

# Earned Release Program FAQs

*A list of frequently asked questions from the ERP virtual town hall meeting is available below.*

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## **1. What is the Earned Release Program (ERP) and who can participate? How does ERP differ from a Substance Use Disorder (SUD) Program? How can ERP programs be made more known to individuals, so they know to ask for the programming during sentencing?**

The Earned Release Program or ERP is an early release treatment program for persons who are incarcerated with substance abuse disorders. The current statute states a person is eligible for consideration for early release under ERP if they meet the following criteria:

- The Sentencing Court determines eligibility for ERP.
- The conviction and associated incarceration is for a non-violent, non-assaultive offense
- The person is serving a bifurcated sentence – (i.e., part of their sentence in confinement, and later on supervision); and
- The person has identified substance abuse issues and treatment needs

DOC developed internal suitability criteria to prioritize when ERP eligible individuals may enroll in the program. The current criteria are as follows:

- The person must be within 36 months of their release date;
- The person must be classified as minimum custody status; and
- Each ERP eligible person may only enroll in the ERP program one time for the same case. If the subject does not successfully complete the program, they are disqualified from re-enrolling

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 programming during their incarceration, ideally during the classification process.

ERP and SUD program suitability is determined at intake when the individual is determined to have a substance use disorder. The Department of Adult Institutions (DAI) provides four levels of care for substance use disorder treatment.

- SUD 1 is for individuals likely to have a substance use disorder but have been assessed as being low risk to offend as determined by an actuarial assessment. In these cases, Social Workers will case plan with them to address any concerns related to substance use.
- SUD 2/Low Risk ERP is for individuals who have a mild substance use disorder and are a moderate risk to reoffend. DAI also overrides any individuals who are identified as SUD 1 into SUD 2 if they are ERP eligible, parole eligible, or have multiple OWI's. Individuals at this level participate in formal programming, including our Cognitive Behavioral Interventions for

Substance Abuse Curriculum (CBISA) providing them approximately 59-78 hours of formal group treatment.

- SUD 3/Moderate Risk ERP is for individuals who have a moderate or severe Substance Use Disorder and are a moderate risk to reoffend. These individuals also receive the Cognitive Behavioral Intervention for Substance Abuse Treatment Curriculum. They additionally receive the Thinking for a Change (T4C) Curriculum, a 25 lesson Cognitive Behavioral program developed by the National Institute of Corrections. Thinking for a Change focuses on cognitive self-change, problem-solving skills, and social skills.
- SUD 4/High Risk ERP is for individuals who have a mild, moderate, or severe substance use disorder and are high risk to reoffend. These individuals participate in CBISA and T4C as well as other ancillary groups depending on their assessed needs. The ancillary group includes groups that address anger management, domestic violence, and employment needs.

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

## **2. What changes does the DOC hope to make to ERP, and why is this such a high priority for the agency?**

The DOC is recommending changes for general expansion of the program to allow for increased enrollment in this programming. The DOC created an ERP Expansion Committee, which made the following recommendations:

- Consolidate all ERP/SUD programs. This would mean that we would add a behavior modification treatment component to the curriculum for SUD programs, making them ERP programs and increasing the overall number of ERP programs throughout our Division of Adult Institutions.
- Allow medium custody individuals to enroll in ERP. This will reduce the number of individuals on the waitlist and allows persons in our care to enroll in ERP sooner in their incarceration. Previously, only minimum custody individuals could enroll.
- Assist in reducing the prison population by allowing individuals to enroll in ERP within 48 months of their release date versus the current requirement of 36 months
- Allow for multiple enrollments in ERP for the same case

The DOC trained SUD social workers and treatment specialists to certify them in the behavioral modification components of the ERP programming. Three new ERP sites are already up and running and one additional site is in progress.

One of the priorities of the agency is to reduce Wisconsin's prison population in a safe manner that maintains public safety. Without comprehensive criminal justice reform, the Earned Release Program is one of very few mechanisms that we have internally to do so. The Earned Release Program 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.

**3. What is the DOC doing to prevent people from coming into the system in the first place? With the option of early release pending, what kind of help is available after release for a person with substance abuse issues? Are there resources to assist individuals in their healing from any lifetime trauma?**

The DOC can only provide resources and programming once a person is in our care. We provide 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 last 6-9 months before an individual releases to the community, DOC Social Workers, Treatment Specialists, and Community Supervision agents collaborate in release planning with all individuals 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.

**4. What is the current capacity for the earned release program? What is the goal capacity once changes are made? Will this expansion cause more people to have their bed date or start date moved to a later date, or encounter delays?**

The DOC estimates that an additional 1,000 individuals will be able to complete ERP programs annually following the changes outlined. The expansion is intended to continue to increase our completions and also to eliminate some of the barriers the current policy puts 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 four additional ERP sites as a response to the COVID-19 pandemic, DOC is already seeing a significant increase in ERP release for 2020. As of July 1, 1,720 individuals had graduated and we project a total of 2,862 graduates by the end of 2020.

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 of that. 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 elevation in custody would allow for an individual to enroll at a medium custody 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 that 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.

Overall, we anticipate that the change to the custody requirement will somewhat reduce tentative bed dates changing but we will not know that for sure until the changes are in place. We do not anticipate

the changes increasing bed date changes. Unfortunately, legal matters and staff resources due to staff promotions, retirements or resignation will always be reasons why bed dates can change.

**5. Is there a proposed timeline for when changes will be made to ERP and where do things stand today?**

The DOC has a drafted policy regarding these changes. The next step is to change our policies as it relates to when individuals are eligible for ERP and to train all DAI facilities on the changes. Currently, a person in our care becomes eligible within three years of their release, but the DOC would like to see the criteria for eligibility expanded to 48 months. This would mean shorter waiting lists for people to get through the program, and we can ultimately decrease our overall prison population.

DOC is also working to allow medium custody individuals to enroll in ERP. This will reduce the number of individuals on the waitlist and allows persons in our care to enroll in ERP earlier in their sentence.

**6. Will the Department of Corrections collect and display data on the Earned Release Program once changes are made? What performance metrics will be tracked to understand if these changes are having the desired impact?**

There will be several performance metrics that we will be tracking to understand if the changes we're making are having the desired impact. DOC also wants to ensure that we're promoting equity within the Earned Release Program, so we will be looking closely at those data points. If we can identify and explain an issue using these data, we will work to fix it.

**7. With DOC set to combine ERP and SUD programs, will those who have already completed the SUD program be considered for a shorter program?**

The DOC makes every effort to offer SUD or ERP treatment to all individuals on the waitlist for SUD and ERP. With that being said, we do have limited treatment resources and do not enroll individuals in SUD treatment multiple times after they have completed a program. This is to ensure that we can serve as many individuals as possible.

When individuals arrive at DAI intake, they are assessed for a substance use disorder. If they are identified as having a substance use disorder, the need and correlated level of care is assigned on their primary program plan. The individual will also have ERP assigned as a need if they are eligible for it.

For individuals who are eligible for ERP, DAI will not place them in a non-ERP SUD program as it is our priority for them to earn their early release through ERP. If it appears that an ERP eligible individual will not be able to enroll in ERP prior to release, we will offer for them to participate in a non-ERP SUD program. This generally happens because individuals do not have enough time remaining on their sentence by the time they become suitable for ERP to enroll. We do not want them to return to the community without treatment so we offer the opportunity to enroll in non-ERP SUD programming.

Due to this practice, DOC does not anticipate that there will be a group of individuals who have completed SUD programming but are now suitable to participate in ERP as their sentence structure

would not allow enrollment regardless of the policy changes. That being said, communication will be sent to all persons in our care ahead of the policy changes becoming effective so that they can make an educated decision about enrolling in any non-ERP programming if the opportunity were made available to them before the policy changes go into effect.

**8. Currently, there are four SUD groups at OCI. Three of them are ERP only and one is non-ERP. By combining the ERP/Non-ERP at the facility, it will be taking the ERP beds down from 30 to 20. Why is each facility treated the same with blanket policies when it can actually limit our earned release potential?**

The move to combine ERP and SUD programming is due to the fact that DOC has aligned all substance use disorder/ERP program curriculum to be the same across the entire system. Because of this, there is no reason to keep them as separate programs. The policy changes add the opportunity to offer program beds to ERP eligible individuals in all programs that treat substance use disorder groups. At sites that offer both ERP and SUD, they will designate a certain number of program beds in each group for ERP individuals and the rest will be designated for non-ERP individuals. In the example above, the institution can designate 8 program beds in two groups and 7 program beds in the other two groups and still maintain current enrollment numbers for ERP. The remaining program beds can be designated for non-ERP individuals.

The landscape of SUD/ERP programming looks very different than what it will look like under the new policy and we understand that this is a shift in philosophy for many DAI sites, particularly those that offer both programs. The blanket policy intends to consolidate the philosophy that our ERP and SUD programs are the same programs with the same curriculum and treats the same needs. The fact that an individual is ERP eligible does not mean that we need to separate them from other individuals with a substance use disorder or treat them differently as we had in years past. The fact that we will be offering ERP eligibility upon completion of any SUD program in DAI will allow individuals to enroll in the program much quicker as they will not have to wait as long for program start dates.

## ERP Live Questions and Answers:

**1. Bed dates for ERP are generally given at reclassification (RC) hearings up to 12 months prior to an offender's eligibility date. Will offenders who were not eligible to receive a bed date at the previous RC hearing, but who would be eligible to receive one now due to the policy change, be granted an early RC hearing if requested, so they can get a bed date? In other words, will this alteration of the current policy be considered a significant change, the barometer for being granted an early RC hearing?**

The Bureau of Offender Classification and Movement will be reviewing cases that will be eligible at the time of the policy changes to determine individuals who warrant an early reclassification hearing for consideration for enrollment.

## **2. Is ERP available for women?**

The Earned Release Program is available to women who are eligible through their Judgement of Conviction and found to be suitable candidates to participate in the program. This programming is available at all WWCS facilities.

## **3. Some of my clients are eligible but found “not suitable.” What are the criteria used to determine suitability?**

To be found “suitable” for the Earned Release Program, a person in our care who is eligible for ERP must be within 36 months of their release date and be classified as minimum custody status. Under a proposal for expansion of ERP, DOC is modifying ERP suitability for individuals who are eligible for ERP, are at a minimum or medium custody status, and within 48 months of their release date.

## **4. If someone previously did not successfully complete the Earned Release Program they were ineligible to participate again. Would that person be eligible if they were determined eligible for ERP on a different or new case?**

Under the current Earned Release Program, each ERP-eligible person in our care may only complete the ERP program once for the same Judgement of Conviction. Therefore, if a person completes ERP and releases into the community but subsequently returns on revocation of the same case, they cannot participate in the program again. If a person receives new charges and receives confinement time while still serving the same sentence that they completed ERP on, they cannot participate in ERP until they have completely discharged from the case in which they completed ERP. If a person enrolls in ERP and does not complete for any reason, they may request to be reenrolled. However, DOC is recommending changes to the ERP program to allow for multiple completions in ERP for the same case. This would allow more individuals to enroll in the program again if they are returned to prison on the same case (either through revocation or new charges while still serving the case on which they completed ERP).

## **5. How much of an individual’s sentence will need to be served before entering ERP, if found eligible? Can an individual participate in ERP if they were in the program before?**

Currently, a person in our care who is eligible for the Earned Release Program and is at a minimum custody status will need to be within 36 months of their release date before enrolling in the program. Under a proposal to expand access to ERP, persons in our care who are eligible for ERP would need to be at a minimum or medium custody status and be within 48 months of their release date. Individuals can enroll in ERP more than once but once they complete, they cannot participate again on the same case. This will also change with the new policy. DOC does not require an individual to serve a mandatory period of time before enrollment; however, if the sentencing court notes on the Judgement of Conviction that they would like a minimum period served, DOC will honor it.

**6. How much of an individual's sentence is converted to extended supervision if they complete the Earned Release Program?**

State statutes do not specify a specific amount or percentage of confinement time that is converted to extended supervision upon completion of the Earned Release Program. Instead, the amount of time that is converted to extended supervision is dependent upon each individual'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 individual's sentence is shortened but extended supervision is lengthened so the total length of the original bifurcated sentence does not change.

**7. Do level one, low-risk individuals, still receive a reduced incarceration period after completion of their programming even though they are not technically enrolled in ERP?**

DAI overrides low-risk individuals into SUD2/Low Risk ERP if they are eligible for ERP or the Challenge Incarceration Program so that they can receive formal programming and earn early release.

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

Individuals under this circumstance may enroll in ERP as long as they are eligible for the program on both cases. If one case allows for ERP eligibility and the other does not, they cannot enroll in the program. They also need to meet the suitability criteria for both 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 before they can enroll.

**9. Program Review Committees are the 'gatekeepers' for entry to ERP. There are multiple reports from residents about staff members at specific institutions who are 'old school' and seek to hold back people as much as possible. What are you planning to do with staff training and supervision that will re-orient that thinking or replace those staff members to allow people to take advantage of this expansion?**

DOC is unaware of any circumstances mentioned above. If an individual feels that they are unfairly being held back from enrollment, they should utilize the institution complaint system to have their concerns reviewed.

**10. What about individuals who are charged with a violent crime who have substance use disorder?**

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

**11. How is “violence” determined in regards to eligibility for the Earned Release Program?**

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

**12. Would a person who is sentenced to a mandatory minimum sentence of 3 years benefit from a sentence reduction upon completion of the Earned Release Program or are they required to complete that mandatory minimum sentence?**

If the Judgement of Conviction notes that a person must serve a mandatory minimum period of time prior to enrolling in the program but otherwise meets all other eligibility and suitability criteria, DOC will not enroll them until the JOC requirements have been met, assuming that they meet the suitability criteria at that time.

**13. I understand from those under your care that there are long waiting lists and limited programming that are holding them up for the ERP. Is there any way those considered for ERP can be moved up on the program list?**

The DOC is recommending changes to current Substance Use Disorders (SUD) and ERP programs to open avenues for enrollment in ERP to individuals who are typically prevented from participating and to allow for expansion in the program. DOC created the ERP Expansion Committee, which was tasked with reviewing ERP and SUD programs to develop recommendations to allow increased enrollment in ERP. Their recommendations include consolidating all Earned Release Program and Substance Use Disorder programs, allowing persons at a medium custody status and within 48 months of their release to enroll in ERP, and allowing for multiple enrollments in ERP for the same sentence. Once fully expanded, DOC estimates that an additional 1,000 persons will be able to complete ERP each year.

**14. Is there guidance on what percentage of a sentence or length of time needs to be served depending on their initial sentence?**

Bed dates for enrolling in the Earned Release Program are based on the time remaining before an individual’s release date. Currently, persons need to be within 36 months of their release date to enroll in ERP but under a policy proposal, individuals would need to be within 48 months of their release date.

**15. To what extent does the current ERP factor in and address the mental health needs of the persons in your care?**

ERP does not directly address mental health needs through programming. Mental health needs can be addressed on an individual basis through a psychologist if one is available on site. Treatment providers will work collaboratively with mental health staff to address any mental health concerns to allow for successful completion of the program. That being said, most minimum security sites do not have the same amount of mental health staff on site to help individuals with more severe mental health concerns. One thing that will be helpful with the policy changes is that individuals with more chronic



mental illness who are suitable for ERP but whose mental health needs are better met at a medium-security facility will be allowed to enroll and have access to more intense mental health care.

**16. Is there any early release program for those who have a mental health diagnosis, without a co-occurring Substance Use Disorder diagnosis? Are there any other early release programs not related to those with Substance Use Disorders?**

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

**17. Does the DOC have enough mental health providers to support those in your care with mental health needs?**

As of October 2, 2020, there were 20,376 persons in our care who resided within Division of Adult Institution (DAI) facilities. Of these, 1,686 individuals were classified as seriously mentally ill. An additional 6,983 individuals were on the mental health caseload for psychological issues other than serious mental illness. Throughout the state, DAI has 162.3 clinical positions within Psychological Service Units, with vacancy rates ranging between 15 and 30% depending on the job classification. We acknowledge that there is still work to be done to decrease the vacancy rates throughout the system for several critical positions, such as our psychologist and other mental health professions. The DOC continues to explore strategies to decrease vacancies throughout the department, and look for alternative resources for those in our care, such as remote and virtual health resources.

In addition, DAI employs 35 to 40 psychiatry providers who work the equivalent of 23 full-time positions. Separate from the above, about 370 persons in our care are housed and treated at the Wisconsin Resource Center (WRC) for more acute mental health conditions at any given point in time. Clinical staff for WRC are provided by the Department of Health Services and are not included in the above numbers.

**18. Are there ways the general public can assist the department in moving the new ERP policy forward?**

Full implementation is anticipated in early 2021. We appreciate the public's support for this program and everyone's attendance in the town hall!

**19. Does the DOC utilize those with lived experience to assist the person in your care? Are certified peer specialists used for programming? If yes, how can they get involved?**

Yes, DOC has a peer specialist training program and uses trained Persons in our Care at several of our institutions with hopes to continue to expand this opportunity after the pandemic is over.

**20. What is the DOC doing to support clients after their release into the community to stop the revolving door of revocation? What additional community resources are available to clients upon release, and are they shown to be effective?**

Those in our care partake in several programming and treatment programs prior to release from incarceration and continue programming and skill training post-release as well. As an agency, we are continually working with all persons in our care on building daily cognitive-based skill sets to better interact with others around them. Our agency works with persons in our care through programming and daily interactions to reinforce those skills through targeted practice and combines the latest in evidenced-based supervision practices with treatment strategies known to work with a justice-involved population.

Once in the community, Probation and Parole Agents connect clients to direct services and treatment programs to support their individual needs. These programs provide the tools and resources necessary to be successful in the community and not return to incarceration. Programming may include (but is not limited to) Alcohol and other Drug Abuse (AODA) counseling including group therapy, individual therapy, denial and relapse therapy and assessment, Sex Offender Therapy, Anger Management and Domestic Violence Groups, Cognitive Intervention Group Therapy, Vocational, Employment, and Community Services.

**21. How effective is ERP? Does the DOC have data determine if the treatment is working, and 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 available to the public at <https://doc.wi.gov/Pages/DataResearch/DataAndResearch.aspx>. You can find information about recidivism and incarceration for the population of offenders as a whole, but we currently do not have data specifically related to the success of the Earned Release Program. To statistically determine if the Earned Release Program is successful, we would need to compare success rates of ERP graduates with success rates of similar people who did not participate in ERP. For example, we would need to compare success rates of high-risk ERP graduates to success rates of other high-risk individuals who did not participate in ERP. At present, it is difficult to find a good comparison group for those who did not participate in ERP as we are working to provide ERP to as many persons in our care as possible. We are continuing to look for options for measuring the success of this program and will share these data when they are available.

Recidivism rates for all clients, including Earned Release Program graduates, are tracked using measures of re-arrest, re-conviction, and re-incarceration.

**22. 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 Health Services program designed to provide education or treatment to individuals convicted of operating a motor vehicle while intoxicated, with the intent of reducing re-offending. 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.

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

The Challenge Incarceration Program (CIP) is not in any way connected to ERP and is a separate and distinct program. The DOC CIP program uses an evidence-based program model to apply Alcohol and Other Drug Abuse intervention strategies and in-depth group interaction. In the program, persons in our care have the opportunity to attend school with individual tutoring as they work towards earning a High School Equivalency Diploma. CIP is designed to allow a participant to successfully complete all program components in a minimum of 140 days. The program is voluntary; however, all program elements are mandatory. 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. While the program will remain a separate program, much of the suitability criteria will mirror the changes to the ERP suitability criteria, with the exception of custody level. CIP is only offered at minimum security.

**24. Are ERP programs up and running during COVID? If so, how do they look now in comparison to pre-COVID?**

Yes, DOC is continuing Earned Release Programs during the COVID-19 pandemic. We are also increasing capacity in ERP by enrolling eligible and suitable individuals within some of our medium-security facilities if they are currently minimum security and awaiting transfer to a minimum security site.

**25. Where can I receive answers to my COVID question as it relates to the DOC?**

The DOC's response to COVID-19 and answers to common questions are available on the DOC's public website. On the COVID page, individuals can view frequently asked questions (FAQs) and their answers, determine the number of active and recovered cases of COVID-19 by location in staff and person in our care, and read the latest news and announcements.

For additional, general questions after using these resources, individuals can contact the DOC's COVID-19 hotline at (608) 240-5700. If you have questions that are related to a specific facility or person in our care, please contact the facility directly.