriate services specific to TBI are met. This will improve the effectiveness of treatment and rehabilitation, giving people with TBI a greater chance of being productive members of society after release.
- ❖ **Equity:** We recommend that people with TBI in the correction system have seamless access to accommodations and team-based services upon reentry to their communities which will continue to support them, leading to lower recidivism rates and improved outcomes.

To access this document online go to: [sbs.mnsu.edu/social-work/policy-briefs](https://sbs.mnsu.edu/social-work/policy-briefs)

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