

Policy 371 Offender Classification

**STATE OF VERMONT
AGENCY OF HUMAN SERVICES
DEPARTMENT OF CORRECTIONS**

Policy: 371

Subject: Offender Classification
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Recommended for approval by: Richard Turner, Director of Correctional Services		Authorized By: Steven Gold, Commissioner	
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Signature	Date	Signature	Date

1. Authority:

1.1. 28 V.S.A., §§ 1(a-c), 2(a), § 101(1), § 102 (c), (1), (3), (4), (5), (8), § 701(a) and (b), § 702, § 703, § 706, §§ 721 – 726, § 808, and 13 V.S.A. § 5301.

2. Purpose:

- 2.1. The purpose of this policy is to provide guidelines for a classification system for incarcerated and community based facilities. The classification policy of the Vermont Department of Corrections reflects the following principles based on statutory mandates and corrections best practice:
- 2.1.1 Traditional institutional prisons fail to reform or rehabilitate.
 - 2.1.2 Traditional institutions may increase the risk of continued criminal acts following release.
 - 2.1.3 Closed custodial confinement is necessary for frequent dangerous offenders.
 - 2.1.4 Public safety is best served when offenders are prepared for responsible roles in the open community upon completion of their sentence.
 - 2.1.5 Offenders have a responsibility to repair the damage caused by their criminal acts to communities in which they occur.
 - 2.1.6 Offenders have a responsibility to redress the wrongs inflicted on individual victims, when requested.
 - 2.1.7 Community involvement is important for the achievement of correctional purposes.
 - 2.1.8 Victims, if they so choose, shall participate in holding an offender accountable for the damage caused to them.
 - 2.1.9 Classification practices should be transparent and allow offenders, victims, Criminal Justice system personnel, and the public to predict movement of the offender through the sentence.
 - 2.1.10 Offenders should be held at the least restrictive environment consistent with public safety, taking into consideration offense severity and risk to re-offend.
 - 2.1.11 Decisions should be made on the basis of objective facts and criteria.
 - 2.1.12 The best, but not the only, predictor of future behavior is past behavior.

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3. Applicability/Accessibility

- 3.1. Anyone may have a copy of this policy.

4. Policy

- 4.1. Individual offender classification, program planning and conditional re-entry will follow corrections best practices on security, supervision, treatment planning, continuity of services, and full utilization of community – based resources. The primary objectives are to provide protection for the public, reduce the risk of criminal behavior, support offenders to make amends, and enhance offender growth and development to become law-abiding citizens. This will be accomplished through the coordinated delivery of a continuum of services and supervision, which provides for offender, community, and victim involvement, and wherever possible, the offender remaining engaged with his home community.
- 4.2. Most offenders are not incarcerated and almost all offenders who are incarcerated ultimately return to the community. While close custodial confinement is appropriate for frequent dangerous offenders who pose a significant threat to public safety, the goal of safe communities is best served when offenders achieve successful return and participation as responsible citizens of the community. Vermont law recognizes what is confirmed in the Corrections research literature that traditional prisons, because of their pro-criminal culture, not only fail to rehabilitate but in fact increase the risk of crime. Incarceration, then is a necessary strategy to incapacitate only those offenders whose risk cannot be managed in the community, but is a compromised strategy for helping offenders prepare for responsible citizenship. Accordingly, the Department's classification system will ensure that incarcerated offenders serve the minimum sentence imposed by the court, and will ensure that dangerous offenders are identified and placed in appropriate confinement and supervision throughout their sentence. At the same time, the Department's classification system will ensure that eligible offenders are supervised and or monitored in community based (both residential and non-residential) risk management programs consistent with the least restrictive principle.
- 4.3. The department also recognizes that continuity of services/programs between incarcerative and community based facilities is essential for successful reintegration. These services must include community involvement so as to address the harm done to the community by the crime, and address the needs of victims. Statute also allows communities and victims, if they choose, to participate in holding the offender accountable for the harm done by the crime. Accordingly the department will seek community and victim input, whenever possible in developing Offender Responsibility Plans.
- 4.4. Finally, the department's classification system will attempt to mitigate the harmful affects of incarceration and ensure that offenders serve their lawful sentence in custody of the department by:
 - 4.4.1 developing classification and program strategies that encourage offenders to engage in pro-social activities that promote responsible citizenship such as work, community service, education, family involvement and treatment to address criminogenic needs;
 - 4.4.2 separating violent predatory offenders from general population;
 - 4.4.3 ensuring that classification identifies offenders likely to escape and place them in appropriate security and custody levels.
- 4.5. Classification for placement in appropriate programs and supervision has nine goals:
 - 4.5.1 To place offenders in the least restrictive level of supervision consistent with public safety and the goals of statute;
 - 4.5.2 To identify violent offenders who are a high risk to re-offend and classify them to ensure public safety;
 - 4.5.3 To ensure that incarcerated offenders serve the minimum sentence imposed by the court;
 - 4.5.4 To release the incarcerated offender to conditional reentry after they serve the minimum sentence unless there is foreseeable risk that the release will place the public/specific citizens/victims at risk of harm;

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- 4.5.5 To provide reentry to offenders with supervision and programming consistent with their risk;
- 4.5.6 To address lapse and relapse behavior of offenders through community based interventions rather than through over dependence upon incarceration;
- 4.5.7 To engage the community in the correctional process in order to ensure that the damage to the community caused by criminal acts is repaired and to ensure that the community supports offender's re-integration into the community;
- 4.5.8 To address the needs of the victims of crime and to allow them, if they choose, to participate in efforts to hold an offender accountable for the damage caused them;
- 4.5.9 To require offenders to address the needs of the victim, restore the community, and learn the skills to become responsible citizens in the open community when their sentence is completed.

Purposes of Classification

4.6 Classification of Offenders serves two broad purposes: internal management of correctional facilities, and preparation of offenders to return to the community as law abiding citizens:

- 4.6.1 Internal management of correctional facilities ensures safe, secure, living environments that attempt to mitigate the negative impact of incarceration.
- 4.6.2 Program placement ensures that:
 - a- Offenders are prepared for their responsible roles in the open community while under supervision and when their sentence expires.
 - b- Offenders are maintained at the least restrictive level of custody and supervision consistent with public safety and Department purpose.
- 4.6.3 Classification for internal management has three goals:
 - a- To establish living environments inside correctional facilities that promotes safety of staff and inmates;
 - b- To place offenders in appropriate custody/security environments designed to prevent escape;
 - c- To allow, consistent with public safety, offenders to participate in activities and programs that ameliorate the negative impact of incarceration on public safety, and the preservation of human dignity and community resources.

Correctional Facility Classification

- 4.7 In order to achieve the purposes indicated in this policy the department shall establish a facility classification system that governs the movement of an offender through the correctional system.
 - 4.7.1 The classification process involves custody determinations, risk assessment / programming needs / offender responsibility plan and release decisions.
 - 4.7.1.1 The custody aspect of classification is to ensure safe and secure correctional facilities. Therefore, offenders are assigned custody levels that are used to determine offender placement within housing units. Further, this determination will impact the nature and extent of such offender's supervision.
 - 4.7.1.2 The risk assessment / programming needs / offender responsibility plan phase of classification entails the use of clinical risk assessment evaluations to identify criminogenic need areas. Once the clinical risk assessment has been completed, then the information is applied to identify a program management level for each offender. The program management level indicates the performance expectations that the offender must meet. These performance expectations encompass areas such as work, education, specific risk related programs and addressing the needs of the victim and the community harmed by the criminal behavior. These performance expectations are used to develop an offender responsibility plan. The plan will dictate which aspects of the plan are to be performed in the facility and which are to be completed in the community.

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- 4.7.1.3 The release decision phase of classification is based upon the offenders' having served the minimum sentence and having achieved the performance expectations as indicated in the offender's responsibility plan.

Classification in Community Based Programs

- 4.8 In order to achieve the purposes indicated in this policy the department shall also establish a classification system that governs appropriate placement of offenders in community-based programs and movement of offenders through designated programs.
- 4.9 With respect to those offenders who are supervised in the community, the sentence, the seriousness of the offense as well as risk assessment and program requirements will be taken into consideration in determining program eligibility.
- 4.10 Once program eligibility has been determined an offender responsibility plan will be developed. This offender responsibility plan will detail the performance expectations that will be required of the offender while in the community. Where the offender is not in compliance with these performance expectations, the behavior is addressed through Graduated Sanctions, The Disciplinary Process, and or the Case Staffing process.

5. Training Method

- 5.1. Each manager is responsible for assuring staff have read and understand this policy.

6. Quality Assurance Processes

- 6.1. Each site manager will establish a quality assurance procedure.

7. Financial Impact:

The incarcerated population in VT has been growing steadily over the past 15 years. In 1989 the incarcerated population was a little over 800 offenders, compared to the end of Jan. 2003 where the incarcerated population was 3,608. In 1989 the VT DOC housed 761 of the incarcerated population in their various facilities and supervised 70 of the incarcerated population on furlough status. Furlough is an extension of incarceration into the community where inmates live at their homes and are visited by and report to correctional authorities with varied frequency. As of the end of Jan 2003 the DOC housed 1752 offenders in its facilities or in out of state facilities and 1279 of the offenders sentenced to incarceration were supervised on a furlough status.

The policy on classification and associated directives drives the decision making process for placing inmates on furlough and the supervision process for those supervised on furlough. The DOC has had a classification system since 1972. That system has changed from time to time over the years, but has not been reviewed or approved through the Administrative Procedures Act. There are two reasons the DOC is using the Administrative Procedures Act at this time. First, decision making on placing offenders who are serving sentences in prison in the community has an effect or potential effect on the Vermont community and the rules and procedures around that decision making should be subject to public scrutiny and legislative authority. Second, a recent court decision, Parker v. DOC, has required the DOC to go through the state rulemaking process for our classification of inmates.

In regards to the financial impact, if the DOC were to house all of the offenders sentenced to incarceration on Jan. 2003 we would be forced to increase our out of state prison contract by the amount of inmates we have on furlough. The cost of an out of state prison bed is approximately \$22,000 a year, and as said previously the DOC had 1,279 inmates on furlough. The cost of housing the furloughees in an out of state prison would be a little over 28 million dollars. The approximate cost of supervising a furloughee is \$1,326 a year, or about 1.7 million dollars a year. The difference would be a total an additional 26.4 million dollars to the VT general fund if we were to house all sentenced offenders in an out of state facility. Building facilities and housing in Vermont using the same population numbers would result in a little over 70 million dollars in capital construction and an approximate 30 million dollars a year increase in the DOC appropriation.

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Of the inmates placed on a furlough situation in the past 5 years we see a range a new charges based on the category of offenders. 18% of the offenders who have served time in a prison setting for generally more serious offenses were arrested for new charges in FY '02. In FY '00, 11% of the offenders in the release from prison status were arrested. 11% of the offenders placed on furlough directly from the court were charged with a new crime in FY '02. In FY 98, 99, and '00 the arrest rate for the court furlough placement category was 7%. For both groups the most frequent crime they were arrested for was escape, or being out of bounds of their furlough authority for more than a few hours. The second most frequent crime they were arrested for was Driving with License Suspended and the third most frequent arrest category was Driving While Intoxicated. There has been a very low percentage of arrests for interpersonally violent crimes although there has been some.

The classification policy and it's associated directives provide guidelines for sorting offenders based on offense categories and risk factors and directs the dosage of prison time, treatment that can reduce the potential for future offenses and community supervision based on offense and risk. The detail around the decision making process is rich and somewhat complicated but is focused on public safety with attention to both human behavior and the cost to the state.

8. References

8.1 Title 28 V.S.A, Title 13 V.S.A.

9. Responsible Director and Draft Participants

Ray Flum, Director of Offender Classification

Management Program Level	Criteria	Program Requirements	Release	Monthly Supervision Plan
A	<p>Non-Listed Offenses</p> <p>Listed Offenses with Low/Low Moderate Risk to Re-offend</p>	<p>In general, the release of Level A offenders on their minimum release date will not be contingent on participation in correctional programming. These offenders may participate in programs if so motivated and if space permits. However, criminogenic need areas will be addressed in community- based programs post-release. Offenders will be held accountable in the community for satisfactory completion of these programs as a condition of their release. Responsible living within the institution, including education and work assignments, shall be the primary focus of case planning for this group.</p>	<p>After Serving Minimum Sentence</p>	<p>1-8*</p>
B	<p>Listed Offenses with Moderate to High Risk to Re-Offend</p>	<p>Level B offenders are the priority group for institutional treatment programs, if the sentence structure permits. These offenders will be released on their minimum release date, if they have participated satisfactorily in their designated program(s), consistent with the requirements. Programming will continue in the community, as dictated by the sentence.</p>	<p>After Serving minimum Sentence and Meeting Program Requirement</p>	<p>8-16*</p>
C	<p>Listed Offenses with Moderate to High Risk to Re-Offend and the crime is egregious</p>	<p>Case planning for Level C offenders will generally focus on long term confinement. Due to the nature of their offenses, victim harm and high risk profile these inmates must demonstrate long-term behavioral and psychological stability, commitment to change, and completion of significant treatment goals prior to any release consideration. In these cases, the burden of demonstrating these objectives lies with the offender. Case planning will be managed through the case staffing process.</p>	<p>To be Determined Based on Program Requirements</p>	<p>10-20*</p>

*The numbers indicate a contact range for general cases. The superintendent, casework supervisor, and the CSS managing the case have discretionary ability to work outside of these numbers as cases would require.

These contacts may be made directly (face to face with the offender), indirectly (interaction or observation with an offender by phone, mail, or other means where face to face communication did not take place), or with collateral sources (significant other, employer, neighbor, law enforcement, etc).

The classification process commences when an incarcerated offender has been convicted of one or more statutorily listed offenses outlined below, or any of the violent crimes that the Department of Corrections has determined that meet the rationale that established the listed offenses.

The CSS staff assigned to the case determines if the offender has been convicted of one or more of the following offenses described in 13 VSA Section 5301 (7):

1. stalking as defined in Section 1062 of Title 13, V.S.A.;
2. aggravated stalking as defined in subdivision 1063(a)(3) or (4) of Title 13, V.S.A.;
3. domestic assault as defined in Section 1042 of Title 13, V.S.A.;
4. first degree aggravated domestic assault as defined in Section 1043 of Title 13, V.S.A.;
5. second degree aggravated domestic assault as defined in Section 1044 of Title 13 V.S.A.;
6. sexual assault as defined in Section 3252 of Title 13, V.S.A., or its predecessor as it was defined in Section 3201 or 3202 of Title 13, V.S.A.;
7. aggravated sexual assault as defined in Section 3253 of Title 13, V.S.A.;
8. lewd or lascivious conduct as defined in Section 2601 of Title 13, V.S.A.;
9. lewd or lascivious conduct with a child as defined in Section 2602 of Title 13, V.S.A.;
10. murder as defined in Section 2301 of Title 13, V.S.A.;
11. aggravated murder as defined in Section 2311 of Title 13, V.S.A.;
12. manslaughter as defined in Section 2304 of Title 13, V.S.A.;
13. aggravated assault as defined in Section 1024 of Title 13, V.S.A.;
14. assault and robbery with a dangerous weapon as defined in subsection 608(b) of Title 13, V.S.A.;
15. arson causing death as defined in Section 501 of Title 13, V.S.A.;
16. assault and robbery causing bodily injury as defined in subsection 608(c) of Title 13, V.S.A.;
17. maiming as defined in Section 2701 of Title 13, V.S.A.;
18. kidnapping as defined in Section 2405 of Title 13, V.S.A., or its predecessor as it was defined in Section 2401 of Title 13, V.S.A.;
19. unlawful restraint in the second degree as defined in Section 2406 of Title 13, V.S.A.;
20. unlawful restraint in the first degree as defined in Section 2407 of Title 13, V.S.A.;
21. recklessly endangering another person as defined in Section 1025 of Title 13, V.S.A.;
22. violation of abuse prevention order as defined in Section 1030 of Title 13, V.S.A., excluding violation of an abuse prevention order issued pursuant to 15 V.S.A. § 1104 (emergency relief) or Title 33, V.S.A. § 6936 (emergency relief);
23. operating vehicle under the influence of intoxicating liquor or other substance with either death or serious bodily injury resulting as defined in Section 1210(e) and (f) of Title 23;
24. careless or negligent operation resulting in serious bodily injury or death as defined in Section 1091(c) or (d) of Title 23;
25. leaving the scene of an accident with serious bodily injury or death as defined in Section 1128(b) or (c) of Title 23;
26. burglary into an occupied dwelling as defined in Section 1201 (c) of Title 13, V.S.A.; and
27. The attempt to commit any of the offenses listed in this section.

The following are violent crimes that the Department of Corrections has determined that meet the rationale that established the listed offenses:

1. Abuse of Disabled Adult – as defined in Section 6913 of Title 33, V.S.A.
2. Arson 1st degree – as defined in Section 502 of Title 13, V.S.A.
3. Assault Law Enforcement 2nd – as defined in Section 1028, (2) of Title 13, V.S.A.
4. Accessory Arson
5. Possession Deadly Weapon During Felony – as defined in Section 4005 of Title 13, V.S.A.
6. Hate Crime – as defined in Section 1455 of Title 13 V.S.A.
7. Use of a Child in a Sexual Performance Title 13 V.S.A § 2822
8. Consenting to a Sexual Performance Title 13 V.S.S § 2823
9. Promoting a Recording of a Sexual Act Title 13 V.S.A §2824
10. Possession of Child Pornography Title 13 § 2827 and meeting penalty requirements in Title 13 V.S.A § 28259(c)(2)(d)
11. Use of Electronic Communications to Lure a Child 13 V.S.A § 2828
12. Careless or negligent operation resulting in serious bodily injury or death as defined in section 1091(b) of Title 23;

Overview of Directives Associated with Policy 371

371.01 American's With Disabilities Act

Provides guidance to Correction's staff regarding access to program services for those offenders with documented disabilities.

371.02 Five Day Classification

Lists the steps to be taken to classify offenders within 5 working days. This is necessary to determine facility or field placement.

371.03 Classification and Furlough of Detentioners

Same as above and includes criteria for furlough consideration as well as sample consent form for State Attorney and Judge authorization.

371.04 Facility Security/Custody Assignment

This directive details how facility and living unit assignment is determined.

371.05 Offender Responsibility Plan

This directive purpose is to define the offender's responsibility for addressing the needs of persons they victimized and the community. Describe the process that leads to developing a plan. Outlines a strategy to ensure offenders are accountable to the plan.

371.06 Termination from Correctional Treatment Programs

This directive outlines the reason for and consequence of termination from programming.

371.07 Assessment

This directive lists the various assessments used by the DOC, how to complete them and their purpose.

371.08 Classification of Offenders Convicted of Listed Offenses

This directive provides a breakdown of Levels based on an offender's score on the Level of Services Inventory. The level determines the program participation requirements for an offender while incarcerated.

371.09 Designation of Listed Offenses

This directive lists the 27 criminal offense described in 13VSA ss 5301 (7) that have determined to be violent. The Department of Corrections has determined that additional offenses meet this criteria, these are also included in this directive.

371.10 Level C Designation for Offenders Convicted of Listed Offenses

This directive is intended to enhance public safety by allowing Corrections Staff to designate an offender Level C. A Level of Services Inventory score as well as details of the offense determines this designation.

371.11 Level C Performance Expectations

This directive sets criterion that level C offenders must meet in order to be considered for release prior to their maximum release date.

371.12 Program Participation Requirements for Offenders Convicted of Listed Offenses

This directive describes the program requirements for offenders convicted of crimes detailed in directive 371.09. Program requirements within a facility will be different for each of the levels. All offenders convicted of listed offenses will be required to participate in programming once they are released into the community. This directive also out-lines how to determine program participation credits.

371.13 Pre-Approved Furlough

This directive discusses offenders supervised under the status of pre-approved furlough. This is a Court ordered sentence.

371.14 Residence Approval

This directive guides Corrections staff in the process of approving residences for offenders being considered for conditional re-entry. The objectives of this directive include consideration of victim and public safety.

371.15 Conditional Re-Entry

This directive assists Corrections staff to determine if an offender is eligible for conditional re-entry. Some factors that are considered are risk to known victims and the public in general. The directive also outlines the planning process that includes facility and field staff. This process is designed so that the offender can immediately begin to access services that will enhance their likelihood of success. This directive also includes a sample conditional re-entry agreement.

371.16 Graduated Sanctions

This directive describes the process that Corrections Staff will follow if an offender violates any part of their conditional re-entry agreement. The directive provides guidance for staff as to appropriate sanctions based on the violation. Sanctions range from community service through incarceration. The directive also describes the process Corrections staff will follow to request revocation of an offender's conditional re-entry status.

371.17 Offender Contact Standards For Field Service Programs

This directive describes the various types of contacts as well as the recommended number of monthly contacts. This number is determined by the type of offense, score on the level of services inventory as well as the type of sentence they are serving (PAF, CR, Parole etc...) Corrections staff has discretion within the range of contacts depending on an offenders overall progress an adjustment to conditional re-entry.

371.18 Sentence Computations

This directive is intended to standardize sentence computations.

371.19 Earned Reduction of Term

This directive lists out all categories of ERT eligibility. It also establishes the method in which offenders are notified.

371.20 Community Release Planning

This directive defines the process that CSS' shall implement prior to returning offenders to the community.

371.21 Out of State Transfers- Interstate Compact

This directive discusses the process of transferring inmates to out of state facilities, as well as inmates from other states transferring in.

371.22 Out of State Transfers- Supplemental Facility

This directive is in regards to transferring inmates to out of state facilities due to overcrowding of Vermont facilities.