Earned Release Program FAQs

A list of frequently asked questions regarding ERP is available below. This includes questions that were asked during the ERP virtual town hall on Sept. 16, 2020.

The following information relates to WI Statute 302.05 Wisconsin substance abuse program, also known as the Earned Release Program (ERP). Persons in our care must be both eligible and suitable to participate in the ERP. Eligibility is determined by the sentencing court and suitability is determined by the Department of Corrections (DOC), Division of Adult Institutions (DAI).

DOC policies and information about programs are available on the DOC website: https://doc.wi.gov

1. **What is the Earned Release Program (ERP) and who can participate?**

The Earned Release Program or ERP is an early release treatment program for persons who are incarcerated with substance use disorders.

WI Statute 302.05 states a person is eligible for consideration for ERP if they meet the following criteria:

- The sentencing Court determines eligibility for ERP.
- The person is incarcerated regarding a violation other than a crime specified in Ch. 940 or s.948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095.
- The person is serving a bifurcated sentence imposed under s. 973.01 – i.e. part of their sentence is confinement and part of their sentence is extended supervision.
- The person has an identified substance use disorder (SUD) treatment need.

Division of Adult Institution Policy 300.00.11 Substance Use Disorder – Earned Release Programs determines suitability for enrollment into ERP. Persons in our care (PIOC) who are eligible and meet the following suitability criteria will be considered for ERP enrollment:

- Have a minimum of 48 months to their adjusted release date;
- Are classified as medium, minimum, or minimum community custody;
- Have demonstrated positive institution adjustment
- Have completed programming for certain Sex Offender Treatment needs
- Have resolved all legal matters impacting program enrollment

2. **How can ERP be made more known to individuals, so they know to ask for the program during sentencing?**

The DOC does not work with individuals prior to sentencing. Program awareness before sentencing would have to come from public defenders, private defense attorneys, or the sentencing judge directly. A judge ultimately determines whether an individual is eligible for the Earned Release Program. Once an individual has been found eligible, they can discuss suitability for program during their incarceration, ideally during the classification process.

3. **How does ERP differ from a Substance Use Disorder (SUD) Program?**

ERP and SUD program suitability are determined during the initial classification process. The Division of Adult Institutions (DAI) provides four levels of SUD treatment.

- SUD1 is for individuals likely to have a substance use disorder and have been assessed as being low risk to reoffend as determined by an actuarial assessment. In these cases, Social Workers will case plan with the individual to address any concerns related to substance use.
- SUD2/Low Risk ERP is for individuals who have a mild substance use disorder and are low risk to reoffend. DAI overrides any individual who is identified as SUD1 into SUD2 if they are ERP eligible, parole eligible, or if they have multiple OWI's. Persons in our care at this level participate in formal group programming, lasting approximately 12 weeks.
- SUD3/Moderate Risk ERP is for individuals who have a moderate to severe Substance Use Disorder and are at moderate risk to reoffend. Persons in our care at this level participate in formal group programming, which also includes cognitive behavioral programming, and lasts approximately 15-18 weeks.
- SUD4/High Risk ERP is for individuals who have a moderate to severe substance use disorder and are at high risk to reoffend. Persons in our care at this level participate in formal group programming, including cognitive behavioral programming and other ancillary treatment components, lasting approximately 17-20 weeks.

All program participants are assisted with treatment planning throughout the duration of their program as well as individual treatment sessions with a licensed substance use disorder counselor.

4. **What recent changes has the DOC made to ERP?**

The DOC created an ERP Expansion committee tasked with increasing enrollment opportunities into ERP for persons in our care. As a result of this committee the following changes were implemented regarding ERP:

- Increased number of beds in DAI through consolidation of all ERP/SUD programs
- A behavior modification treatment component was added to the design of SUD programs.
- Expanded criteria to allow persons in our care assigned medium custody to enroll. Previously, only persons in our care assigned minimum and minimum community custody were suitable to enroll.
- Increased maximum time frame to release at time of enrollment from 36 months to 48 months.
- Persons in our care may enroll more than once on the same case. Historically, each ERP eligible person in our care could only enroll in ERP one time on the same case.

5. **Why were the changes to ERP a priority for DOC?**

One of the priorities of the agency is to reduce Wisconsin's prison population in a safe manner maintaining public safety. Without comprehensive criminal justice reform, the ERP is one of very few mechanisms we have internally. ERP is also a meaningful way to give persons in our care the skills necessary to be successful upon release and provide treatment for their clinical needs.

6. **What is the DOC doing to prevent people from coming into the system? With the option of early release pending, what kind of help is available after release for a person with a substance use disorder? Are there resources to assist individuals int heir healing from any trauma?**

The Division of Adult Institutions provides resources and programming once a person is in our care. DAI provides programming and education to help those in our care to have the resources necessary to be successful in the community and not return to incarceration or supervision. In the 6-9 months prior to a person in our care's release to the community, DAI Social Workers and Treatment Specialists, and DCC Agents of Record collaborate in release planning with all persons in our care returning to the community. They plan for a wide arrange of services including safe housing, healthcare needs, and referrals for services in the community. Services arranged for vary upon the needs of each individual and resources available in the community to which they are returning.

The DOC utilizes a trauma-informed approach in all programs, interventions, and interactions with persons in our care. Services to address trauma can be accessed through the psychological services units in DAI facilities.

7. What is the current capacity for the Earned Release Program?

The DOC estimated an additional 1,000 persons in our care would be able to complete ERP annually following the outlined changes above. The expansion was intended to continue to increase ERP completions and also to eliminate some of the barriers the previous policy put in place. Historical ERP release data shows 1,734 graduates in 2017, 1,831 in 2018, and 1,917 in 2019. With the successful expansion of additional ERP sites as a response to the COVID-19 pandemic, DOC is already seeing a significant increase in ERP releases. In 2020, the WI DOC had 2,244 ERP completions. In 2021 and 2022, the DOC saw a decrease in ERP completions, due to the operational changes required to respond safely to the COVID-19 pandemic, as well as staffing patterns. There are currently seventeen sites offering the Earned Release Program. Prior to policy changes, there were eleven sites offering the program.

Individuals are placed on the reservation list at the time of either their initial or reclassification hearing if they meet all suitability criteria. All bed dates assigned at that time are tentative and individuals are made aware the tentative bed date. The most common reasons for a change in bed date are recent misconduct concerns that result in a custody elevation, pending legal matters that may have come up since the assignment of the bed date, and staff vacancies leading to delays in programming.

With the new policy changes, an individual may enroll at a medium security site. The bed date may still change as they wait for an opening at either their current site if they have the program or while they wait for a transfer to a medium site that does. The policy for medium custody individuals states they may be excluded from suitability if they are found guilty of a major offense in the six months prior to program enrollment. Depending on the severity of misconduct, DAI may decide to delay enrollment at a medium site to monitor institution conduct.

8. Does the DOC collect and display data on the Earned Release Program? What performance metrics are used to understand if the above changes are having the desired impact?

The DOC reports data related to ERP on the DOC's public website through the interactive dashboards. Data regarding program enrollment, completions, and outcomes can be found via the interactive dashboards. The DOC published a primary programs report, which also identified outcome data for DAI's primary programs, including ERP.

9. With DOC combining ERP and SUD programs, will those who have already completed SUD program be considered for a shorter program?

The DOC makes every effort to offer program to all persons in our care on the waitlist for any given program. With that being said, DAI has limited program resources, and DAI does not enroll persons in our care in SUD program multiple times throughout the same incarceration after they have completed the program. This is to ensure we can serve as many persons as possible.

When persons in our care arrive at DAI intake they are assessed for a SUD program need. If they are identified as having a SUD program need, the correlated level of care and need is assigned. Every person in our care has their ERP eligibility and suitability documented during this process as well.

DAI will not place a person in our care in a non-ERP SUD program if they are eligible for ERP, as our priority is for them to earn their early release through ERP. If it appears the ERP eligible person in our care will not be able to enroll in ERP prior to release, DAI will offer for them to participate in non-ERP SUD. This may occur when persons in our care do not have enough time to serve on their sentence when they become suitable to enroll in ERP.

10. Is ERP available for women?

The Earned Release Program is available to women. The same eligibility and suitability criteria applied to male persons in our care apply to female persons in our care.

11. How much of a person's sentence must be served before entering ERP, if found eligible?

DOC does not require an individual to serve a mandatory period of time prior to enrollment; however, if the sentencing court established a specified time on the Judgement of Conviction and/or some sentences require a mandatory minimum period of confinement, the DOC would adhere to those.

12. How much of a person's sentence is converted to extended supervision if they complete ERP?

State statutes do not specify an amount or percentage of confinement time to be converted to extended supervision upon completion of ERP. Instead, the amount of time converted to extended supervision is dependent upon each person's circumstances, including the length of the confinement portion of their sentence, when in their confinement they are suitable for enrollment in ERP, and the length of the waitlist to enter ERP. Upon completion of ERP, the confinement portion of the person's sentence is shortened by extended supervision is lengthened so the total length of the original bifurcated sentence does not change.

13. Can a person participate in ERP if they are serving concurrent sentences on more than one case/charge? Does it apply to all concurrent cases? Example, a person has two 3-year sentences concurrent. Does ERP allow early release from both sentences?

Persons in our care under this circumstance may enroll in ERP as long as they are eligible for the program on all cases. If one case allows for ERP eligibility and the other does not, they cannot enroll in the program. They also need to meet suitability criteria for all cases. If the concurrent cases are a different length and one has ERP eligibility and the other does not, they must fully discharge from the case that does not have eligibility before they can enroll.

14. What about persons who are charged with a violent crime who have a substance use disorder?

While the DOC has no authority to grant eligibility for Earned Release Program to persons convicted of violent crimes as defined by Wisconsin State Statute 302.05(3)(a)1, staff will work to provide Substance Use Disorder treatment programming to any person in our care who is determine to have a need for the treatment program.

15. How is "violence" determined in regards to eligibility for ERP?

Eligibility for ERP is defined in Wisconsin State Statutes 302.05(3)(a). Anyone convicted of a crime that is listed in the statute as being a violent crime would be ineligible to participate in ERP.

16. Can a person participate in ERP if they are to serve a consecutive sentence for an excluded offense? Example, a person has two 3-year sentences which is followed by a 2-year consecutive sentence for an offense that is excluded from participating in ERP.

Persons in our care under this circumstance may not enroll in ERP. Persons in our care shall be eligible on all sentences to participate in programming.

17. Would a person who is sentenced to a mandatory minimum sentence of 3 years benefit from sentence reduction upon completion of ERP or are they required to completed the mandatory minimum sentence?

If the Judgement of Conviction indicates a person must serve a mandatory minimum period of time prior to enrolling in ERP but otherwise meets all other eligibility and suitability criteria, DOC will not enroll them until the mandatory minimum requirements have been met.

18. To what extent does the current ERP factor in and address mental health needs of the persons in our care?

ERP does not directly address mental health needs through programming. Mental health needs can be addressed on an individual basis through psychological services provider. Treatment providers will work collaboratively with mental health staff to address any mental health concerns, to allow for successful completion of the program.

19. Is there any early release program for people who have a mental health diagnosis, without a co-occurring substance use disorder diagnosis? Is there any other early release program not related to those with substance use disorders?

Persons who enroll in the dual diagnosis program at Oshkosh Correctional Institution or Taycheedah Correctional Institution may release early upon completion, if they are ERP eligible and suitable. DOC does not have any other earned release programs that are not related to substance use disorders.

20. How effective is ERP? Does the DOC have data to determine if treatment is working or to track recidivism rates for those who complete ERP?

The DOC's Research and Policy Unit does lead research and evaluation efforts for the Department, including conducting research on recidivism and other key performance indicators. This information is available to the public at https://doc.wi.gov/Pages/DataResearch/DataAndResearch.aspx. Recidivism rates for all clients, including Earned Release Program graduates, are tracked using measures of re-arrest, re-conviction, and re-incarceration.

21. Does ERP meet the requirements of the Intoxicated Driver Program AODA Treatment that is court ordered after OWI convictions? If not, why not?

The Intoxicated Driver Program is a Department of Heath Services program designed to provide education or treatment to individuals convicted of operating a motor vehicle while intoxicated, with the intent of reducing reoffending. This program is completely independent of the Earned Release Program, and the program components are not equivalent, and thus neither program can be used to meet the requirements of the other program.

22. Will the Challenge Incarceration Program (CIP) remain a separate and distinct program?

CIP is a separate and distinct program defined in WI Statute 302.045 Challenge Incarceration Program. The DOC CIP program uses an evidence-based program model to apply substance use disorder treatment strategies and in-depth group interaction. Program components are structured around personal orientation and rehabilitative programming. The program includes rigorous physical activity, manual work assignments, regimentation and discipline, and instruction on military bearing. Persons must be classified as minimum or minimum community custody to participate in CIP.