

STATE OF VERMONT AGENCY OF HUMAN SERVICES DEPARTMENT OF CORRECTIONS	Risk Containment	Page 1 of 7
CHAPTER: PROGRAMS – CLASSIFICATION AND CASE PLANNING	#371.10	Supersedes: #371.09, dated 07/29/2024
Local Procedure(s) Required: No Applicability: All staff (including contractors and volunteers) Security Level: “B” – Anyone may have access to this document.		
Approved: <div> <div> <u>SIGNED</u> Nicholas J. Deml, Commissioner </div> <div> <u>04/03/2025</u> Date Signed </div> <div> <u>04/03/2025</u> Date Effective </div> </div>		

PURPOSE

This policy outlines the criteria and process used by the Vermont Department of Corrections (DOC) to identify incarcerated individuals who pose a high risk of dangerousness to the community if released.

AUTHORITY

28 V.S.A. §§ 1, 101, 701, and 721

DEFINITIONS

Offense: The conduct underlying a conviction.

POLICY

The DOC’s policy is to use a standardized process to identify incarcerated individuals who pose a high risk of harm to the community if released. The DOC

integrates evidence-based and gender responsive best practices and risk assessments to inform more effective support to individuals who are incarcerated. When the risk of harm posed by an incarcerated individual cannot be mitigated in the community, the DOC may refrain from releasing the individual, while under the DOC's discretion, and use incarceration to contain the risk until it can be appropriately managed in the community.

GENERAL PROCEDURES

A. Classification Criteria for Risk-Containment

1. Any individual under the custody or supervision of the DOC who was previously designated Level C shall receive a risk-containment classification.
2. An incarcerated individual may receive a risk-containment classification if:
 - a. The offense for which they have been convicted is a:
 - i. Sex offense, as defined in 13 V.S. A. § 5401 (10) (A);
 - ii. Listed offense, as defined in 13 V.S.A. § 5301 (7); or
 - iii. A felony, as defined in 13 V.S.A. § 1; and
 - b. The individual constitutes a threat to the life, safety, or physical or mental well-being of others, on the basis of evidence establishing:
 - i. A pattern of repetitive behavior by the incarcerated individual showing a:
 - a) Failure to restrain their behavior and a future likelihood of causing death or injury to, or inflicting severe psychological harm on, others; or
 - b) Substantial degree of indifference on the part of the incarcerated individual respecting the reasonably foreseeable consequences to others as a result of their behavior;
 - ii. Any behavior by the incarcerated individual that is of such a brutal nature as to compel the conclusion that the individual's conduct in the future is unlikely to be inhibited by conventional standards of behavioral restraint;
 - iii. A failure to control their sexual or violent behavior that creates a likelihood they will cause injury or harm to others through failure to control their behavior in the future; or

- iv. Continued violent behavior following the completion of intervention(s), sanction(s), or programming.
- 3. Examples of evidence which can be used to support the assessment that the incarcerated individual constitutes a threat to the life, safety, or physical or mental well-being of others may include, but are not limited to, the:
 - a. Number and nature of past offenses;
 - b. Time span between offenses (e.g., offenses getting closer together);
 - c. Pattern or escalation of violence or harm, including:
 - i. Institutional behavior;
 - ii. While under community supervision; and
 - iii. Continued violence, intimidation, grooming, or threatening behaviors towards victims/survivors or others matching the victim's/survivor's profile;
 - d. Circumstances surrounding the offenses (e.g., egregiousness, premeditation, brutality);
 - e. History of past substantiation by Department for Children and Families (DCF) or Department of Disabilities, Aging, and Independent Living (DAIL) for violent or sexual offenses; and
 - f. Safety implications that the incarcerated individual's release may have on victims/survivors.
- 4. Any incarcerated individual who meets the following criteria shall be reviewed for a risk-containment classification:
 - a. Is convicted of murder, as defined in 13 V.S.A. § 2301;
 - b. Is convicted of habitual criminal, as defined in 13 V.S.A. § 11; or
 - c. Has been designated as a high-risk sex offender.

B. Process for Risk-Containment Classification

- 1. Determinations on whether an incarcerated individual receives a risk-containment classification shall be made by the Central Case Staffing Committee.
- 2. The assigned Correctional Services Specialist (CSS) or Probation and Parole Officer (PPO) shall identify the case of any incarcerated individual they believe may meet the criteria for a risk-containment classification, and refer the case to the Living Unit Supervisor (LUS) or Probation and Parole Supervisor (PPS).

3. The LUS or PPS shall review the case, and if they agree that the case meets the criteria for a risk-containment classification, they shall submit the case to the Central Case Staffing Committee for review.
4. The Committee shall determine if the case is appropriate for consideration for a risk-containment classification. For all cases determined appropriate for consideration:
 - a. The CSS shall:
 - i. Provide the incarcerated individual with written notification that their case is being reviewed for a risk-containment classification. The form shall:
 - a) Include that the individual may be referred for a forensic evaluation, the purpose of the evaluation, and the consequences of not participating; and
 - b) Inform the incarcerated individual that they can provide mitigating information for consideration;
 - ii. Review the form with the incarcerated individual and:
 - a) Ask the individual to select whether they consent to the forensic evaluation, if referred, and sign the form; and
 - b) Return the signed form to the Classification Unit Director.
 - iii. If the incarcerated individual refuses to sign the form:
 - a) The CSS shall write "refused to sign;" and
 - b) The CSS and another facility staff member shall sign the form as witnesses to the individual's refusal; and
 - b. The Classification Unit Director shall ensure the signed form is uploaded into the custom form in OMS.
5. After an incarcerated individual has been notified that their case is being reviewed for a risk-containment classification and they have had the opportunity to provide mitigating information, the Central Case Staffing Committee shall determine if a forensic evaluation is advised. Such an evaluation shall be performed by an evaluator certified in (an) evidence-based, clinical risk instrument(s) approved by the DOC. If a forensic evaluation is ordered, the Committee shall include any specific questions that should be addressed by the evaluation in its referral.
6. For all cases referred for forensic evaluation:
 - a. If the incarcerated individual refuses to participate in the forensic evaluation:

- i. The CSS shall notify the Classification Unit Director;
 - ii. The Classification Unit Director shall apply a provisional risk-containment classification, until the incarcerated individual participates in the forensic evaluation.
- b. After the forensic evaluation, the Committee shall review the case again, including the results of the evaluation and an updated record check, to make a final determination on whether the incarcerated individual shall receive a risk-containment classification.
- 7. Upon receipt of all the relevant material by the Central Case Staffing Committee, the Committee shall:
 - a. Review the material to determine if the individual meets the criteria for risk-containment classification set out in [Section A., Classification Criteria for Risk-Containment](#);
 - b. Document its determination, including which criteria were met.
- 8. Whenever an incarcerated individual receives a risk-containment classification, the Classification Unit Director shall draft the notification of the classification in writing, and send it to the Superintendent and the individual's assigned CSS and PPO. The notification shall include:
 - a. The specific reasons for the classification;
 - b. When the Central Case Staffing Committee will next review the classification;
 - c. Notification that they can grieve the classification, in accordance with the policy on the grievance system; and
 - d. Information on how to meet with an Open Ears coach or obtain a referral for mental health services.
- 9. The CSS shall notify the following of the risk-containment classification:
 - a. The Victim Services Specialist (VSS), if the incarcerated individual's case already has an assigned; and
 - b. The Victim Services Unit (VSU) Director, if there is no assigned VSS. Upon notification, the VSU Director shall then assign a VSS to the case.
- 10. The assigned CCS shall:
 - a. Hand-deliver two copies of the notification to the incarcerated individual;
 - b. Offer the individual the opportunity to meet with an Open Ears coach;
 - c. Make a referral for mental health services, if appropriate;

- d. Ask the individual to sign the notification, indicating receipt and that they were offered the opportunity to meet with an Open Ears coach and a referral for mental health services. If the incarcerated individual refuses to sign:
 - i. The CSS shall indicate that the individual refused to sign; and
 - ii. The CSS and another facility staff member shall sign the notification as witnesses to the individual's refusal; and
 - e. Upload the signed notification into OMS.
- 11. Any incarcerated individual who receives a risk-containment classification shall be automatically designated as a release sensitive notification (RSN) case.
- 12. An incarcerated individual shall have an opportunity to grieve any risk-containment classification, in accordance with the policy on the grievance system.

C. Review of Risk-Containment Classification

- 1. An incarcerated individual who has received a risk-containment classification may submit a written petition to the Classification Unit Director for a change in their risk-containment classification no more than once every 12 months. The petition must contain substantive evidence that they have addressed one or more of the factors that contributed to their risk.
- 2. The Classification Unit Director shall review the petition to determine if the evidence provided is substantive, and if so, shall refer the petition to the Central Case Staffing Committee for review.
- 3. Upon the determination by the Classification Unit Director that the evidence provided is substantive, the Committee shall review the case for any changes in the significant details of the case or new intervention modalities that the preponderance of evidence suggest may reasonably mitigate the risk presented.
- 4. The Central Case Staffing Committee shall conduct a services determination staffing to review the case of an incarcerated individual who has received a risk-containment classification five years prior to their earliest possible release date to determine:

- a. Services required in advance of release; and
- b. Release considerations that require planning (e.g., medical, competency).

These staffings shall proceed according to the policy on release notifications.