



# Abused & Forgotten

*Life Inside The BVCF  
Protective Custody Hallway*

CIVIL RIGHTS CLINIC

UNIVERSITY OF DENVER STURM COLLEGE OF LAW

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# Table of Contents

|  |           |
|--|-----------|
| <b>Executive Summary</b> .....   | <b>1</b>  |
| <b>Introduction</b> .....  | <b>3</b>  |
| <b>Methodology</b> .....   | <b>6</b>  |
| <b>Admission Into Protective Custody</b> .....   | <b>7</b>  |
| <b>CDOC’s Only PC Units Are in Some of Its Most Restrictive Facilities</b> .....         | <b>10</b> |
| <b>The BVCF Protective Custody Unit: “That Place Will Push You Until You Snap”</b> ..... | <b>11</b> |
| Layout of the BVCF PC Unit .....   | 11        |
| “Groundhog Day”: A Day in the Life Inside the BVCF PC Unit.....                          | 12        |
| <b>Findings</b> .....  | <b>14</b> |
| Programming: A “Choice” Between Life and Liberty.....                                    | 14        |
| Lack of Programming Impacts Successful Re-Entry Into the Community .....                 | 14        |
| Lack of Programming Impacts the Ability to Be Released on Parole .....                   | 15        |
| BVCF PC Staff: “I Am Not Here to Help You” .....   | 18        |
| Medical Emergencies: “If You’re Not Passed Out, We’re Not Sending Medical” .....         | 21        |
| Atmosphere Of Violence: “Eventually You’re Going to Lose Your Mind” .....                | 24        |
| Arbitrary Removal From PC: “Thrown to the Sharks” .....                                  | 25        |
| <b>Recommendations</b> .....   | <b>29</b> |
| Colorado Legislature .....   | 29        |
| The Colorado Department Of Corrections & Executive Director Dean Williams .....          | 29        |
| Public.....  | 30        |
| <b>Conclusion</b> .....  | <b>31</b> |
| <b>Acknowledgments</b> .....   | <b>32</b> |

# Executive Summary

Protective custody units are used to house people who are acutely vulnerable to prison violence. These groups include individuals who have aided the government in criminal prosecutions, former gang members who renounced membership, government informants, members of the LGBTQIA+ community, and other individuals at a heightened risk of violence behind bars. The Colorado Department of Corrections (“CDOC”) was late to acknowledge the need for protective custody but eventually created a protective custody (“PC”) unit in 2013. Currently, CDOC maintains two protective custody units: one at Arkansas Valley Correctional Facility and the second at Buena Vista Correctional Facility (“BVCF”). The only two PC units in CDOC are in prisons with the highest and most restrictive custody levels: close and medium custody.

In 2020, after receiving many concerning reports about the conditions in the BVCF PC Unit, the University of Denver Sturm College of Law’s Civil Rights Clinic (“Clinic”) began an investigation into the conditions. The Clinic found the conditions in the BVCF PC Unit create a dangerous environment that is harmful to the mental, emotional, and physical health of the people who live there. This Report describes the conditions and elevates the stories and lived experience of the individuals locked up in the BVCF PC Unit.

The Report details how the BVCF PC Unit, two tiers of cells that let out to a narrow hallway and houses approximately fifty people, is a former restrictive housing unit that meets the purpose of its original design—to punish individuals by housing them in a mostly locked-down existence with highly restricted recreational and social opportunities. And CDOC prohibits individuals in the BVCF PC Unit from participating in vocational, employment, and rehabilitative programming available to other individuals in CDOC custody. But the people in the BVCF PC Unit are not there to serve an extra judicial punishment. People are in PC because they need protection while they serve their judicially-imposed sentences. The miserable conditions CDOC has created in the BVCF PC Unit not only encourage violence, they also restrict residents’ ability to receive drug and alcohol abuse treatment or other rehabilitative programming. Without such programming, people in the BVCF PC Unit are less likely to be released on parole. Moreover, CDOC prohibits individuals in the BVCF PC Unit from meaningful vocational training or job opportunities, which are imperative for people to be able to support themselves and their families upon release and to compensate victims through the restitution process.

The Report also chronicles the deficiencies in the staffing, medical care, and emergency response mechanisms in the BVCF PC Unit. Individuals in the BVCF PC Unit are often not provided timely emergency responses to violence or health crises because there are no emergency call buttons anywhere in the unit and staff disregard or don’t hear screams for help. People who live in the BVCF PC Unit are forced to scream and kick the doors to attempt to summon emergency assistance. Individuals in the BVCF PC Unit are reasonably fearful of publicly reporting fighting or threats involving others in the Unit and are generally unable to summon help during serious medical emergencies like seizures or severe diabetic complications. And staff in the BVCF PC Unit have been shown to not only neglect their obligations to conduct rounds in the Unit but also to fabricate records to cover up their neglect.



The BVCF PC Unit is a terrifying and abysmal place for most of the people housed there. And it is well known in CDOC that if a person is forced to enter protective custody—for example, by becoming a target as a result of refusing their gang’s order to hurt a staff member—they will likely end up serving their sentence in the miserable hallway. This is a problem for individuals in custody and for the general public, who encourage and benefit from many of the pro-social actions that result in the need for protective custody. CDOC’s refusal to improve the conditions in the BVCF PC Unit should be a concern to all of us.

This Report provides a road map for reforms by both the Colorado Department of Corrections and state lawmakers to ensure the wellbeing of individuals in protective custody in Colorado.

## Recommendations At A Glance

### FOR THE COLORADO LEGISLATURE

- ▶ Pass legislation that mandates all parole-required programming be offered in all CDOC protective custody units
- ▶ Pass legislation to create a Protective Custody Commission to reform and standardize protective custody units in Colorado

### FOR THE COLORADO DEPARTMENT OF CORRECTIONS

- ▶ Direct the Office of Inspector General to conduct an investigation pursuant to C.R.S. § 17-1-103.8
- ▶ Offer Sex Offender Treatment and Management Program (SOTMP) and alcohol/drug treatment in all CDOC protective custody units
- ▶ Provide all protective custody unit cells and common areas with emergency call buttons or other emergency alert system
- ▶ Consolidate protective custody into a dedicated, multi-custody level facility
- ▶ Offer protective custody residents the same educational and vocational programs provided to the general population

### FOR THE PUBLIC

- ▶ Call upon your state legislators to take action and hold CDOC accountable for ensuring humane and rehabilitative conditions for individuals in protective custody

# Introduction

Prisons in the United States began to create and use protective custody units (“PC units”) in the 1960s.<sup>1</sup> Since their inception, PC units have been used to house people who are acutely vulnerable to prison violence. These groups include:

- ▶ Individuals who have aided the government in criminal prosecutions,<sup>2</sup>
- ▶ Former gang members who renounced membership,
- ▶ People convicted of certain crimes,<sup>3</sup>
- ▶ Members of the LGBTQIA+ community,
- ▶ People “who are at high risk of sexual victimization,”<sup>4</sup>
- ▶ Government informants, and former law enforcement officers.<sup>5</sup>

In 1990, the Department of Justice’s National Institute of Corrections claimed that the need for protective custody units resulted from the rise of drug culture, gangs, and an increase in incarcerated people with “notoriety.”<sup>6</sup> During the Reagan administration, the United States prison population rose from 329,000 incarcerated people to 627,000,<sup>7</sup> largely due to policies that disproportionately targeted and incarcerated people of color, such as mandatory minimums and the “war on drugs.”<sup>8</sup> As the prison population grew nationally, so too did the number of vulnerable prisoners and the need for protective custody units.

The Colorado Department of Corrections (“CDOC”) was late to acknowledge the need for protective custody. In 2011, the National Institute of Corrections (“NIC”) conducted an audit of CDOC’s use of administrative segregation (also known as solitary confinement).<sup>9</sup> In their report, NIC investigators revealed that CDOC, unlike other prison systems,<sup>10</sup> did not have a unit for individuals in need of protective custody.<sup>11</sup> Instead, CDOC placed people who required heightened safety measures in solitary confinement.<sup>12</sup> In 2013, following the NIC investigation and report, CDOC created a protective custody unit.<sup>13</sup> As a result, CDOC moved some incarcerated people from administrative segregation into a protective custody unit<sup>14</sup> and gave them a formal “protective custody status.”<sup>15</sup> Currently, CDOC maintains two protective custody units: one at Arkansas Valley Correctional Facility (“AVCF”) and the second at Buena Vista Correctional Facility (“BVCF”). This report is focused on the BVCF PC Unit.

The BVCF PC Unit ostensibly exists to protect uniquely vulnerable people from physical violence, extortion, or other serious harm in the general population;<sup>16</sup> however, the PC Unit inflicts a unique trauma on those who live there. The BVCF PC Unit is a narrow hallway of boxcar cells with two levels (also referred to as tiers). Between the two tiers, the unit houses approximately 50 people—in some instances, two people to a cell. People who live in the BVCF PC Unit are warehoused in this small hallway and systematically deprived of access to programming, recreation, basic safety measures, physical space, and activities. BVCF PC Unit residents recount being ignored during life threatening medical emergencies, subjected to emotional manipulation by staff members, and left unattended to

endure acts of violence that erupt between members of the Unit. One person described living in the Unit as “rotting away in a hallway.”<sup>17</sup>

Though protective custody units are intended to simply provide for the safety of their residents, the conditions of confinement in these units often resemble the conditions in punitive segregation units.<sup>18</sup> As a form of punishment, segregation or solitary confinement units are used to lock people in small cells alone for up to twenty-four hours a day. People in solitary confinement are limited in their access to recreation, programming, social contact, and movement. These conditions are purposefully harsh in an effort to deter the conduct that lands people in these units. In contrast, CDOC Administrative Regulation (“AR”) 650-02 claims that protective custody “is not a punitive measure.” Yet the conditions in the BVCF PC Unit are egregious and punishing. In its administration of the Unit, CDOC has failed to uphold basic standards of dignity and humanity. As one individual who was housed in the BVCF PC Unit noted,

**PC should be an example within the prisons—a unit that operates efficiently, safely, and offers people an opportunity to grow. From the minute we’re arrested it’s ‘tell us what you know, testify against your co-defendant, walk away from your gang.’ And the minute you do, this is the life you lead—the worst life in CDOC. You’re nothing. You live in a hallway. Why would I choose this?’<sup>19</sup>**

In the spring of 2020, the University of Denver Sturm College of Law’s Civil Rights Clinic (“Clinic”) began investigating the Colorado Department of Corrections Buena Vista Correctional Facility’s Protective Custody Unit (“BVCF PC Unit”) after receiving multiple concerning reports about the conditions in the Unit.

During our investigation, Clinic student attorneys communicated at length with people who live or have lived in the BVCF PC Unit, consulted with a corrections expert,<sup>20</sup> reviewed correctional literature about the history, purpose, and design of protective custody, corroborated reported experiences with records wherever possible, and researched the management of protective custody systems inside and outside of Colorado. This Report is the result of the Clinic’s extensive analysis and in-depth research over two years. The Clinic found the conditions in the BVCF PC Unit combine to create a dangerous and inhumane environment that is detrimental to the mental, emotional, and physical health of the people who live there. In this Report, we have gone to great lengths to remain faithful to the stories of the people who have experienced the daily realities of life in the BVCF PC Unit. We invited our incarcerated contacts to send us any art they wished to include. Those pieces are featured throughout the Report.

We begin the Report by describing the Clinic’s investigative methodology. We then detail the process by which people are put in protective custody in Colorado. The heart of the Report is a description of the grim living conditions and issues that impact the lives and safety of people in the BVCF PC Unit, as well as the dangers of forced removal from protective custody. We conclude by offering recommendations to improve protective custody in Colorado.



## Inner Demons ↓

It's a fight I have to conquer,  
I deal with it everyday,  
Angel on one shoulder,  
But the demons want to play,  
Will I fall into temptation,  
Or will the light cast it away,  
I use to think this life was cool,  
Now I pray for better days,  
I was never close with god,  
But now I'm asking for forgiveness,  
Got my right hand on the book,  
With only him as my witness,  
I ain't proud of things I've done,  
Some of it knocked me to my knees,  
Somehow he gave me the strength,  
And put me back up on my feet,  
So I pray for forgiveness,  
And for my life that he spared,  
Every so often I look up,  
Now I realize that he cared.

POEM CONTRIBUTED BY ISAAC



# Methodology

The Clinic began investigating conditions in the BVCF PC Unit in response to multiple complaints from people living there. The complaints revealed a host of issues touching nearly every aspect of life: food being contaminated or tampered with, second-hand exposure to mace, limited-to-no access to the law library, limited-to-no outside recreation, a lack of educational, vocational, mental health, and religious programming, no emergency alert system, and interference with access to the prison grievance procedure, among others.

This Report is the culmination of a two-year investigation into the conditions in the BVCF PC Unit. The goal is to educate the public, legislature, and other stakeholders about the dangerous and inhumane conditions suffered by people in the PC Unit and to prompt reform efforts. The Report relies on documents obtained through the Colorado Open Records Act (“CORA”), CDOC’s Administrative Regulations, interviews with and materials from our incarcerated contacts, and consultation with a corrections expert. We have drawn from these records and sources to provide a comprehensive overview of the conditions inside the BVCF PC Unit and to demonstrate the urgent need for reform. Due to security concerns and a well-founded fear of retaliation among our incarcerated contacts, this Report uses pseudonyms to protect the identities of the incarcerated individuals interviewed.

# Admission Into Protective Custody

Admission into protective custody is incredibly hard to achieve and many incarcerated individuals are left to suffer violent attacks before CDOC is willing to admit them. CDOC states that protective custody is for those who need protection based on “verifiable information” of a heightened risk to their safety.<sup>21</sup> In practice, there appears to be a significant disconnect between what incarcerated individuals consider to be a threat to their lives and what CDOC is willing to recognize as a “verifiable threat.” Frequently, this forces people to endure brutal assaults and live in abject fear for their lives for months—sometimes years—before CDOC finally admits them into protective custody, even if they have assisted law enforcement or renounced gang life.

**“Do you know what it’s like to choose to fight for your life every day? It takes heart and courage.”**

— DAVID

For example, before he came to prison, David testified against one of his co-defendants, a high-ranking member of his gang. In response, the gang put out a hit on David’s life. David, sentenced to 28 years, was worried about his safety upon his arrival in prison and immediately applied for PC. CDOC officials denied his request. They told David that because he didn’t assist the government or “rat on anyone,” he didn’t need PC, ignoring the fact that David *did* assist the government by testifying against his co-defendant, at great risk to himself. Tragically, but unsurprisingly, three members of his former gang viciously attacked David his first day in prison, just hours after his arrival. David sustained serious injuries and was stomped by his attackers so forcefully he had a bootprint on his head.<sup>22</sup>

Yet even this attack did not prompt CDOC staff to reconsider their denial of David’s PC application; this was just the beginning of the targeting and violence David would face in prison. Incredibly, David suffered *five* more assaults before CDOC finally allowed him to enter protective custody. He observes, “Do you know what it’s like to choose to fight for your life every day? It takes heart and courage.”<sup>23</sup> David’s story is not unique. Several other people we spoke to detailed their struggle to gain admission to PC while facing threats to their lives by people in general population. Summing up his experience of watching CDOC repeatedly minimize the danger of his situation and refuse to admit him to PC, David observed, “the protective custody system is just a big game.”<sup>24</sup>

CDOC’s stated purpose for protective custody is, “to provide adequate alternate housing placement for offenders who are at substantial risk of serious harm if placed in a general population setting.”<sup>25</sup> One of the most common reasons people request PC is to seek safety after their former gang “greenlights” them.<sup>26</sup> Prison gangs often “greenlight” former gang members who have renounced their membership in a gang; being “greenlighted” means the gang has issued a standing order to all its members to hurt or kill the individual who has renounced membership (as happened to David).<sup>27</sup> Moreover, disowning a gang and losing their protection makes an individual an easy target for other rival groups.



In CDOC, when an incarcerated person requests admission into PC, they invoke a six-step process that involves substantial staff discretion at each step. According to CDOC policy, an incarcerated person may either request PC themselves or may be placed there involuntarily if CDOC administration knows of a “legitimate verifiable threat” against the incarcerated person.<sup>28</sup> If an incarcerated person feels their life and safety are threatened because of a custody issue, they must request and fill out an “Offender PC Request Form” and then go through multiple rounds of interviews with groups of CDOC administrators in which they are required to detail the specific threat against their life.<sup>29</sup> People in protective custody are so targeted by those in general population that even requesting, having, or filling out a PC request form can be dangerous and lead to being labeled a “snitch” or a “rat”—a lethal label in prison. If CDOC determines the incarcerated individual does not need protective custody, the process ends, and the incarcerated individual is returned to general population, sometimes to the same unit that prompted the individual’s request for protective custody.<sup>30</sup>

Many people who requested to be placed in PC because they renounced gang life or chose to assist the government or law enforcement have been forced to endure unimaginable stress, terror, and physical violence as a direct result of CDOC’s refusal to put them in PC. In fact, CDOC’s verifiable threat requirement often leaves those seeking PC status believing they need to be viciously attacked in order to gain entry into the PC unit.<sup>31</sup> James used to be a high-ranking member of a well-known gang. Before being sent to prison, James cooperated with federal law enforcement officials, becoming a confidential informant against other members of his former gang and wearing a wire to drug and weapons deals at great personal risk.<sup>32</sup>

After cooperating with the authorities, James was sentenced to prison and placed at a CDOC facility. Months after his arrival, his former gang discovered his assistance to law enforcement and greenlighted him in retaliation. His life has been in danger ever since. Because of his former high-ranking status in his gang, James was, and is, considered a highly-prized target for his former gang; if a gang member were to successfully assault him, it would be seen as a “trophy” or “stripe”<sup>33</sup> for the attacker.<sup>34</sup> Recognizing the threat to his life, federal law enforcement officials told James he should be placed in protective custody and even wrote a letter on his behalf to CDOC officials, including staff at the prison where he was housed. The letter explained James’s cooperation with law enforcement, noted the threats on his life, and advocated for him to be placed in protective custody. Yet, when James formally applied for PC, CDOC denied him admission.<sup>35</sup>

This was only the beginning of James’s nightmare journey into protective custody. CDOC denied James access to PC three separate times, despite the documented danger to his life corroborated by law enforcement. Each denial further exacerbated James’s fear. He repeatedly explained his situation to CDOC staff, begging to be placed in PC. He even provided a federal agent’s telephone number to CDOC staff so they could again confirm his story, to no avail.<sup>36</sup>

After the third denial, CDOC transferred him to another facility where his former gang also had a substantial presence. When he began receiving more threats on the yard, James went to his case manager and “refused housing,” meaning he refused to go back to his cell in general population as a means of self-protection, i.e., to try to force CDOC’s hand to house him safely. In response, CDOC staff put him in disciplinary segregation. While the maximum time in disciplinary segregation,

also known as “the hole,” is fifteen days, James continued to refuse housing and had to endure solitary confinement for months in order to protect his own life because CDOC refused to take any appropriate steps to protect him.<sup>37</sup>

What’s more, because he kept “refusing housing,” he kept accruing disciplinary infractions which increased his custody score to “close custody,” the highest classification level with correspondingly harsh conditions of confinement. James even attempted to resolve the issue through CDOC’s formal grievance system but was told he “could not grieve classification.”<sup>38</sup> Even after federal authorities sent another letter to the prison where he was housed, CDOC still refused to approve his PC application, and instead just shuffled him to yet another facility. When he arrived at this new facility, prison staff told him they had been apprised of his situation, and they “would watch him closely.” James knew this wasn’t true, but he was so exhausted, beat down, and isolated from his prolonged time in the hole that he relented and accepted his housing assignment in general population. The next morning, he was stabbed leaving the mess hall after breakfast.<sup>39</sup>

After his family told federal law enforcement officials that he was attacked, federal authorities called CDOC. The day after he was stabbed—and months after his initial request—CDOC finally placed James into PC. Because his custody score had increased to close custody during his housing refusals, CDOC housed James at the BVCF PC Unit instead of the more appropriate medium custody PC Unit at AVCF. Had he been appropriately classified and sent to AVCF, he would have had fewer restrictions, more space and opportunities for recreation, and more access to educational and rehabilitative programs. Understandably, the entire ordeal has made James incredibly anxious. “I don’t know who to trust. You can speak the truth and not be heard until it is too late.”<sup>40</sup> Mike, who suffered multiple assaults and four separate PC hearings before CDOC finally admitted him to PC, expressed a similar sentiment: “I believe that CDOC treats my safety as a privilege.”<sup>41</sup>



# CDOC's Only PC Units Are in Some of Its Most Restrictive Facilities

An individual's custody level determines the security level of the facility where they are placed as well as their housing unit a particular facility.<sup>42</sup> CDOC uses a "point score" to determine people's custody level based on a number of factors, including history of institutional violence, age, prior felony convictions, mental health needs, need for programs, and severity of current conviction.<sup>43</sup>

Custody level dictates a substantial amount of the prison experience; indeed, a person's custody score has a direct impact on the access they have to programs, educational and vocational opportunities, treatment, prison jobs, and other opportunities for rehabilitation.<sup>44</sup> Those who have a lower custody score are eligible to be housed in lower custody units and facilities that offer valuable vocational and education programs to help reintegrate people into society or provide other opportunities.<sup>45</sup>

Yet, those who need protective custody in CDOC are forced to forgo these crucial rehabilitative opportunities because there are no minimum-restricted or minimum custody PC units in the system. The only two PC units in the entire CDOC system are in prisons with the highest and most restrictive custody levels: close and medium custody. The Arkansas Valley Correctional Facility PC Unit is medium custody, and those in the unit have access to basic educational and vocational programs, some indoor recreation, a gym, and other rehabilitative opportunities. By contrast, the hallway where the BVCF PC Unit is located was originally constructed for punitive segregation, where people lived in solitary confinement and remained entirely siloed from other incarcerated people. The repurposing of this area for protective custody did not change the layout of the living space in any material way; those who are confined there say the day hall, where they spend the vast majority of their time out of their cells, is "just a hallway."<sup>46</sup>

According to the corrections expert we consulted, prisons should house people according to similar programmatic needs and safety risks. Despite this basic corrections classification principle, because CDOC has failed to establish PC units with lower custody levels, it forces together a mismatched group of people who have differing types of risks and needs in the BVCF PC Unit. Rather than allowing people to live with others of a similar classification group, CDOC's PC process forces everyone in PC into two management categories—the most restrictive and second most restrictive in CDOC's system. Thus, CDOC sacrifices the needs, specifically the program and treatment needs, of those who need protective custody for the convenience of housing these individuals together despite their differing custody levels. In addition to failing to allow for rehabilitative opportunities, this scheme also denies people access to programs needed to meet parole requirements.<sup>47</sup> As CDOC itself recognized in a 2013 Internal Classification Report, "Although it may seem easier to treat all offenders alike, they clearly are not."<sup>48</sup>

**"Although it may seem easier to treat all offenders alike, they clearly are not."**

— 2013 CDOC INTERNAL CLASSIFICATION REPORT

# The BCVF Protective Custody Unit:

## *“That Place Will Push You Until You Snap”*

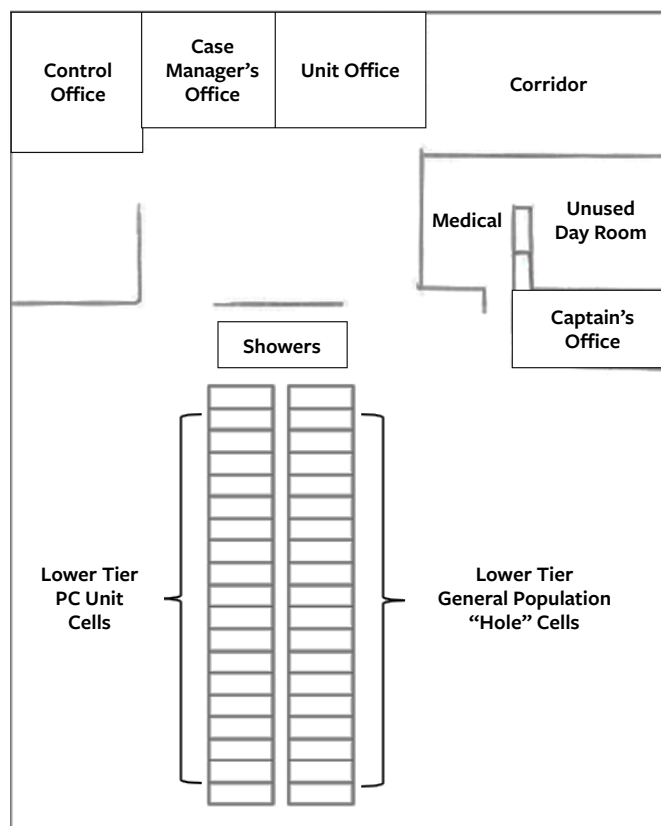
Driving towards the Buena Vista Correctional Facility, with the Collegiate Peaks and the mountain town of Buena Vista just visible in the background, it’s easy to pick out the BCVF PC Unit: a narrow, two-story annex of white cement extending from the main prison building. Just outside is a dirt pit surrounded by an electric fence with coils of barbed wire.

### LAYOUT OF THE BCVF PC UNIT

Inside that narrow, white cement building live approximately 50 people. The entire BCVF PC Unit is comprised of two narrow hallways, one stacked on top of the other. For people in the PC Unit, their entire day-to-day life takes place in these hallways, save for hour long excursions to the small patch of dirt that serves as an exercise “yard” and occasional trips to the medical unit. The bottom hallway is approximately 86 feet long and six feet wide.<sup>49</sup> The hallway is so narrow that a person standing in the middle with outstretched arms can touch both sides.<sup>50</sup> One resident described it as a “sardine can.”<sup>51</sup>

The hallway, which BCVF staff refer to as a “day hall” bears no resemblance to the day halls in non-PC units, where people are able to move around, sit at tables, eat together or play games, watch television, or participate in group programs. In the BCVF PC Unit hallway, there are a few small tables bolted to the wall, so it’s impossible for multiple people to sit around them to play cards—one of the very few activities that people in the PC Unit are able to do.<sup>52</sup> One person explained that the area is so narrow, “if you have a guy sitting at the table, you have to stop and allow them to move before walking by. It’s like a cattle chute in here.”<sup>53</sup>

Eighteen single cells line one side of the hallway.<sup>54</sup> Some of these cells are so small that the toilet almost touches the bed.<sup>55</sup> Todd, who has been living in the BCVF PC Unit for several years, described having to sleep with his head three inches from the toilet.<sup>56</sup> When he rolls over in bed, his sheets fall into the toilet water.<sup>57</sup> The cells have no windows.<sup>58</sup>



BCVF PC Unit Floorplan



The line of side-by-side cells all face a concrete wall with a few windows that have been broken for years. Requests to repair the windows are ignored, so residents of the BVCF PC Unit cover the broken windows with trash bags in the winter in an attempt to keep out the frigid mountain cold.<sup>59</sup> And in the summer, the heat is suffocating.<sup>60</sup> Mice and insects frequently come into the PC Unit from the outside.<sup>61</sup>

The lower tier has two phones and two showers to be shared among 18 people.<sup>62</sup> All 18 people must use the phones and showers during the same few hours a day, when they are allowed out of their cells to mill about in the hallway. Upstairs, 18 double cells line a hallway that is the same length as downstairs.<sup>63</sup> Oddly, the double cells upstairs are smaller than the single cells downstairs.<sup>64</sup> There are no ladders to climb up to the top bunk, and people have fallen trying to heave themselves onto their beds.<sup>65</sup> There are also no windows in the cells on the upper tier.<sup>66</sup> Unsurprisingly, tension arises among cellmates when people's only escape from their tiny cells is a cramped hallway. There are double the number of people upstairs but the tier still only has two showers and three phones.<sup>67</sup> Each day, there's a rush when the cell doors first open for "hallway time." Daniel observes: "It's like a corral. You know how they let the horses out? That's what it is to get to the shower first. And the phone."<sup>68</sup>

For the people who live in the BVCF PC Unit, these tiny hallways are their entire world. Jonah, who has lived in the BVCF PC Unit for just under a year, described the unit as an "alternate reality."<sup>69</sup> Another resident, Leo, stated, "the conditions are dismal. It's disheartening to know that I have to stay here. I don't have any hope."<sup>70</sup> "It's like death row," concluded another resident.<sup>71</sup>

#### **"GROUNDHOG DAY:" A DAY IN THE LIFE INSIDE THE BVCF PC UNIT**

A typical day in the BVCF PC Unit is mind-numbingly monotonous.<sup>72</sup> People receive three meals a day, all of which are cold by the time they reach the PC Unit because BVCF chooses not to use heated carts to deliver food to the PC Unit as it does in many other units.<sup>73</sup> Unlike people in general population, who largely eat meals together in a cafeteria, people in PC eat meals locked down in their cells.<sup>74</sup>

During the limited time people are let out of their cells, there is nothing to do. People in the BVCF PC Unit receive one hour of outdoor recreation six days a week.<sup>75</sup> But "recreation" is a misnomer: the "yard" consists of a small dirt pen with some pull-up bars, a quarter-size basketball court and hoop, and three torn sandbags for "lifting weights."<sup>76</sup> The people in the PC Unit submitted a proposal to get more exercise equipment—they even offered to pool their money to pay for it—but BVCF staff denied the proposal.<sup>77</sup> There is no access to indoor recreation, like a gym, for people in the BVCF PC Unit.<sup>78</sup> In stark contrast, the general population units at BVCF have access to an indoor gym, softball leagues, basketball contests, and football.<sup>79</sup>

**"There's nothing that gives you hope. It's just the same fucking thing. It's Groundhog Day, a horrible version of Groundhog Day."**

— ALEX

When BVCF PC residents are inside the hallway, all they have to keep busy are cards and a chess set that is missing four pieces—the people in the unit had to make replacement pieces out of toilet paper.<sup>80</sup> There is very limited access to educational or religious programming, and no vocational training or really anything to occupy peoples’ minds, resulting in forced idleness.<sup>81</sup> One resident captured daily life in the PC Unit succinctly: “We get up and play cards, wait for the phone and shower. That’s it.”<sup>82</sup>

Todd acknowledged the widespread and ubiquitous use of hooch (homemade alcohol) to occupy peoples’ minds, stating,

**[G]uaranteed, you’d find 100 pounds of homemade hooch here. That’s what this place does to people. [There’s] no out. The corrections officers will say, “all they do down there is make hooch.” Then give them something to lose. They have nothing. There’s no outlet. People are trying desperately to find a release.**<sup>83</sup>

Alex agreed: “These guys drink every day because there’s nothing to do. It’s insane. The constant stress is overwhelming and it builds up in people and just explodes. Drinking is the way that guys deal. This environment creates hostilities.”<sup>84</sup>

The physical layout and cramped quarters of the BVCF PC Unit and lack of activities contribute to an overall sense of hopelessness and boredom. There is so little to do that many people in the PC Unit spend their days pacing up and down the hallway and sitting alone in their cells. “It’s the same thing every day,” Alex explained. “There is no sense of purpose. There’s no productivity. No access to anything. It’s constant frustration.”<sup>85</sup> Studies have documented the positive correlation between boredom and incidents of violence.<sup>86</sup> Boredom in prison results in “too much time to dwell on one’s problems, too much time to think about and carry out acts of misbehavior or violence, and lack of opportunity to engage in constructive activities that may improve self-esteem or otherwise improve someone’s life.”<sup>87</sup> Joel’s description of his lived experience in the PC Unit echoes the research findings: “one of the reasons there’s so much violence is that people living in the unit just don’t have anything to do; everyone is bored all the time. This increases tension that eventually boils over into fights about petty things.”<sup>88</sup>



# Findings

## PROGRAMMING: A “CHOICE” BETWEEN LIFE AND LIBERTY

One of the most significant problems in the BVCF PC Unit is the lack of programming and rehabilitative opportunities. This includes a lack of vocational training, educational programs, rehabilitative programs, and jobs. Correctional studies have found that a lack of programming in prisons leads to increased frustration and aggression in incarcerated people.<sup>89</sup> Inexplicably, as demonstrated in the chart below, CDOC says it offers individuals in the PC Unit significantly fewer programs than those offered to individuals in other close custody units (i.e., to those people incarcerated at the same security level).<sup>90</sup>

Moreover, the only job available to people in the BVCF PC Unit is being a porter, which involves cleaning the unit or handing out meals.<sup>91</sup> There is currently no vocational training offered.<sup>92</sup>

| BVCF PC Unit Programs   | LCF Close Custody Programs  | CSP Close Custody Unit Programs  | SCF MCC Unit Programs  |
|---|---|--|--|
| <ul style="list-style-type: none"> <li>• Customer Service</li> <li>• Why Try</li> <li>• Moral Reconciliation Therapy</li> <li>• GED classes</li> <li>• University of Denver Arts &amp; Resilience</li> <li>• Virtual Job Shadow</li> <li>• Pueblo Community College Care 4 You</li> <li>• Pre-Release/Re-Entry</li> </ul> | <ul style="list-style-type: none"> <li>• Adult Basic Education (ABE)</li> <li>• ABE II</li> <li>• Pre-GED</li> <li>• GED classes</li> <li>• Customer Service</li> <li>• Computer Information Systems</li> <li>• Foundations in Career and Technical Education</li> <li>• Virtual Welding</li> <li>• CDOC Flaggers Certification</li> <li>• Thinking for a Change</li> <li>• Moral Reconciliation Therapy</li> <li>• Why Try</li> <li>• Pre-Release</li> <li>• Post-Secondary Education Classes (availability varies)</li> </ul> | <ul style="list-style-type: none"> <li>• High School Equivalency Classes</li> <li>• Pueblo Community College Classes</li> <li>• Second Chance Pell</li> <li>• Pre-Release Program</li> <li>• Drug/Alcohol Relapse Prevention</li> <li>• Medication Assisted Treatment</li> <li>• Why Try</li> <li>• Bring you're a Game</li> <li>• Moral Reconciliation Treatment</li> <li>• Development of Ethics</li> <li>• Anger Management</li> <li>• Khan</li> <li>• Phoenix Program</li> <li>• Victim Impact</li> <li>• iLive (Gang Disengagement)</li> <li>• Break Through</li> <li>• Denver University Leadership</li> </ul> | <ul style="list-style-type: none"> <li>• ABE</li> <li>• GED classes</li> <li>• Computer Essentials</li> <li>• Work Essentials</li> <li>• Money Essentials</li> <li>• Ready to Work Courseware</li> <li>• Soft Skills Courseware</li> <li>• National Work Readiness Credential (NWRC)</li> <li>• Supplemental Work Skills</li> <li>• Parents on a Mission</li> <li>• Why Try</li> <li>• The Resilience Breakthrough</li> <li>• I Creative Educational Video Courses of:               <ul style="list-style-type: none"> <li>○ Career Development</li> <li>○ Financial Literacy</li> <li>○ Life Skills</li> <li>○ Technology courses</li> </ul> </li> </ul> |

Programs Offered in CDOC Close Custody Units

## LACK OF PROGRAMMING IMPACTS SUCCESSFUL RE-ENTRY INTO THE COMMUNITY

Programming in prison is critically important for several reasons. First, it increases a person’s chance of successful re-integration back into society once released. As CDOC Executive Director Dean Williams has observed, about 95% of incarcerated people are returning to our communities at some point in their lives.<sup>93</sup> Between 2019 and 2020, releases from CDOC custody rose by 6.3%.<sup>94</sup> As of 2017, the three-year recidivism rate<sup>95</sup> reached 44.9%.<sup>96</sup> While CDOC is releasing significant numbers of people into the community, the high recidivism rates suggest that individuals may not be adequately prepared during their incarceration for successful re-entry.

Despite CDOC’s recognition of the importance of rehabilitative programming, the BVCF PC Unit doesn’t offer most of the programs designed to prepare incarcerated people for release. Unlike in general population, in the BVCF PC Unit, there are no college classes or opportunities for incarcerated people to earn a post-secondary degree. Nor are there vocational or trade classes, like welding, furniture making, or culinary arts, which can provide job training and (limited) wages that can help a person successfully transition back into society and pay restitution.<sup>97</sup>

Even the small number of programs CDOC occasionally offers in the BVCF PC Unit aren’t offered on a consistent basis. For example, Justin signed up for the customer service vocational training that was scheduled to begin in March 2022.<sup>98</sup> But the program never happened, and Justin has no idea when—or if—it will be offered again.<sup>99</sup> He stated,

**“We know that the key to reducing the recidivism rate in Colorado is to improve the culture inside the prison . . . providing programs that focus on rehabilitation and redemption not only improves prison safety, but also increases public safety as well.”**

— CDOC EXECUTIVE DIRECTOR  
DEAN WILIAMS

“I need programs that are going to benefit me on the outside in a career. People in the PC Unit need people skills, job skills, and communication skills.”<sup>100</sup> Alex agreed: “Teach people a trade. Show them how they can make a living when they get out. That’s what works.”<sup>101</sup>

Colorado Correctional Industries (“CCI”), the top provider of vocational training in CDOC, advertises a reduced recidivism rate as one of the benefits of participating.<sup>102</sup> CCI also touts their programs as helping incarcerated individuals satisfy restitution obligations to victims and helping incarcerated people financially support their families in the community.<sup>103</sup> But there are no CCI positions offered to people in BVCF PC. By providing relevant job training and opportunities to earn money, CDOC could increase people’s chances of obtaining employment post-release and successfully re-entering society.

## **LACK OF PROGRAMMING IMPACTS THE ABILITY TO BE RELEASED ON PAROLE**

Participation in programming is also important, and is sometimes required, for a person to be meaningfully considered for release by the Colorado State Parole Board. The primary consideration for any decision to grant parole is public safety.<sup>104</sup> The Parole Board may parole any person who has served their minimum sentence after determining, *inter alia*, “there is a strong and reasonable probability the person will not thereafter violate the law and that release of such person from institutional custody is compatible with the welfare of society.”<sup>105</sup> The Colorado parole system is discretionary, meaning the Parole Board can deny someone for essentially any reason. In evaluating a parole application, the Board considers several factors specified by statute, including the incarcerated person’s program or treatment participation and progress.<sup>106</sup>



People convicted of sex offenses face stricter requirements to be released on parole. In 1998, the Colorado legislature passed the Colorado Sex Offender Lifetime Supervision Act.<sup>107</sup> Under the Lifetime Supervision Act, people convicted of sex offenses are sentenced to at least the minimum of the presumptive range and a maximum of the person's natural life, also known as indeterminate sentences.<sup>108</sup> Upon completion of a person's minimum sentence, the Parole Board will consider whether the person may be released.<sup>109</sup> The Colorado State Parole Board has taken the position that, under the Lifetime Supervision Act, anyone convicted of a sex offense must have "successfully progressed in treatment" to even be considered for release.<sup>110</sup> In CDOC, this treatment is called Sex Offender Treatment and Management Program ("SOTMP").<sup>111</sup> CDOC describes SOTMP as "cognitive-behavioral based therapy [that] adheres to the risk, needs, and responsivity model of treatment."<sup>112</sup> SOTMP utilizes clinical interviews, psychological testing, sexual interest testing, polygraph testing, and individualized treatment plans.<sup>113</sup> The legislature requires this treatment to address public fears that people who commit sex offenses will continue to present a danger when released if they do not receive treatment.<sup>114</sup>

But SOTMP is not offered in the BVCF PC Unit.<sup>115</sup> Because participation in the program is currently and has historically been required for parole eligibility, incarcerated people in the BVCF PC Unit who must participate in SOTMP are serving de facto life sentences. Joel and Carter are two people in the BVCF PC Unit who are serving indeterminate sentences under the Lifetime Supervision Act. Joel is sentenced to six years to life.<sup>116</sup> Carter is sentenced to 12 years to life.<sup>117</sup> Joel and Carter will not be considered by the parole board for release until they have progressed in treatment.<sup>118</sup> Without access to SOTMP, they will die in prison.

By failing to provide access to SOTMP in the BVCF PC Unit, CDOC is forcing incarcerated people to choose between safety or treatment and release. Carter described feeling completely forgotten by CDOC and devastated at the prospect of serving a life sentence. He states, "I want to grow and learn from my mistakes but there are no opportunities for growth or progress, or any normalcy or quality of life. I also feel it is unfair to the victim for CDOC not to educate or provide opportunities for growth for myself and others who need SOTMP."<sup>119</sup>

Several people in the BVCF PC Unit have been told they are required to participate in "Therapeutic Community," a substance abuse treatment program, prior to being released. Participation in Therapeutic Community is not statutorily required for release but is effectively required by CDOC for people with certain convictions to be paroled.<sup>120</sup> CDOC describes Therapeutic Community as "a structured method and environment for changing human behavior in the context of community life

**"My only options are 1) stay in PC and never get paroled, or 2) take SOTMP in the general population. If I go to the general population, I risk being physically assaulted. Knowing that these are my two options makes me feel helpless and lost. I feel like I have no future."**

— JOEL

and responsibility.”<sup>121</sup> The stated objective of the program is to provide “comprehensive treatment and therapeutic intervention in a safe, secure atmosphere.”<sup>122</sup> Therapeutic Community is typically a separate housing unit where people can access support and are monitored 24 hours a day.<sup>123</sup> The BVCF PC Unit does not offer a Therapeutic Community program.<sup>124</sup>

Like those required to take SOTMP, individuals who need to complete the Therapeutic Community program but are in protective custody also face a Hobson’s choice: treatment and the possibility of release versus safety in prison. For example, the Parole Board denied Lorenzo parole in 2022 because he has not completed Therapeutic Community, which he has been told he must receive for release because of his criminal convictions. While serving his current sentence, Lorenzo has not been using drugs and has received no disciplinary infractions. He is trying to rehabilitate himself but is unable to receive the proper treatment because he is faced with the forced “choice” of safety in the PC Unit or Therapeutic Community in the general population, where he is at risk of harm by his former gang.

Lorenzo has completed every program offered in the BVCF PC Unit. But none of these programs provided treatment for his struggle with substance abuse. Prior to his most recent parole hearing, an inpatient, intensive substance abuse rehabilitation program outside of prison accepted Lorenzo to the program upon his release.<sup>125</sup> Lorenzo also obtained two other parole sponsors from well-established agencies.<sup>126</sup> All in all, Lorenzo was the perfect candidate for parole. Yet, he was denied parole partly for “untreated criminogenic needs and insufficient treatment dosage”<sup>127</sup> because he had not completed Therapeutic Community.

|  |
|--|
| <b>Defer Reasons: READINESS RELATED</b>  |
| <b>Program Considerations</b><br><input checked="" type="checkbox"/> Untreated Criminogenic Needs/Insufficient Tx Dosage |
| <b>Parole Plan Considerations</b>  |

*Excerpt of Lorenzo’s Parole Board Action Sheet*

Lorenzo says it’s disheartening knowing he cannot be released until he participates in Therapeutic Community. “It feels like I am just doing dead time and wasting my time not taking any programs,” he says. Lorenzo was recently transferred to the AVCF PC Unit, which also does not offer Therapeutic Community. His case manager at AVCF won’t even explain how to get into Therapeutic Community even if he was willing to leave protective custody to receive the treatment. Lorenzo doesn’t know whether he’s on a waitlist. He has been trying to leave the PC Unit to participate in a Therapeutic Community.<sup>128</sup> Even though Lorenzo does not feel safe leaving protective custody, CDOC has left him with no choice but to risk his life for a chance at parole.<sup>129</sup>

Both Jonah and Xavier are in the same situation.<sup>130</sup> In spring 2019, CDOC told Xavier he needs to participate in a Therapeutic Community to be eligible for parole. CDOC staff told Xavier he would need to leave the BVCF PC Unit and go to the general population to participate in a Therapeutic Community. Because Xavier is not currently participating in a Therapeutic Community, he is designated “TC non-compliant” by CDOC.<sup>131</sup> In addition to the impact this has on parole, when incarcerated people are “TC non-compliant,” they are able to earn significantly less good time credit



than if they were “compliant.”<sup>132</sup> Xavier has not been able to accrue good time credit from being “TC non-compliant” for so long that if he had been given a second opportunity to take the program, he would have been released from prison by now.<sup>133</sup> Thus, Xavier is being incarcerated for a longer period of time because of CDOC’s failure to provide him access to the Therapeutic Community program while he is in PC.

### **BVCF PC STAFF: “I AM NOT HERE TO HELP YOU”**

Not only does CDOC administration fail to provide even minimally-adequate programming for those in the BVCF PC Unit, CDOC does not have appropriately qualified correctional staff in the PC Unit and has failed to properly train them in management of a PC Unit. While PC-specific training is not necessarily common, it is well-known that “PC is difficult to manage.”<sup>134</sup> Not only is no such specialized training required for PC staff, some BVCF PC Unit staff have demonstrated an inability or unwillingness to comply with even the most basic CDOC policies and procedures. For example, several staff members admitted in documentation of an emergency situation in the PC Unit that they had not signed or were not familiar with either their post orders or the posted operational rules for the unit.<sup>135</sup> And there have been troubling lapses in staff performance of other basic responsibilities. For example, the duties of a BVCF PC officer include conducting “security and wellness rounds” (essentially visual checks on each incarcerated person) once every hour.<sup>136</sup> Yet after a serious incident in the BVCF PC Unit, a CDOC investigation revealed not only that PC Unit staff had neglected to conduct rounds during the three and a half hours during which the incident occurred, but also that staff falsified documents in an attempt to cover up their dereliction.<sup>137</sup>

While a lack of training and apathy may account for some of the safety concerns and lack of supervision in the BVCF PC Unit, they are not the entire cause of the problem. Several of the correctional staff in the PC Unit have adopted a flippant, even cruel, manner in their dealings with the people incarcerated in the PC Unit and treat protective custody like a privilege, not a life-saving necessity. For example, people in the PC Unit have reported that staff instigate or escalate verbal altercations with residents, needlessly antagonize people in the PC Unit, and even start confrontations between incarcerated people for entertainment. At least one person reported that correctional officers in the PC Unit pull out their taser as a threat at inappropriate times.<sup>138</sup>

In one instance, CDOC staff used pepper spray in the PC Unit causing Will, who has a severe mental disability, to be triggered because the mace reminded him of a traumatic event in his life. He became distressed and in response, BVCF PC staff sprayed him with three cans of pepper spray before slamming him to the ground. The officers then dragged Will to the showers to wash off the pepper spray but instead of using cold water, as is protocol, they used hot water to decontaminate him. Staff are supposed to use cold water because hot water makes the pepper spray sink deeper into the skin, intensifies the caustic, airborne nature of the spray, and exacerbates its effects, especially the burning sensation. PC staff left Will, still handcuffed, locked inside the shower, screaming because he was in so much pain and struggling to even breathe. He begged PC staff to turn the water off. After PC staff finally released him from the shower approximately thirty minutes later, he had welts on his legs from kicking the door of the shower to try to escape the hot water and its devastating effects. Will then had to wash his face in his cell toilet because that was the only cold water available to him. Incredibly, CDOC later charged Will \$60 for the expense of the pepper spray they used on him.<sup>139</sup>

When BVCF staff lash out or antagonize people in the PC Unit, those who object to the correctional officers' behavior end up facing severe consequences, while the officers seemingly face little to no consequences at all.<sup>140</sup> For example, while PC staff passed out dinner one night, Justin asked CDOC Sergeant Rinke about his order of stamps, which he did not receive with the rest of his commissary order. Sergeant Rinke responded by saying if Justin asked her again, he “won’t get shit.” Sergeant Rinke and Justin spoke a bit more before PC staff decided to punish Justin by refusing to provide him dinner because he was being confrontational. When Justin expressed his indignation at not receiving his meal, Sergeant Rinke said to him, “I hope your daughter gets raped, motherfucker.”<sup>141</sup>

After he yelled back at her in outrage, PC staff put Justin in the hole for fourteen days and charged him with “Threatening Staff,” a violation of the Code of Penal Discipline (“COPD”).<sup>142,143</sup> But CDOC eventually downgraded the charge to a “Non-Disciplinary Resolution,” an alternative process that carries a minor penalty and less serious consequences. According to a different PC staff member who spoke to Justin, CDOC downgraded Justin’s COPD conviction because Sergeant Rinke has a history of making explicit and improper remarks to other incarcerated individuals, as well as to CDOC staff.<sup>144</sup> Unfortunately, this type of verbal abuse from staff appears to be common in the BVCF PC Unit. Correctional Officer Vigil, a PC staff member with an infamous reputation among incarcerated individuals, told another incarcerated person in the PC Unit to “suck [his] fucking dick” and then made sexual gestures towards him.<sup>145</sup>

**“Cops used to tell me ‘why don’t you get away from gang life?’ And I do and they treat me worse.”**

— JUSTIN

“They have my life in their hands,” observed Justin, who joined PC after he renounced his gang ties in order to raise his daughter. “We choose to be back here [in PC] instead of picking up a blade to protect ourselves. Why are we treated so much worse?”<sup>146</sup> This is a familiar sentiment in the BVCF PC Unit, where another person told us, “Cops used to tell me, ‘Why don’t you get away from gang life?’ And then I do, and they treat me worse.”<sup>147</sup>

Some of the things BVCF PC staff say to the incarcerated people in the unit actually put them in harm’s way. For example, while Carter waited to provide a required urinalysis, Correctional Officer Knudsen stated in front of other staff and in earshot of other incarcerated people in

the unit that Carter was a “child molester,” a completely false accusation.<sup>148</sup> As correctional staff well know, people convicted of sexual crimes against children are one of the most vulnerable populations in prison because they are frequently victims of “jailhouse justice” and are preyed upon by other incarcerated people.<sup>149</sup> Calling an incarcerated person a “child molester” (or a snitch) in front of other incarcerated people puts them at substantial risk of serious harm; courts have found this kind of staff misconduct so dangerous that it can violate an incarcerated person’s constitutional right to be free from cruel and unusual punishment.<sup>150</sup>

Moreover, some BVCF officers allowed other incarcerated people in the PC Unit to view Carter's prison financial account information, including purchased canteen items. Armed with knowledge of his financial information and knowing they had leverage because he was labeled a child molester, certain incarcerated people in the PC Unit extorted Carter for roughly \$500 and stole property from him. These individuals threatened to spread the word that he is a child molester if he refused to pay them money or "let" them steal certain items from him.<sup>151</sup>

There is one particular staff member in the unit whose apathetic attitude is renowned: Case Manager Denwalt. "I am not here to help you," he recently told a person in the unit.<sup>152</sup> "I'm just waiting to get into enough trouble so I can pack my box and retire," he shared with another.<sup>153</sup> Jonah, who has been in the BVCF PC Unit since the summer of 2021, reported that he has never met with Case Manager Denwalt nor has he had the required monthly "meaningful contact"<sup>154</sup> meetings with him. Other PC staff falsely claim Jonah met with Case Manager Denwalt twice.<sup>155</sup>

The absence of a case manager's involvement hurts these individuals' chances of getting parole and being released. "He won't send emails to help us progress through programs and connect with programs on the outside," Lorenzo told us. Lorenzo reported that Mr. Denwalt refused to email a drug and alcohol program or scan and send them any of the materials they needed for Lorenzo's application, as he is supposed to do as case manager. "He was actively trying to [prevent] me [from] get[ting] into the [drug and alcohol] program."<sup>156</sup> Case Manager Denwalt has refused to submit paperwork for halfway houses and parole plans and has refused to do yearly reclassifications that can lower a person's custody level. And he has also refused to even notify the parole board that those individuals who are deemed "program non-compliant" are only noncompliant because the program they need is not offered in BVCF PC Unit.<sup>157</sup>

BVCF PC Unit staff also systematically obstruct incarcerated individuals from filing formal, written grievances about the PC Unit and staff.<sup>158</sup> Obtaining grievance forms is difficult, as Case Manager Denwalt and other PC staff do not make them available and unilaterally impose additional requirements not reflected in CDOC policy on people who seek to file grievances.<sup>159</sup> Only after sending a "kite" (a written request) to Case Manager Denwalt detailing what they want to complain about can an incarcerated person obtain a grievance form. However, multiple people reported that Mr. Denwalt rarely replies to kites, ignores requests, and does not distribute grievance forms.<sup>160</sup> And when residents of the PC Unit do manage to file grievances, retaliation by staff is commonplace: "staff members play games with people who file grievances. When an incarcerated person who files grievances asks for staff help, staff often ignore their requests or refuse to engage with them."<sup>161</sup> As shown below, Case Manager Denwalt has also threatened to limit a person's ability to even file grievances when Mr. Denwalt felt they had filed too many grievances, many of which complained about Mr. Denwalt's own misconduct. This kind of restriction keeps incarcerated individuals from raising concerns to higher authorities within CDOC.



RE: WARNING LETTER REGARDING THE FILING OF FRIVOLOUS GRIEVANCES

Be advised that you have filed 11 frivolous grievances in the past 30 days.

You are infringing upon the right of access to the grievance process by all other offenders. Resources available to respond to grievances are limited and the process is designed to allow all offenders the ability to grieve. You are hereby directed to cease the filing of multiple, frivolous grievances immediately. Failure to adhere to this warning will result in a restriction of your privilege to file grievances. Such restriction will result in limiting you to one grievance per month.

The length of the restriction is dependent upon the number of times your privileges have been restricted in the past.

Our records indicate this is your first warning notice and your privileges have never been suspended therefore, your privileges may be suspended for a period of 90 calendar days.

Our records indicate this is your second warning notice and your privileges have been suspended on one prior occasion; therefore, your privileges may be suspended for a period of 180 calendar days.

Our records indicate this is your third warning notice and your privileges have been suspended on two prior occasions; therefore, your privileges may be suspended for a period of one year.

Your grievance activity is being closely monitored and should you choose to continue your abuse of the grievance system, you will be notified in writing that your privileges are being restricted.

I, [REDACTED] Denver LT # [REDACTED] Print name and DOC employee ID) hereby certify that on  
th

### **MEDICAL EMERGENCIES: “IF YOU’RE NOT PASSED OUT, WE’RE NOT SENDING MEDICAL.”**

Medical care throughout CDOC is highly criticized and litigated; however, care in the BVCF PC Unit is exceptionally inadequate. CDOC states it is “the policy of the Colorado Department of Corrections (DOC) to ensure that offenders have unimpeded access to a continuum of health services so that health care needs, including prevention and health education, are met in a timely and efficient manner.”<sup>162</sup> But CDOC does not ensure people in the BVCF PC Unit have access to emergency health services because: 1) there are no emergency call buttons (or other emergency notification systems) anywhere in the PC Unit; and 2) staff members disregard—and sometimes punish—cries for medical help.

When describing the medical care in the BVCF PC Unit generally, one person living there said, “the lack of medical care causes me to feel unsafe and helpless.”<sup>163</sup> One BVCF PC corrections officer told someone having a medical emergency, “If you’re not passed out on the ground, we’re not sending medical.”<sup>164</sup> People in the BVCF PC Unit recounted numerous stories where the lack of an appropriate medical response caused them serious harm. For example, Timothy’s appendicitis was left untreated for days; as a result, he developed life-threatening sepsis.<sup>165</sup> Mike sustained fractures to his eye and facial bones, but when he didn’t receive timely treatment, his bones could not be reset. As a result, Mike suffers from permanent numbness and damage to his cheek.<sup>166</sup> When David was diagnosed with appendicitis, staff entered his cell, where he was visibly ill and draped over his toilet. Seeing his obviously ill state, medical staff merely nudged his foot and only then proceeded to check his vitals.<sup>167</sup>

Even when corrections officers stumble onto an emergency by chance while doing rounds, their response is lacking. Last year, Timothy, who suffers from tonic-clonic seizures, had a seizure in his cell. During the seizure, an officer barged into his cell and inexplicably dug his knee into Timothy’s back, slamming Timothy’s head into the concrete floor. Once the officer finally believed Timothy was

having a seizure, he dragged him out of his cell and into the public hallway. Timothy's pants fell down as he was dragged across the concrete. One corrections officer watched and laughed as Timothy lay exposed on the ground, feeling "humiliated."<sup>168</sup>

As noted, individuals incarcerated in the PC Unit spend between eighteen and twenty hours of the day confined to their cells, but none of the cells in the BVCF PC Unit have emergency call buttons or any discreet, safe, or effective mechanism to summon help in the event of an emergency.<sup>169</sup> Many people reported that the only way to call for help from a cell is to scream and bang on the locked, solid cell door until a corrections officer responds—if they respond.<sup>170</sup> When a person lives in a cell located further down the tier and away from the unit staff office, it is even more difficult to get the attention of a staff member.<sup>171</sup> At least one person in the BVCF PC Unit reported that people have been disciplined for their improvised attempts to summon medical aid.<sup>172</sup> Individuals who kick doors to get staff attention during emergencies can be accused of "Tampering with a Security Device"<sup>173</sup>—a Class 1 Code of Penal Discipline charge.<sup>174</sup> Given the frequency and severity of medical emergencies in the BVCF PC Unit, the fact that individuals are locked down in their cells and out of view for a vast majority of the time, and the documented fact that BVCF PC Unit staff fail to do their rounds as required, the need for emergency call buttons is simply "common sense."<sup>175</sup> Indeed, emergency notification systems are present in many other facilities, including the Arkansas Valley Protective Custody Unit.

People in the BVCF PC Unit estimate that medical emergencies occur approximately three to four times a month, and if corrections officers act, they take an average of 20–30 minutes to respond.<sup>176</sup> Failing to provide medical treatment for 30 minutes following an emergency could render a person with a severe condition seriously injured, disabled, or dead. If PC Unit staff members ignore or fail to hear screams for emergency aid, those emergencies are unaddressed until correctional officers make their rounds through the unit—minutes, or even hours—after the emergency. However, officers in the PC Unit have been shown to neglect rounds and even falsify rounds logs.<sup>177</sup>

Carter's experience illustrates the dangerousness of this situation. Carter was diagnosed with a seizure condition in 2018. Carter has no emergency call button and does not have a cellmate, so he has no way to notify BVCF PC unit staff when he is having a seizure. As a result, medical staff only learn about Carter's seizures long after they occur. In times of crisis, Carter depends on his neighbors' ability to hear and recognize when he is having a seizure and their willingness to scream for help.<sup>178</sup> During a seizure earlier this year, Carter's neighbor yelled for staff to come to his aid. Staff never answered the calls for help. Luckily, Carter came out of this seizure without serious injuries, but officers only became aware of the emergency when he alerted them to the event during their rounds later that day. Medical staff did not see Carter until the day after he seized.<sup>179</sup> Any traumatic injuries sustained from a loss of consciousness or uncontrolled seizing (like trauma to the head), can severely worsen over the course of a day. Despite alerting staff to the serious and ongoing risks he faces from repeated seizures, nothing has changed. During his most recent seizure, Carter had to notify corrections officers about the event when they made their rounds—more than an hour after he had seized.<sup>180</sup>

A number of people in the BVCF PC Unit suffer from seizures, and it is common for them to fall during these episodes. Most objects and surfaces in the BVCF PC Unit cells are made of concrete or

metal.<sup>181</sup> In that environment, a seizure—regardless of its cause—could result in head injuries, loss of consciousness, broken bones, or broken teeth; a person suffering a seizure could also inadvertently bite off their tongue or aspirate.<sup>182</sup> Severe seizures, like the ones experienced by Carter, Timothy, and Leo, can also result in death. Yet people housed in the BVCF PC Unit have no emergency call buttons and corrections officers often do not respond to screams for help, leaving medical emergencies ignored and untreated.

As another example, Leo, who also has diabetes, needs an emergency call button to summon medical attention when his blood sugar spikes too high or falls too low.<sup>183</sup> Leo is frequently unable to monitor his blood sugar because he doesn't have adequate access to the medical supplies he needs (lancets and test strips). Leo has a glucometer, but he is only able to test his blood sugar twice a day during med-line when provided those supplies—once in the morning and once a night.<sup>184</sup> When Leo's blood sugar fluctuates throughout the day, he cannot test and therefore cannot take the necessary actions to raise or lower his blood sugar to keep himself safe. When Leo's blood glucose levels rise or fall significantly, he is at risk of a diabetic emergency, including coma and death.<sup>185</sup> When his blood sugar drops, Leo experiences severe cold sweats and shakes. During crashes, Leo eats whatever food he has in his cell to raise his blood sugar. But without the ability to measure his blood glucose levels, sometimes Leo overeats and his levels spike, which can lead to other complications. Leo requires insulin to bring his blood glucose levels down.<sup>186</sup> Leo also has a history of diabetic seizures. CDOC's own internal 2020 memo on this states people "with diabetes and a history of hypoglycemia at BVCF are issued a medical alert pendant if they are housed in a unit without a call button."<sup>187</sup> But when Leo requested a hand-held emergency call button, BVCF staff denied his request saying "[he] would be fine."<sup>188</sup> It is clearly established law that a failure to treat diabetic emergencies can violate the Eighth Amendment. See *Chapman v. Santini*, 805 F. App'x 548, 561 (10th Cir. 2020).

Without these lifesaving buttons or alert systems, there is no effective way for people incarcerated in the BVCF PC Unit to get the attention of staff, even during the limited times when people are out of their cells and in the hallway. In the summer of 2021, BVCF PC residents on the lower tier hallway created a makeshift "magnet system" in an attempt to communicate with staff. People incarcerated in Unit acquired three blank strip magnets, and wrote one message on each: "Talk to Staff," "Cleaning Supplies," and "Soda."<sup>189</sup> They left the magnets on a piece of metal near the hallway's security camera, which is aimed at the lower BVCF PC hallway. The camera's feed is supposed to be closely monitored by unit staff.<sup>190</sup> People living on the lower tier would then attempt to get the attention of staff in the unit office by holding up one of the magnets to the camera.<sup>191</sup> Incarcerated people reported brief and varying success in obtaining staff attention through this system, but one person in the BVCF PC Unit reported that the "magnet system" has recently disappeared. Before the magnets vanished, someone crossed out the message on the magnet reading "Talk to Staff," changing it to "Trying to Rat."<sup>192</sup> This action underscores how public efforts to speak with unit staff are viewed as an individual attempting to "snitch" on someone else in the unit and shows the importance of having some way to communicate with staff in a discrete and timely fashion in an emergency.

Screaming and kicking at cell doors and a makeshift public "magnet system" are demonstrably inadequate alternatives to emergency call buttons. An electronic emergency alert system tracking the use of the buttons and the response to every alert, would make it significantly less likely that staff would be unaware of or ignore emergencies in the BVCF PC Unit.



## **ATMOSPHERE OF VIOLENCE: “EVENTUALLY YOU’RE GOING TO LOSE YOUR MIND”**

Because of the combination of troubling factors present in the BVCF PC Unit, emergency call buttons are critical, not only to alert staff to medical emergencies, but also to episodes of violence. The physical layout coupled with a lack of oversight by the staff who run the PC Unit has led to incidents of violence in a place whose purpose is to protect its occupants from violence.

The narrow hallway that houses the BVCF PC Unit makes the occupants feel like they are living in a “sardine can,” with cramped conditions and little room for activities or personal space.<sup>193</sup> As stated above, the “day hall,” a space where incarcerated people are supposed to be able to spend time outside of their cell, is a hallway so narrow that two people cannot walk down it side by side.<sup>194</sup> In units and day halls in other CDOC facilities, people can create art and music, congregate, engage in religious worship or classes, or go to the gym or a large yard. But in the BVCF PC Unit hallway, daily life is limited to fighting for use of the few showers and phones, gathering in very small groups to attempt to play cards or converse, or pacing the tier. Even these limited activities are hindered, though, by the crowded conditions and boxcar-like layout of the PC Unit. And the powderkeg created by these conditions is made worse by the dearth of programming and work opportunities available to individuals living in the hallway.

These are the conditions that people are faced with when renouncing gang life or assisting law enforcement—both activities society purports to laud. Rather than being able to serve their sentences in a safe and rehabilitative environment, people in the BVCF PC Unit are forced to do their time in a literal hallway, where they have few ways to progress or exert pent-up energy. With little to do (such as educational or vocational programs or sufficient recreation), some turn to other ways to occupy their minds and time, such as making hooch. Others act out their frustration, creating an atmosphere of violence in the BVCF PC Unit. The correctional officers’ response exacerbates the situation: “The staff inspire violence in [BVCF] PC. If one person gets punished, then everyone gets punished and these circumstances cause other incarcerated people to be angry towards the person who got in trouble. It’s like retaliation against other incarcerated people is encouraged by staff.”<sup>195</sup>

As the authors of one study examining the link between lack of programming in prisons and increased frustration and aggression concluded, “Much of the violence under such conditions is thought to be expressive, lacking any goal other than tension reduction.”<sup>196</sup> Many people in the BVCF PC Unit observed that idleness and boredom appear to be a substantial cause of confrontation between people confined there. “It’s mostly spur of the moment stuff, little petty stuff that escalates because it is so congested back here,” Joel explained. “But the violence that takes place shouldn’t be taking place. The fights that occur should be squashed or correctional officers should intervene.”<sup>197</sup> Jonah agreed: “Living in such a confined area makes people distressed, distrustful, and paranoid.”<sup>198</sup>

Yet those in the BVCF PC Unit have little access to education or vocational programs, no access to meaningful work, and no access to treatment programs like Therapeutic Community. This lack of activities and programming undoubtedly contributes to increased violence and tensions in the BVCF PC Unit. Several studies have found that incarcerated people who participate in programs and who work meaningful jobs are less likely to be involved in assaults, substance abuse, and other prison misconduct.<sup>199</sup> “In my view, one of the reasons there is so much violence is that people living in the unit just don’t have anything to do; everyone is bored all the time. This increases tension that eventually boils over into fights.”<sup>200</sup>

And once violence erupts, there is no easy way for people in the BVCF PC Unit to stop it because, as noted, there is no avenue for people to call for help discretely from their cells. Often, a fight will break out or someone will attack someone else within the confines of a cell where cameras do not point for privacy reasons.<sup>201</sup> This means that staff may not realize fights are happening until after the fact, if at all.<sup>202</sup> Even if a verbal altercation has yet to escalate into a physical altercation, incarcerated people have no way to quickly and subtly alert staff before it escalates to violence.<sup>203</sup>

Emergency call buttons would not only provide for timely notification of urgent situations, they would also allow those in the BVCF PC Unit to call staff covertly, without fear of retaliation or being branded a “snitch.”<sup>204</sup> Several people reported being attacked or witnessing an attack by a group of predatory individuals and being prevented from alerting corrections officers to the incident due to threats from others in the group.<sup>205</sup> For example, an agitated individual in the BVCF PC Unit hit Xavier over the head with a rock brought in from the yard.<sup>206</sup> Jonah, who witnessed the attack, was afraid to notify staff because he feared retaliation from certain people in the PC Unit.<sup>207</sup> Jonah explained, “If I had an emergency call button, I would have pressed it so I could notify staff discretely.”<sup>208</sup>

Another incarcerated individual assaulted Mike in the BVCF PC Unit. The attacker hit Mike on the head, knocking him out, and then dragged him into his cell. Mike woke up some time later, bleeding profusely. When he managed to pull himself up and look in the mirror, he saw a “cave” in the side of his face where his cheekbone had been. The person who attacked him pressured him to refuse medical treatment so neither of them would get in trouble. Mike had no way to discretely call for medical attention or to alert staff he had been attacked. As noted in the previous section, Mike was eventually diagnosed with multiple fractures to the eye and facial bones, but by the time he saw a doctor, Mike’s broken cheekbone had already healed in a way where it was impossible to re-set the bone. Mike still has nerve damage and facial numbness.<sup>209</sup>

The constricted and inadequate physical layout of the BVCF PC Unit coupled with antagonistic staff and the lack of programs and recreation creates a desperate, tense, sometimes almost-manic atmosphere. As one resident noted, “being confined to a place like that—eventually you’re going to lose your mind.”<sup>210</sup> This environment drives people, many of whom risked their lives when they assisted the government or law enforcement, to physical altercations with each other because CDOC will not provide them any avenues to rehabilitate or reduce the tension and stress that fills the PC Unit. Within this atmosphere of violence, everyone in the BVCF PC Unit is a victim of living in that hallway: “It’s self-destruction.”<sup>211</sup>

### **ARBITRARY REMOVAL FROM PC: “THROWN TO THE SHARKS”**

People in the BVCF PC Unit are also forced to live with constant anxiety as to whether even a minor disciplinary infraction will lead to their removal from PC and placement back in general population, where their lives are once again threatened. Our corrections expert noted that the severity of the threats against people in protective custody means that those housed in the unit should rarely be kicked out.<sup>212</sup> But people cycle in and out of the BVCF PC Unit with alarming frequency.

CDOC’s removal of people from protective custody for seemingly arbitrary or inconsistent reasons has placed people in situations of life-threatening danger. Isaac, who spends his time studying psychology textbooks and hopes to earn a degree in business one day, was removed from PC for

possession of a shank (a homemade knife). Isaac's situation is unusual: possession of a shank typically does not result in removal from PC. Isaac was originally put into protective custody after his then-gang ordered him to attack a corrections officer. As quickly as he could without arousing suspicion, instead of following the order, he notified prison staff about the situation and the individual at risk. He then asked to be placed in protective custody and renounced his gang ties. Subsequently, his former gang greenlighted him, and his life has been in danger ever since.<sup>213</sup>

CDOC quickly accepted Isaac's PC application and put him in protective custody at BVCF. But two months later, staff put him in the hole for possessing hooch (many people in the PC Unit have hooch but not all are disciplined for it). About a week into Isaac's time in the hole, correctional officers searched his cell and found a shank hidden in the door. The shank was left there by a previous occupant of the cell; regardless, CDOC officials issued Isaac a COPD for "Possession of Contraband in the First Degree." Shortly after, CDOC removed Isaac from PC.<sup>214</sup>

Our corrections expert explained that this is not the ordinary course of events in such a circumstance; if an incarcerated person is found to have a weapon in their cell, typically they are sent to the hole for several days as punishment before being returned to the PC unit.<sup>215</sup> Indeed, other incarcerated people in the BVCF PC Unit have not been removed for more serious infractions, including actual assaults with weapons and threatening staff.<sup>216</sup>

CDOC moved Isaac to a different prison where his former gang maintains a strong presence. In the several months since he was removed from PC, Isaac has received numerous threats on his life from gang members, telling him they will hurt him the first chance they get. To stay alive, Isaac instituted a self-imposed lockdown: he does not leave his cell for any programs or activities because he fears he will be severely beaten or killed. He also avoids the limited socialization available through "table time," a form of so-called "passive recreation" where incarcerated people play cards and other activities at tables in a common area while in full restraints with their feet shackled to the table. Though this may seem secure, there have been multiple instances of incarcerated individuals escaping their restraints with a homemade handcuff key and attacking others who are restrained.<sup>217</sup>

"Everybody has a handcuff key," says Isaac. If gang members want to attack a greenlighted person at table time, they will pass the handcuff key around the table or room and wait until they are all out of their chains before they attack their restrained victim. Prison staff, not wanting to put themselves at risk during an attack like this, do not typically interfere and instead deploy pepper spray on the whole table and wait until the attack is done. "A minute and a half lasts a long time when you're getting your ass whooped," Isaac observed. Isaac desperately wants to get back into the BVCF PC Unit, despite the terrible conditions. "If they don't [put me back], they're basically feeding me to the wolves."<sup>218</sup>

Unfortunately, Isaac's story is not unique. Ben was a former high-ranking member of a well-known gang. Then his gang greenlighted him for talking to law enforcement about a crime he witnessed. At first, Ben tried to refuse when CDOC offered him protective custody because he knew the BVCF PC Unit was "just was a hallway of people – a sardine can." Ben was also worried about the stigma that accompanies PC and was concerned he would become a target if he accepted the offer of protection. Eventually, he agreed because he realized he had no other choice if he wanted to remain alive.<sup>219</sup>



But after several years, CDOC officials removed Ben from PC for getting into a shoving match with a friend during a minor argument. Even though his friend and other witnesses to the incident told BVCF PC staff the fight was horseplay, PC staff still gave Ben a disciplinary charge for assault, put him in the hole, and eventually removed him from PC. As noted, punishment for fighting in a well-run PC Unit should usually earn one or both parties a stint in the hole, not removal from protective custody entirely. “I thought I would be able to go to the hole, do my time, and get back in the PC unit, but instead they removed me. Typically, fighting with another person in PC doesn’t mean removal from the unit.”<sup>220</sup> This arbitrary and inconsistent response to fights by BVCF PC staff appears to be a common experience: “Corrections officers pick and choose who gets away with violence.”<sup>221</sup>

**“Everyone knows who I am...I’m like a trophy to them, they’re gonna beat me senseless and stab me. I have a hit on my head. I don’t stand a chance here.”**

— BEN

CDOC eventually transferred Ben to another facility where he has received multiple threats on his life. “Everyone knows who I am . . . I’m like a trophy to them, they’re gonna beat me senseless and stab me. I have a hit on my head. I don’t stand a chance here.” Ben faces similar concerns as Isaac because handcuff keys are very common where he is now housed. So Ben, like Isaac, tries to never leave his cell because he fears getting killed in general population. In addition to the significant toll that seven months of solitary confinement has taken on him, his isolation means he cannot attend the final class he needs to get his GED. The only interaction he has with other people is when CDOC permits him to call his family.<sup>222</sup>

Even when people are removed from PC to facilities where handcuff keys are less common, the danger is still constant and exhausting. After an altercation with an individual in the BVCF PC Unit who called him a racial slur, CDOC removed James from PC and placed him in a facility with a strong gang presence. “I’ve never had high blood pressure before, but since being here I’ve developed high blood pressure. [This facility] is scary at times. People here are dying—getting stabbed, getting jumped, and hanging themselves.” James feels particularly threatened because he is considered a “rat” for having spent time in PC and knows there is an old associate at the facility who hopes James will go out into the yard so he can attack him. The threat against his life in the yard (along with COVID protocols) means James hasn’t been outside in over a year.<sup>223</sup>

Six months after placing David in PC, CDOC kicked him out for an altercation with staff and placed him at another prison. “I don’t feel safe at all,” David said. “When I arrived here, a member of my former gang warned me I was still greenlighted.” Despite his demonstrated need for PC, David is now designated to “general population.” Because of that status, in some situations, he is exposed to unrestrained people. David told us:

**[In my current unit], all the incarcerated people can see each other. If I have to go to a visit, they take me and general population people out together. If I let my guard down, I could get assaulted during a visit or while passing a member of general population in the hall. At any moment, someone could decide to assault me . . . I certainly don’t feel safe.<sup>224</sup>**

Some people who CDOC removes from the BVCF PC Unit are put into what is informally known as a “soft pod”<sup>225</sup>: a general population close custody unit where CDOC claims they can “closely monitor” those who are housed in the unit.<sup>226</sup> Despite the fact that soft pods are labeled as general population, CDOC has admitted that soft pods are used as overflow for its PC units.<sup>227</sup>

These overflow pods are dangerous because they have few of the protections of protective custody. First, those in PC are supposed to be segregated from all other incarcerated people in general population. But people housed in soft pods can and do encounter incarcerated people from other day halls in the corridors, often unhandcuffed, when traveling to see their case manager or to go to a medical appointment. Second, in PC, peoples’ identities remain confidential from others, both in the unit and facility-wide, and there must be a secure barrier between a person in protective custody and those in general population, which provides some anonymity and safety for the individuals in protective custody.<sup>228</sup> There are no such privacy protections in soft pods; people are addressed and referred to by last name by prison staff, their names are labeled on the outside of their clothes, and their names are publicly announced when they have an appointment, allowing anyone in earshot to know who is housed there.<sup>229</sup>

Unfortunately, there is little documentation about the processes or even function of soft pods in CDOC in comparison to protective custody. “Strategic housing” (another name CDOC uses for the soft pods) does not appear in any publicly-available Administrative Regulation and is not a formal housing designation listed by CDOC. Recently, the opacity of the function and the questionable operation of soft pods has been a substantial factor in at least two federal civil rights lawsuits against CDOC officials.<sup>230</sup> Because soft pods are treated as PC overflow, people housed there are also often ongoing targets for violence or extortion because of the stigma surrounding protective custody. Yet, those housed in the soft pods have few of the institutional protections that those in PC have, leaving them vulnerable to assaults and targeting by people in general population.

# Recommendations

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment by government agencies and officials.<sup>231</sup> “The [Eighth] Amendment embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency.”<sup>232</sup> The United States Supreme Court has held that what constitutes an Eighth Amendment violation is dictated by society’s “evolving standards of decency.”<sup>233</sup> Evolving standards of decency are derived from the collective morals and values held by our governments and communities.<sup>234</sup> Across the nation, in recent years, laws concerning incarcerated people have gradually started to shift to recognize the humanity and rights of those behind bars. For example, in 2018, Colorado voters changed the state constitution to remove language that permitted prison labor without pay.<sup>235</sup> Some places have reenfranchised those serving criminal sentences—in Washington D.C., Maine, and Vermont, incarcerated people can vote in political elections.<sup>236</sup> And CDOC’s Executive Director Dean Williams is a major proponent of “normalizing” prisons, a phrase he often uses to mean that life behind prison walls should be less traumatic and more rehabilitative.<sup>237</sup>

As a society, we are moving away from using the criminal system solely as a means of indefinite condemnation. Policies and practices that incorporate our shared commitment to human dignity must extend to conditions in prisons. We conclude with recommendations to improve conditions in the BVCF PC Unit. These recommendations reflect a shift toward approaches that are in line with evolving standards of decency and best practices for the administration of protective custody units.

## **COLORADO LEGISLATURE**

- ▶ Pass legislation that mandates all parole-required programming be offered in all CDOC protective custody units.
  - Alternatively, repeal C.R.S. § 18-1.3-1006(1)(a), which the Parole Board construes to mandate participation in Sex Offender Treatment and Management Program (SOTMP) as a condition for release on parole.<sup>238</sup>
- ▶ Pass legislation to create a Protective Custody Commission to reform and standardize protective custody units in the Colorado Department of Corrections. Any such commission should solicit feedback and input from the people living in protective custody units and include members representing that population.

## **THE COLORADO DEPARTMENT OF CORRECTIONS & EXECUTIVE DIRECTOR DEAN WILLIAMS**

### **General**

- ▶ Direct the Office of Inspector General to conduct an investigation pursuant to C.R.S. § 17-1-103.8, which authorizes the inspector general to “investigate, detect, and prevent any violations of administrative regulations or state policy and procedure and any waste or mismanagement of departmental resources and corruption that may occur within the department and any other violation that may be committed by department staff where the violation could affect



the performance of staff duties or tend to erode public confidence in the performance of the department.”

- ▶ Offer Sex Offender Treatment and Management Program (SOTMP) in all CDOC protective custody units.
- ▶ Offer a Therapeutic Community program in all CDOC protective custody units.<sup>239</sup>
  - Alternatively, CDOC should allow incarcerated people to be released to halfway houses without first participating in a prison Therapeutic Community.<sup>240</sup>
- ▶ Conduct specialized protective custody unit training for staff and choose qualified staff members to run the unit. Officers should be trained in de-escalation tactics without the use of force to end altercations between individuals before they get out of hand.
- ▶ Equip all protective custody unit cells and common areas with emergency call buttons or other emergency alert system.
  - Alternatively, provide individuals with a handheld or amulet emergency call buttons.
- ▶ Eliminate the use of “soft pods” (also known as “strategic housing”) and make available a protective custody bed for any person designated to a “soft pod” for their safety.
- ▶ Consolidate protective custody into a dedicated, multi-custody level facility.<sup>241</sup>
  - Within the specialized protective custody facility, group all individuals based on similar needs and risks.

#### **If BVCF PC is closed and individuals are moved to alternative protective custody units**

- ▶ Offer protective custody residents the same educational, vocational, therapeutic, religious, and recreational programs provided to the general population.
- ▶ Ensure that any physical space devoted to protective custody unit(s) is adequate to ensure that “privileges, programs, services, and activities will be consistent with those afforded to similar classified [incarcerated people] in general population.”<sup>242</sup>

#### **If BVCF PC Remains Open**

- ▶ Offer BVCF PC residents the same educational, vocational, therapeutic, religious, and recreational programs provided to the general population.<sup>243</sup>
- ▶ Ensure the availability and integrity of the grievance process in the BVCF PC Unit.
- ▶ Create an internal commission that includes residents of the BVCF PC Unit and implement changes based on their specific requests and needs.<sup>244</sup>

#### **PUBLIC**

- ▶ Call upon your state legislators to take the above actions and hold CDOC accountable for ensuring humane and rehabilitative conditions for individuals in protective custody in Colorado. Colorado residents can find the contact info for their state representatives here:

<https://leg.colorado.gov/find-my-legislator>

# Conclusion

Many of the people in the BVCF PC Unit did what some might call the “right” thing—they helped the government in a criminal case or they renounced their gangs. They did the hard thing, the dangerous thing. As Jonah explained, “the whole point of coming to PC was to flip the script on my life, to make changes, do something different, and get out of the gang environment.”<sup>245</sup> As a result, CDOC shoves them into a hallway that is exposed to the elements all year long, locks them in their cells for most of the day, withholds mandatory and rehabilitative programming, allows medical emergencies to go untreated, tolerates violent assaults, enables harassment by staff, and then prohibits PC Unit residents from seeking redress.

The Buena Vista Correctional Facility Protective Custody Unit is a unique manifestation of a criminal punishment system that values retribution over rehabilitation and pro-social behavior like renouncing gang membership. It is a place riddled with degradation and stagnancy, where people are consigned to “rot away in a hallway.”<sup>246</sup> Colorado deserves more than a system that condemns people to exist in places haunted by suffering, stagnation, humiliation, and danger.

When someone is convicted of a crime, they are sent to prison *as* punishment— not *for* punishment.<sup>247</sup> The penalty for a criminal conviction is prison time. But abhorrent prison conditions that enable suffering and prolong sentences impose additional layers of punishment on the people who endure them.<sup>248</sup> The conditions in BVCF PC Unit go beyond prison conditions that have been normalized as “restrictive” and “harsh.”<sup>249</sup> The people locked away in the BVCF PC Unit hallway deserve more.

## Darkness

Alone in the dark, a man waits,  
For visions of horror, and dreams of hate.

Alone in the dark, a man cries,  
In each night of loneliness, a part of him dies.

Alone in the darkness, a man sleeps,  
To angels of darkness, his soul to keep.

Alone in the dark, a life must end,  
His wasted existence, in eternal sin.

Alone in the dark, noose over his head,  
Takes one last step, now he is dead.

POEM CONTRIBUTED BY ALEX

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# Endnotes

<sup>1</sup> United States Department of Justice National Institute of Corrections, 134060, *Protective Custody Management in Adult Correctional Facilities: A Discussion of Causes, Conditions, Attitudes, and Alternatives*, at 1 (Nov. 1990) (“DOJ NIC”).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> These certain crimes include sex crimes or crimes against children.

<sup>4</sup> Colorado Department of Corrections (“CDOC”) Administrative Regulation 650-02(IV)(C)(4)(b), Offender Group Living.

<sup>5</sup> DOJ NIC, *supra* note 1 at 2.

<sup>6</sup> *Id.* at iv.

<sup>7</sup> James Cullen, *The History of Mass Incarceration*, Brennan Center for Justice (July 20, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration>

<sup>8</sup> Nkechi Taifa, *Race, Mass Incarceration, and the Disastrous War on Drugs*, Brennan Center for Justice (May 10, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/race-mass-incarceration-and-disastrouswar-drugs>

<sup>9</sup> James Austin & Emmitt Sparkman, COLORADO DEPARTMENT OF CORRECTIONS ADMINISTRATIVE SEGREGATION AND CLASSIFICATION REVIEW, NAT’L INST. OF CORR., (Oct. 35 2011), [https://www.prisonlegalnews.org/media/publications/national\\_institute\\_of\\_corrections\\_co\\_doc\\_ad\\_seg\\_and\\_classification\\_review\\_oct\\_2011.pdf](https://www.prisonlegalnews.org/media/publications/national_institute_of_corrections_co_doc_ad_seg_and_classification_review_oct_2011.pdf)

<sup>10</sup> Other prison systems, like California, identified a need for special units to house at risk individuals in the 1990s. California implemented “Sensitive Needs Yards” in 2002; however, the yards themselves were poorly run. *See, e.g.,* The Associated Press, *Prisons Created to Protect At-Risk Inmates Bred Own Violence*, AP NEWS (July 1, 2018), <https://apnews.com/article/c862bcb4269f44978db4c013d1ea85e1>.

<sup>11</sup> Maureen O’keefe & Alysha Stucker, SB 11-76 ANNUAL REPORT: ADMINISTRATIVE

SEGREGATION FOR COLORADO INMATES, Colo. Dep’t. of Corr., at 3-4, Jan. 2014. [https://drive.google.com/file/d/oB8WLSXAb0Mg8VXpNSnRGb3R4T28/view?resourcekey=0-zHNq7mb\\_h\\_yTl78NvkDHLw](https://drive.google.com/file/d/oB8WLSXAb0Mg8VXpNSnRGb3R4T28/view?resourcekey=0-zHNq7mb_h_yTl78NvkDHLw) (“Annual Report”).

<sup>12</sup> *Id.* Studies have shown that solitary confinement is psychologically damaging and can cause anxiety, depression, rage, paranoia, hallucinations, loss of control, aggression, and suicidal ideations. *See, e.g.,* Craig Haney, *Mental Health Issues in Long Term Solitary and “Supermax” Confinement*, 49 *Crime & Delinq.* 124, 130-131 (2003).

<sup>13</sup> Annual Report, *supra* note 11 at 3-4.

<sup>14</sup> CDOC Administrative Regulation 650-02(I), states, “[i]t is the policy of the Department of Corrections (CDOC) to provide adequate alternate housing placement for offenders who are at substantial risk of serious harm if placed in a general population setting. Protective Custody is not a punitive measure.” Moreover, “[p]rotective custody is intended for offenders requiring protection based on verified information, in which a higher level of potential risk within a general population setting is possible and no other reasonable housing alternatives are available.” AR 650-02(IV)(C)(1).

<sup>15</sup> Annual Report, *supra* note 11 at 4.

<sup>16</sup> People who live in the general population are part of the “main” prison population. They are not isolated into special units used for punitive or safety measures.

<sup>17</sup> Statement of Leo.

<sup>18</sup> James E. Robertson, *The Constitution in Protective Custody: An Analysis of the Rights of Protective Custody Inmates*, 56 *UNIV. CIN. L. REV.* 91, 91 (1987).

<sup>19</sup> Statement of Todd.

<sup>20</sup> Our expert, who we agreed to keep anonymous, is a renowned expert in the field of corrections.

They have previous experience as a correctional officer and administrator, have acted as a consultant for multiple state correctional departments, authored numerous reports, and are a prominent expert witness.

<sup>21</sup> CDOC Administrative Regulation 650-02(IV) (C)(1).

<sup>22</sup> Statement of David.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> CDOC Administrative Regulation 650-02(I).

<sup>26</sup> See, e.g., David Skarbek, *The Social Order Of The Underworld: How Prison Gangs Govern The American Penal System* 92-93 (2014).

<sup>27</sup> See generally *id.*

<sup>28</sup> CDOC Administrative Regulation 650-02 (IV) (C)(4)(a).

<sup>29</sup> CDOC Administrative Regulation 650-02 (IV) (C)(3).

<sup>30</sup> Statement of David.

<sup>31</sup> Statement of James.

<sup>32</sup> *Id.*

<sup>33</sup> “Stripe” is used in this context as the equivalent of a service stripe on a military uniform, meaning the attacker would gain notoriety or status by attacking James.

<sup>34</sup> Statement of James.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Statement of Mike.

<sup>42</sup> In evaluating custody level, CDOC policy states that it attempts to balance an individual’s security risk to the public, CDOC employees, and other incarcerated people with the security and programmatic needs of the incarcerated individual. Maureen O’keefe, INTERNAL CLASSIFICATION IN THE COLORADO DEPARTMENT OF CORRECTIONS, Colo. Dep’t. of Corr. 1, at 4, April 2013 (“Internal

Classification in the CDOC Report”); *and see* CDOC Administrative Regulation 600-01(IV)(A).

<sup>43</sup> CDOC Administrative Regulation 600-01(IV) (D)(3)(b)(4).

<sup>44</sup> CDOC has recognized the importance of accurate classification and placement. In a 2013 Internal Classification report, CDOC stated, “the mind-boggling challenge is to categorize a heterogeneous mix of offenders into similar subgroups that will minimize conflict and maximize opportunities for treatment, education, and jobs.” Internal Classification in the CDOC Report at 5.

<sup>45</sup> For example, one minimum-restricted facility provides programs for welding and iron working vocational training, CDL Operating Training, and HVAC and Electrical Systems training. Colo. Dep’t. of Corr., Four Mile Correctional Facility, <https://cdoc.colorado.gov/facilities/canon-city/four-mile-correctional-facility>.

<sup>46</sup> Statement of Will.

<sup>47</sup> See Programming Section *infra* at 14-18.

<sup>48</sup> Internal Classification in the CDOC Report at 5.

<sup>49</sup> Statements of Todd and Justin.

<sup>50</sup> Statement of Todd.

<sup>51</sup> Statement of Ben.

<sup>52</sup> Statement of Todd.

<sup>53</sup> *Id.*

<sup>54</sup> Statements of Todd and Alex

<sup>55</sup> Statement of Alex.

<sup>56</sup> Statement of Todd.

<sup>57</sup> *Id.*

<sup>58</sup> Statement of Alex.

<sup>59</sup> Statement of Jonah.

<sup>60</sup> Statement of Alex.

<sup>61</sup> *Id.*

<sup>62</sup> Statement of Todd.

<sup>63</sup> Statements of Alex and Justin.

<sup>64</sup> Statement of Justin.

<sup>65</sup> Statement of Alex.

<sup>66</sup> *Id.*

<sup>67</sup> Statements of Alex and Todd.

<sup>68</sup> Statement of Daniel.

<sup>69</sup> Statement of Jonah.  
<sup>70</sup> Statement of Leo.  
<sup>71</sup> Statement of Lorenzo.  
<sup>72</sup> Statement of Jonah.  
<sup>73</sup> Statement of Alex.  
<sup>74</sup> *Id.*  
<sup>75</sup> *Id.*  
<sup>76</sup> Statements of Leo and Todd.  
<sup>77</sup> Statement of Todd.  
<sup>78</sup> Statements of Daniel and Jonah.  
<sup>79</sup> Statement of Alex.  
<sup>80</sup> Statements of Todd, Jonah, Joel, and Leo.  
<sup>81</sup> For more information, see Programming Section *infra* at 14-18.  
<sup>82</sup> Statement of Alex.  
<sup>83</sup> Statement of Todd.  
<sup>84</sup> Statement of Alex.  
<sup>85</sup> *Id.*  
<sup>86</sup> See, e.g., Ann Marie Rocheleau, *An Empirical Exploration of the “Pains of Imprisonment” and the Level of Prison Misconduct and Violence*, 38 CRIM. J. REV. 354, 364 (2013); John J. Gibbons & Nicholas De B. Katzenbach, *Confronting Confinement: A Report of the Commission on Safety and Abuse in America’s Prisons*, 24 FED. SENT’G REP. 36-37 (2011); Kevin N. Wright, *A Study of Individual Environment and Interactive Effects in Explaining Adjustments to Prison*, 8 JUSTICE QUARTERLY 236-37 (1991).  
<sup>87</sup> Ann Marie Rocheleau, *supra* note 87 at 366-67.  
<sup>88</sup> Statement of Joel.  
<sup>89</sup> Richard C. McCorkle, Terance D. Miethe & Kriss A. Drass, *The Roots of Prison Violence: A Test of the Deprivation, Management, and Not-So-Total Institution Models*, 41 CRIME & DELINQUENCY 317, 318-319 (1995); see also, Lee H. Bowker, *An Essay on Prison Violence*, 63 PRISON J. 24, 27-29 (1983).  
<sup>90</sup> This chart includes the programs CDOC claims are offered in BVCF PC and close custody units at Limon Correctional Facility (“LCF”), Colorado State Penitentiary (“CSP”), and the Management Control Comprehensive (“MCC”) Unit at

Sterling Correctional Facility (“SCF”). CDOC Education Memos of Programs Offered in Closed Custody (2022). Our incarcerated contacts who have lived in the BVCF PC Unit report that several of these programs that are allegedly available are rarely, if ever, actually offered.

<sup>91</sup> Statements of Jonah and Joel. CDOC has said it offers five positions to individuals housed in the PC Unit; however, our contacts have reported only this single position.

<sup>92</sup> Statement of Justin. CDOC claims to offer a “virtual job shadow” program on Chromebooks; however, one of our incarcerated contacts was selected for it and the program was rescheduled three times. Eventually, the teacher just quit. None of our contacts has actually been able to participate in this proposed program.

<sup>93</sup> Sterling Journal-Advocate, *Colorado Joins Five States in Prison Improvement Program*, JOURNAL ADVOCATE (Nov. 21, 2019), <https://www.journal-advocate.com/2019/11/21/colorado-joins-five-states-inprison-improvement-program/>.

<sup>94</sup> CO Dep’t of Corr., *Statistical Report FY2020-19* (2020) (“CDOC Statistical Report”), 11.

<sup>95</sup> The three-year recidivism rate is a measurement of the rate at which people are returning to prison either for new crimes or technical parole violations.

<sup>96</sup> CDOC Statistical Report, *supra* note 94 at 44.

<sup>97</sup> Statement of Justin; CDOC CORA Response of Classes Offered to 6P (2022).

<sup>98</sup> Statement of Justin.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> Statement of Alex.

<sup>102</sup> Colorado Correctional Industries, *2020 Annual Report*, 5 (noting that individuals working in correctional industries have a recidivism rate 20% lower than the rate of those individuals not in such programs).

<sup>103</sup> *Id.*

<sup>104</sup> C.R.S. §17-2-100.2.

<sup>105</sup> C.R.S. §17-2-201(4)(a).



<sup>106</sup> C.R.S. §17-22.5-404(4)(a)(IV).  
<sup>107</sup> Colorado Division of Criminal Justice, *Overview of Sex Offender Management in Colorado*.  
<sup>108</sup> C.R.S. §18-1.3-1004. For example, a class four felony carries a minimum sentence of two years and a maximum sentence of six years. Thus, a person convicted of a class four sex offense under the Lifetime Supervision Act could receive a sentence of two years to life.  
<sup>109</sup> C.R.S. §18-1.3-1006(1)(a).  
<sup>110</sup> C.R.S. §18-1.3-1006(1)(a). This reading of the statute reflects a 2018 position statement of the Colorado Attorney General's Office. This interpretation has been challenged by many criminal defense attorneys in Colorado.  
<sup>111</sup> CDOC Administrative Regulation 700-19(IV).  
<sup>112</sup> CDOC Administrative Regulation 700-19(IV)(E).  
<sup>113</sup> CDOC Administrative Regulation 700-19(IV)(F).  
<sup>114</sup> C.R.S. §18-1.3-1001.  
<sup>115</sup> Statements of Joel and Carter; CDOC CORA Response on SOTMP (2022).  
<sup>116</sup> Statement of Joel.  
<sup>117</sup> Statement of Carter.  
<sup>118</sup> Statements of Joel and Carter.  
<sup>119</sup> Statement of Carter.  
<sup>120</sup> Statements of Xavier and Lorenzo.  
<sup>121</sup> CDOC CORA Response, "TC History and Basic Components of a TC" (2022).  
<sup>122</sup> BVCF, *The Freedom Project, Therapeutic Community Manual* (2021).  
<sup>123</sup> *Id.*  
<sup>124</sup> CDOC CORA Response Listing Facilities Offering TC (2022).  
<sup>125</sup> Thus, at that point, he wasn't asking to be completely released but to be paroled out to an inpatient substance abuse program. Lorenzo knows he needs a structured program and counseling to avoid making the same mistakes he did in the past. He is trying to take all the necessary steps to avoid coming back to prison. He receives support from his mom, grandma, and sister, all of whom live in Colorado.  
<sup>126</sup> Statement of Lorenzo.

<sup>127</sup> Colorado Parole Board Action Sheet.  
<sup>128</sup> Lorenzo must get permission from CDOC to leave the AVCF PC Unit. Because people in PC are at risk of harm in the general population, individuals cannot just leave PC whenever they want.  
<sup>129</sup> Statement of Lorenzo.  
<sup>130</sup> Statements of Jonah and Xavier.  
<sup>131</sup> Xavier previously participated in a Therapeutic Community program. During the program, Xavier overdosed and was kicked out. People are considered TC non-compliant when they had the opportunity to participate in a Therapeutic Community program but are removed.  
<sup>132</sup> See CDOC Administrative Regulation 550-12(3)(b)(3). Good time credit is time deducted from an incarcerated person's sentence when they have good conduct for a period of time. Incarcerated people can earn up to 10 or 12 days of good time credit per month, plus any additional good time credit for completing certain programs, working, or succeeding in group living communities. People in a Therapeutic Community can earn up to four days of good time credit per month. People who are considered TC non-compliant are ineligible to earn that four days of good time credit.  
<sup>133</sup> Statement of Xavier.  
<sup>134</sup> Corrections Expert.  
<sup>135</sup> BVCF Incident Review (2021).  
<sup>136</sup> BVCF 6P Floor Officer Post Order (2021).  
<sup>137</sup> BVCF Incident Review (2021); BVCF After Action Report (2021). Investigators interviewed several PC staff members who responded to the incident, one of whom told investigators that he "discovered after the incident that rounds were not being conducted as logged...Although staff would make appearances on the tier at various times, they do not coincide with the logged times, and they are not complete rounds."  
<sup>138</sup> Statement of Xavier.  
<sup>139</sup> Statement of Will.  
<sup>140</sup> Officer Incident Reports (2022).

- <sup>141</sup> Statement of Justin.
- <sup>142</sup> *Id.*
- <sup>143</sup> The Colorado Department of Corrections provides written rules of conduct that outline prohibited behavior and the penalties imposed for engaging in prohibited conduct. *See generally*, CDOC Administrative Regulation 150-01.
- <sup>144</sup> Statement of Justin.
- <sup>145</sup> Statement of Timothy.
- <sup>146</sup> Statement of Justin.
- <sup>147</sup> Statement of Ben.
- <sup>148</sup> Statement of Carter.
- <sup>149</sup> David Skarbek, *The Social Order Of The Underworld: How Prison Gangs Govern The American Penal System*, at 28 (2014).
- <sup>150</sup> *See, e.g., Benefield v. McDowall*, 241 F.3d 1267 (10th Cir. 2010).
- <sup>151</sup> Statement of Carter.
- <sup>152</sup> Statement of Leo.
- <sup>153</sup> Statement of Justin.
- <sup>154</sup> A “meaningful contact” meeting is a meeting in which the case manager is supposed to discuss with the incarcerated person their status, progress, and program needs, among other things. CDOC Administrative Regulation 550-01(IV)(K).
- <sup>155</sup> Statement of Jonah.
- <sup>156</sup> Statement of Lorenzo.
- <sup>157</sup> Kite to BVCF Prison Staff from Xavier.
- <sup>158</sup> Grievances are a procedural mechanism people in custody must use to raise institutional problems and ask for change. Federal law *requires* incarcerated people to exhaust every step of the grievance process before they are allowed to file a civil lawsuit in federal court to vindicate their rights. 42 U.S.C. 1997e(a). Thus, denial of a grievance not only stops an incarcerated person from complaining about problems to higher level individuals within the CDOC, it can also effectively cut off their ability to challenge any problem in court.
- <sup>159</sup> Statements of Leo and Justin.
- <sup>160</sup> *Id.*
- <sup>161</sup> Statements of Joel and Leo.
- <sup>162</sup> CDOC Administrative Regulation 700-02(I).
- <sup>163</sup> Statement of Timothy.
- <sup>164</sup> Statement of Joel.
- <sup>165</sup> Statement of Timothy.
- <sup>166</sup> Statement of Mike.
- <sup>167</sup> Statement of David.
- <sup>168</sup> Statement of Timothy.
- <sup>169</sup> Statements of Jacob, Joel, Todd, and Timothy.
- <sup>170</sup> Statements of Jonah, Joel, and Jacob.
- <sup>171</sup> Statement of Joel.
- <sup>172</sup> Statement of Justin.
- <sup>173</sup> *Id.*
- <sup>174</sup> Other Class 1 charges include murder, rape, kidnapping, and assault. CDOC Administrative Regulation 150-01.
- <sup>175</sup> Statement of Jacob.
- <sup>176</sup> Statements of Joel, Jonah, Leo, Jacob, and Todd.
- <sup>177</sup> BVCF Incident Review (2021), *supra* note 135.
- <sup>178</sup> Statement of Carter.
- <sup>179</sup> *Id.*
- <sup>180</sup> *Id.*
- <sup>181</sup> *Id.*
- <sup>182</sup> Statements of Timothy, Carter, and Leo.
- <sup>183</sup> Statement of Leo.
- <sup>184</sup> *Id.*
- <sup>185</sup> *Id.*
- <sup>186</sup> *Id.*
- <sup>187</sup> CDOC BVCF Memo, “Protocols for incarcerated people to request a personal medical alarm at BVCF” (2020).
- <sup>188</sup> *Id.*
- <sup>189</sup> Statements of Todd and Jacob.
- <sup>190</sup> BVCF PC Post Orders (2020).
- <sup>191</sup> Statement of Todd.
- <sup>192</sup> *Id.*
- <sup>193</sup> Statement of Ben.
- <sup>194</sup> Statement of Todd.
- <sup>195</sup> Statement of Leo.
- <sup>196</sup> Richard C. McCorkle, Terance D. Miethe & Kriss A. Drass, *The Roots of Prison Violence: A Test of the Deprivation, Management, and Not-So-Total*

*Institution Models*, 41 CRIME & DELINQUENCY 317, 319 (1995).

<sup>197</sup> Statement of Joel.

<sup>198</sup> Statement of Jonah.

<sup>199</sup> Ann Marie Rocheleau, *An Empirical Exploration of the “Pains of Imprisonment” and the Level of Prison Misconduct and Violence*, 38 CRIM. J. REV. 354, 366 (2013) (“Difficulty dealing with boredom was positively associated with both serious prison misconduct in general and general prison violence in particular.”); *see also* Kevin N. Wright, *A Study of Individual, Environmental and Interactive Effects in Explaining Adjustment to Prison*, 8 JUST. Q. 217 (1991) (activity and self-improvement programs lead to a decrease in misconduct); Benjamin Steiner and John Wooldredge, *Inmate Versus Environmental Effects on Prison Rule Violations*, 35 CRIM. JUST. AND BEHAV. 438 (2008) (finding that those who participated in programs and worked more job hours were less likely to be involved in prison misconduct including assaults and substance abuse).

<sup>200</sup> Statement of Joel.

<sup>201</sup> Statements of Xavier and Jonah.

<sup>202</sup> Statement of Jacob.

<sup>203</sup> Statement of Jonah.

<sup>204</sup> Statements of Xavier and Jonah.

<sup>205</sup> *Id.*

<sup>206</sup> Statement of Xavier.

<sup>207</sup> Statement of Jonah.

<sup>208</sup> *Id.*

<sup>209</sup> Statement of Mike.

<sup>210</sup> Statement of Will.

<sup>211</sup> *Id.*

<sup>212</sup> Corrections Expert.

<sup>213</sup> Statement of Isaac.

<sup>214</sup> *Id.*

<sup>215</sup> Corrections Expert.

<sup>216</sup> Statements of Xavier, Jonah, and Isaac.

Notably, an incarcerated person was permitted to stay in the BVCF PC Unit despite committing a Class I Assault. *See* Case No. 18-cv-03025-KLM, ECF Doc. 161 (Order Granting Injunctive

Relief), at \*29 (D. Colo. May 12, 2022) (order granting preliminary injunction and ordering an incarcerated individual be placed back in protective custody after CDOC removed him and describing how at least one individual was allowed to remain in PC after committing a serious Class I Assault in PC).

<sup>217</sup> Statement of Isaac.

<sup>218</sup> *Id.*

<sup>219</sup> Statement of Ben.

<sup>220</sup> *Id.*

<sup>221</sup> Statement of Mike.

<sup>222</sup> Statement of Ben.

<sup>223</sup> Statement of James.

<sup>224</sup> Statement of David.

<sup>225</sup> CDOC sometimes refers to the soft pods as “strategic housing.”

<sup>226</sup> Case No. 18-cv-03025-KLM at \*10 (describing CDOC officials’ description of this unit and noting it is considered general population).

<sup>227</sup> *See* Case No. 19-cv-01290-SKC, ECF Doc. 100-1 (Scheduling Order-Appendix A), at 1 (D. Colo. June 14, 2021) (stipulating this facility “does not have a formal protective custody unit, but it does have an overflow unit that certain inmates refer to as ‘soft housing.’”).

<sup>228</sup> CDOC Administrative Regulation 650-02(IV) (D)(2).

<sup>229</sup> Case No. 18-cv-03025-KLM, ECF Doc. 161 (Order Granting Injunctive Relief), at \*41 (comparing the safety measures in place in PC versus those in the soft pods and concluding the “argument that the setup of [the soft pod] helps ensure his safety is not persuasive”).

<sup>230</sup> Case Nos. 19-cv-01290-SKC and 18-cv-03025-KLM.

<sup>231</sup> U.S. Const. amend. VIII.

<sup>232</sup> *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (internal quotation and citations omitted).

<sup>233</sup> *Id.*

<sup>234</sup> *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

<sup>235</sup> *See* Daniel Gotoff and Celinda Lake, *Voters Want Criminal Justice Reform. Are Politicians*



*Listening?*, THE MARSHALL PROJECT (Nov. 13, 2018), <https://www.themarshallproject.org/2018/11/13/voters-want-criminaljustice-reform-are-politicians-listening>.

<sup>236</sup> See *Felon Voting Rights*, National Conference of State Legislatures (June 28, 2021), <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.

<sup>237</sup> Sara Fleming, Colorado's New Corrections Chief: "It's Okay for Us to Question Who We Are", Westword (Aug. 30, 2019), available at <https://www.westword.com/news/dean-williams-wants-to-reform-coloradosprison-system-11446772>.

<sup>238</sup> CDOC is simply overwhelmed by the sheer number of incarcerated people who require SOTMP programming. As of June 30, 2022, there are 62 positions offered in SOTMP in all of CDOC. But across CDOC, there are 1,022 people on the waiting list for SOTMP. Even more disturbing, 474 incarcerated individuals on the waiting list are being incarcerated past their parole eligibility date. CDOC CORA Response (2022). This is a significant, systemic problem that is largely beyond the scope of this Report, but we strongly endorse the ongoing efforts of groups like the Colorado Criminal Defense Bar to reform sex offender treatment and rehabilitation programs.

<sup>239</sup> Incarcerated people who attended any level of the Therapeutic Community program were half as likely to be rearrested within one year of release. Those who attended the highest intensity program had a rearrest rate of 16.6%. See Marilyn Daley, et al., *Cost-Effectiveness of Connecticut's in-Prison Substance Abuse Treatment*, 39 J. OFFENDER REHAB. 69, 71 (2004).

<sup>240</sup> The total capacity of Therapeutic Community programs across all CDOC facilities is 679. There are currently 3,626 people on the waiting list for Therapeutic Community in CDOC. Of those 3,626 people, 1,315 are past their parole eligibility date, meaning they would be eligible for release had they been given the opportunity to participate in a Therapeutic Community. CDOC

CORA Response Listing TC Numbers (2022).

<sup>241</sup> This recommendation is a suggestion we heard from many of our contacts who live or have lived in the BVCF PC Unit.

<sup>242</sup> CDOC Administrative Regulation 650-02(IV)(A).

<sup>243</sup> CDOC's own policies recognize this as an important goal. See CDOC Administrative Regulation 650-02(IV)(A) ("Privileges, programs, services, and activities will be consistent with those afforded to similar classified [incarcerated people] in general population."); CDOC Administrative Regulation 650-02(I) ("Protective Custody is not a punitive measure."). Comparing the costs of correctional education and reincarceration, researchers found that providing correctional education is very cost-effective compared with the cost of reincarceration of those who were not educated. See Lois M. Davis et al., *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults*, RAND 13, 38 (2013).

<sup>244</sup> The Clinic is aware that the BVCF PC Unit had a "normalization committee" where representatives of the unit's population met with the BVCF Warden and other administrators to ostensibly discuss issues in the unit. However, according to the individuals we interviewed, the "normalization committee" did not yield any substantive changes for the individuals in the BVCF PC Unit.

<sup>245</sup> Statement of Jonah.

<sup>246</sup> Statement of Leo.

<sup>247</sup> Rachel Bloom, *Prison as Punishment, Not for Punishment*, ACLU (March 26, 2010) <https://www.aclu.org/blog/national-security/prison-punishment-not-punishment>.

<sup>248</sup> See *Farmer v. Brennan*, 511 U.S. 825, 834 (1970) citing *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981), wherein the Supreme Court held "being violently assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offenses.'"

<sup>249</sup> *Farmer*, 511 U.S. at 833.





# Abused & Forgotten

*Life Inside The BVCF  
Protective Custody Hallway*