



# WISCONSIN DEPARTMENT OF CORRECTIONS

Governor Tony Evers / Secretary Kevin A. Carr

## GUIDANCE DOCUMENT CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections §227.10 and §227.11 of the Wisconsin Statutes.

I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated.

I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

Wendy Montils

Name of Individual Certifying this Document/Proposed Document

Office of Management & Budget Director

Title


Wendy Montils

Signature

6/25/19

Date Signed

Department of Corrections – Wisconsin  
Office of the Secretary  
Wis. Stat. § 227.112(6)  
DOC-2910 (6/2019)

 <p style="text-align: center;"><b>DIVISION OF ADULT INSTITUTIONS</b></p> <p style="text-align: center;"><b>POLICY AND PROCEDURES</b></p>	<b>DAI Policy #:</b> 302.00.09	<b>Page</b> 1 of 10
	<b>Original Effective Date:</b> 10/01/09	<b>New Effective Date:</b> 07/01/18
	<b>Supersedes:</b> 302.00.09	<b>Dated:</b> 04/24/17
	<b>Administrator's Approval:</b> Jim Schwochert, Administrator	
<b>Required Posting or Restricted:</b>		
<input checked="" type="checkbox"/> <b>Inmate</b> <input checked="" type="checkbox"/> <b>All Staff</b> <input type="checkbox"/> <b>Restricted</b>		
<b>Chapter:</b> 302 Inmate Classification, Sentence and Release Provisions		
<b>Subject:</b> Certain Earned Releases		

**POLICY**

The Department of Corrections may release to extended supervision certain persons serving the confinement portion of a bifurcated sentence.

**REFERENCES**

Wisconsin Act 28 – Relating to state finances and appropriations, constituting the executive budget act of the 2009 legislature

Wisconsin Statutes s. 16.964(12)(a), 2009 Stats – Definition of “violent offender”

Wisconsin Statutes s. 301.45 – Sex Offender Registration

Wisconsin Statutes s. 301.46 – Access to Information Regarding Sex Offenders

Wisconsin Statutes s. 301.048(2)(bm)1 – Definition of “violent offense”

Wisconsin Statutes s. 302.113(9h), 2009 Stats – Certain Earned Release Criteria

Wisconsin Administrative Code s. DOC 302.35 – Certain Earned Releases

Wisconsin Statutes Ch. 940 – Crimes Against Life And Bodily Security

Wisconsin Statutes Ch. 975 – Sex Crimes Law

ROP I-01 – Ensuring Proper Release

**DEFINITIONS, ACRONYMS, AND FORMS**

A&E – Assessment and Evaluation

Certain Earned Releases (CER) Coordinator – Records Office staff assigned to assist with CER reviews.

COMPAS – Correctional Offender Management Profiling for Alternative Sanctions

DAI – Division of Adult Institutions

DCC – Division of Community Corrections

DOC – Department of Corrections

DOC-7E – Pre-Release Investigation

DOC-745 – Release Plan Information

DOC-1121 – Notice of Release

DOC-2070 – Records Office Release Information

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DOC-2288A – OVSP Confidential Cover Sheet

DOC-2491 – Certain Earned Release (CER) Review

DOC-2492 – Inmates for Consideration of Release within One Year of Extended Supervision

DOC-2499 – Order Pursuant to 302.113 (9h) (DOC Secretary's Office)

DOC-2500 – SORP Review for Certain Earned Release

DOC-2505 – Court Notification of Certain Earned Release (CER)

DOC-2518 – Certain Earned Release – Notice of Denial (DOC Secretary's Office)

DOC-2519 – CER Ineligibility Notification (Institution Warden/Superintendent)

DOC-2520 – Order to Rescind CER (DOC Secretary's Office)

ES – Extended Supervision

ICCR200 – Initial Classification Decision Report

ICCR204 – Reclassification Decision Report

OVSP – Office of Victim Services and Programs

PSI – Pre-Sentence Investigation

ROP – Records Office Procedure

SORP – Sex Offender Registry Program

Virtual folder – Shared storage medium for CER materials found in Locator/Document tab/Release Planning.

## **PROCEDURE**

### **I. Eligibility**

To be eligible for CER, an inmate must meet all of the following:

- A. The inmate is serving the confinement portion of a bifurcated sentence for a misdemeanor or a Class F to I felony for a crime that was committed or convicted or sentenced after 9/30/2009 but before 8/3/2011 that is not a violent offense as defined in Wisconsin Statutes s. 301.048(2)(bm)1. An inmate who has an active detainer is eligible for CER consideration without meeting the criteria under this paragraph when the detainer is for a sentence imposed in another jurisdiction and the remainder of that sentence is equal to or longer than the remainder of the Wisconsin sentence.

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- B. The facility Social Worker or DCC agent of record has reason to believe the inmate will be able to maintain himself/herself while not confined/on ES without engaging in assaultive activity.
- C. The release to ES date is not more than 12 months before the inmate's calculated release date.

## **II. Exclusions**

- A. The inmate is the subject of a bulletin issued under Wisconsin Statutes s. 301.46(2m).
- B. The inmate has, in his or her lifetime, been convicted of or found not guilty by reason of mental disease or defect of a sex offense, as defined in Wisconsin Statutes s. 301.45(1d)(b).
- C. The inmate has, in his or her lifetime, been found to have committed a sex offense in another jurisdiction, as defined in Wisconsin Statutes s. 301.45(1d)(am).
- D. The inmate is required to register under Wisconsin Statutes s. 301.45.
- E. The inmate, in his or her lifetime, has been committed under Wisconsin Statutes Ch. 975.
- F. The Secretary is exercising discretion to exclude the following inmates from consideration for CER:
  - 1. An inmate who, during the inmate's current incarceration period, is serving, has served, or will serve a sentence for a Class A or B felony.
  - 2. An ES violator who has been revoked and has a release date one year or less from the date of admission to prison.
  - 3. An inmate in A&E status at an intake facility.
  - 4. An inmate who, during his/her current incarceration is serving, has served or will serve a sentence defined in Wisconsin Statutes Ch. 940.
  - 5. An inmate who has been determined to be a violent offender, as defined in s. 16.964(12)(a), 2009 Stats.

## **III. General Guidelines**

- A. Records Office staff shall not begin the review process for CER consideration when an inmate's release date is less than 90 days from the date he/she is identified as eligible for CER consideration. Upon receipt of notification from the Records Office staff, the CER Coordinator shall complete a DOC-2518 based on insufficient time to complete the review process prior to release.
- B. If an inmate transfers to another facility after the CER process is initiated, the Social Worker shall notify the receiving facility Social Worker, agent and agent supervisor of the inmate's transfer and status of the CER review within one working day of the transfer.

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- C. If only the supervisory review remains to be completed at the time an inmate transfers to another facility, the supervisory review shall be completed at the sending facility by the Social Worker supervisor.
- D. Inmates may not waive consideration for CER. During the review process, if staff is aware an inmate does not wish to be considered for CER, they shall document the inmate's negative response on the DOC-2491, to include why the inmate does not wish to be considered.
- E. If new information becomes available or the inmate indicates he/she does not wish to be released on CER after the CER packet has been forwarded or after the Secretary has ordered an inmate's release, the Warden/designee shall immediately contact the DOC Secretary, Deputy Secretary and Executive Assistant via email.
- F. When the CER Coordinator receives notice of a completed CER packet to be forwarded to the Secretary's Office and the inmate's release date is less than 60 days from the date of receipt, the packet shall not be forwarded to the Secretary's office for review. A DOC-2518 shall be issued based on insufficient time to review prior to release date.
- G. After initial review by the Secretary's Office designee(s), the Secretary's Office designee shall provide via email a list of inmates who may be considered for release to the CER Coordinator.
  - 1. The CER Coordinator shall forward this list of inmates to DCC Monitoring center staff who shall complete a warrant check within three days of notification.
  - 2. The CER Coordinator shall coordinate another warrant check on approved CER inmates within five working days prior to the scheduled CER release date and provide the results to the Secretary's Office designee.
- H. CER releases shall occur only on Wednesdays. An inmate whose release contingencies are met after Wednesday, but prior to the next Wednesday may not be released until the next Wednesday.
- I. By 4:30 PM each Monday, Records Office staff shall report CER releases for the current week to the CER Coordinator. By 10:00 AM each Tuesday, the CER Coordinator shall provide the DOC Secretary's Office/designee(s) with the list of inmates who are scheduled for release on Wednesday.

#### **IV. Records Office Initial and Secondary Review**

Records Office staff have up to five working days to complete the following and, in addition to the steps noted below, shall follow the applicable section of the DOC-2491.

##### **A. Initial Review:**

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1. Records Office staff creates a list of potentially eligible inmates who are within one year of release and meet requirements defined in Wisconsin Statutes s. 302.113 (9h) and Wisconsin Administrative Code s. DOC 302.41.
  2. Records Office staff forwards DOC-2500 to the SORP for sex offender screening.
- B. Secondary Review:
1. Upon determination and notification from SORP, complete the Records Office Review section of the DOC-2491.
  2. If the inmate is eligible for consideration after the SORP review, save the DOC-2491 in the virtual folder in the inmate's Release Planning folder.
  3. If the inmate is ineligible after the SORP review, print the first page of the DOC-2491 and place it in the inmate Legal file.
  4. Update the tracking system used for CER reviews.
  5. Notify the Social Worker and Social Worker supervisor the material in the virtual folder is ready for the Social Worker's initial review.
- V. **Social Worker and Social Worker Supervisor Review**  
Social Workers and supervisors have up to a total of ten working days to complete the following:
- A. Review the DOC-2491 in the virtual folder.
  - B. Notify the inmate of his/her eligibility to be considered for CER.
  - C. Coordinate the inmate's completion of the DOC-745.
  - D. Review the inmate's completed DOC-745.
  - E. Complete a COMPAS Reentry Risk Assessment if most recent assessment is older than two years.
  - F. Discuss any questions related to his/her review with his/her supervisor prior to completion of the review.
  - G. Update the Social Worker Review section of the DOC-2491 and save the updated DOC-2491 into the virtual folder.
  - H. Scan the completed DOC-745 and ICCR204 or ICCR200, and save them into the virtual folder.
  - I. Notify the Social Worker's supervisor informing that the materials in the virtual folder are ready for Social Worker supervisory review.
  - J. Supervisor shall:
    1. Review materials in the virtual folder,
    2. Complete the Social Worker Supervisor Review section of the DOC-2491.

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3. Save the updated DOC-2491 into the virtual folder.
4. Email the respective Regional mailbox with a copy to the current Social Worker, indicating that this form and the supporting documents for the specified inmate are ready for agent review in the virtual folder.
5. Subject line should read CER REVIEW – INMATE LAST NAME, first name, DOC #.

#### **VI. DCC Review**

- A. The DCC agent, field supervisor, and regional chief/designee have up to 30 days to complete their reviews and follow the steps outlined on the DOC-2491.
- B. Upon completion of the DCC review process, the DCC Regional Chief/designee notifies the current Social Worker that the materials in the virtual folder are ready for Social Worker final review.

#### **VII. Social Worker Final Review**

The current Social Worker has up to five working days to complete the following:

- A. Review the contents of the virtual folder and verify that all required documents (identified on DOC-2491) are present and complete for the process to continue.
- B. Complete the Social Worker Final Review section of the DOC-2491 and save the updated DOC-2491 into the virtual folder.
- C. During the Social Worker final review:
  1. If either the agent or Social Worker believes the inmate shall be able to maintain himself/herself while not confined/on extended supervision, the Social Worker notifies the Records Office staff that the materials in the virtual folder are ready for the Records Office Tertiary Review.
  2. If both the Social Worker and agent indicate they believe the inmate is not able to maintain himself/herself while not confined/on ES without engaging in assaultive activity, a DOC-7E is not completed.
  3. The Social Worker prepares and submits the DOC-2519 to the Warden/Superintendent for signature and distribution.

#### **VIII. Records Office Tertiary Review**

Records Office staff has up to 34 calendar days to complete the following and, in addition to the steps noted below, shall follow the applicable section of the ROP I-01:

- A. Based on Records Office staff data entry to the CER Tracking System, OVSP is notified of inmates being considered for CER via email DOC OVSP Admin. OVSP notifies any registered victims the inmate is being considered for an earned release and of their opportunity to provide victim impact statement(s).
  1. OVSP notifies the CER Coordinator of any CER eligible inmates who have victims who have been notified. OVSP forwards the victim impact

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statement(s) with a DOC-2288A to the CER Coordinator for inclusion in the CER packet provided to the Secretary/designee.

2. If the inmate has a registered victim who has been notified, the process takes up to an additional 30 days to allow the victim(s) time to submit a victim impact statement.
- B. The Records Office staff completes the DOC-2070.
- C. The Records Office staff completes the Records Office Tertiary Review section of the DOC-2491.
- D. The Records Office staff saves the updated DOC-2491 into the virtual folder and updates the Central Office notification date in the CER Tracking System.
- E. The Records Office staff completes the DOC-2492 and forwards to the CER Coordinator via email.
- F. The CER Coordinator prints the DOC-2492 and prints the completed CER Review packet to include:
1. DOC-2491.
  2. DOC-2492.
  3. DOC-2266.
  4. ICCR204 or ICCR200.
  5. COMPAS bar chart.
  6. DOC-7E.
  7. DOC-2288A.
  8. Victim Impact Statement(s).
- G. The CER Coordinator forwards the DOC-2492s and the CER Review packets to the DOC Secretary/ designee for final release decision.

#### **IX. DOC Secretary/Designee Review and Decision**

The DOC Secretary/designee shall complete the following as soon as possible:

- A. Print the PSI and revocation summary and provide to the Secretary/designee for their use in review of the CER packet.
- B. Review the CER packet and complete a review summary.
- C. Forward via email a list of inmates for whom the CER Coordinator shall request a warrant check be completed by DCC Monitoring Center staff.
- D. Receive the results of the warrant check and make a recommendation/ decision.
  1. Upon review of the final recommendation/decision, complete the Secretary's Office Review and Decision section of the DOC-2491 and save it in the virtual folder.
  2. Define contingencies for the inmate's release, if applicable.



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3. Destroy the Warrant Check printout after the review is complete, based on an agreement with the United States Department of Justice.
  - E. Complete and distribute the DOC-2492 provided by the CER Coordinator. A copy shall be scanned to OVSP via email at DOC OVSP Admin.
  - F. Print a copy of the DOC-2491 for the CER file.
  - G. If release is authorized, complete and distribute the DOC-2499.
  - H. If release is denied; complete and distribute the DOC-2518.
  - I. If release is rescinded, complete and distribute the DOC-2520.
  - J. Return the completed release packet with Order for Release or Notification Letter to the CER Coordinator.
- X. Records Office Final Review**
- A. If the Secretary's Office authorizes release of an inmate, the Records Office shall:
    1. Complete a DOC-2070 in accordance with ROP I-01.
    2. Complete and route the DOC-1121.
    3. Update the Final Records Office Review section of the DOC-2491 and save the updated DOC-2491 into the virtual folder.
    4. Request the final warrant check, within five working days prior to the inmate's scheduled CER release date.
    5. Communicate any change in the outcome of the warrant check to the Secretary's office for decision.
  - B. If the Secretary's office does not authorize release, the Records Office staff shall file the completed DOC-2518.
  - C. By 4:30 PM each Monday, Records Office staff shall report CER releases for the current week to the CER Coordinator. By 10:00 AM each Tuesday, the CER Coordinator shall provide the DOC Secretary's Office/designee(s) with the list of inmates who are scheduled for release on Wednesday.
  - D. The CER Coordinator shall update the CER Tracking System immediately upon notification of the inmate's release and ensure the updated DOC-2491 is saved in the virtual folder.
  - E. Records Office staff shall complete the DOC-2505 notifying the Court and District Attorney of the inmate's release within five working days after the release of the inmate.

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**Administrator's Approval:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
Jim Schwochert, Administrator

**DIVISION OF ADULT INSTITUTIONS FACILITY IMPLEMENTATION PROCEDURES**

<b>Facility:</b> Name		
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<b>Subject:</b> Certain Earned Releases		
<b>Will Implement</b> <input type="checkbox"/> As written <input type="checkbox"/> With below procedures for facility implementation		
<b>Warden's/Center Superintendent's Approval:</b>		

**REFERENCES**

**DEFINITIONS, ACRONYMS, AND FORMS**

**FACILITY PROCEDURE**

- I.
  - A.
  - B.
    - 1.
    - 2.
      - a.
      - b.
      - c.
    - 3.
  - C.

II.

III.

**RESPONSIBILITY**

I. Staff

II. Inmate

III. Other

Scott Walker  
Governor

Jon E. Litscher  
Secretary



State of Wisconsin  
Department of Corrections

Mailing Address

3099 E. Washington Ave.  
Post Office Box 7925  
Madison, WI 53707-7925  
Telephone (608) 240-5000  
Fax (608) 240-3300

DATE: March 28, 2017

[POST FOR INMATES]

TO: All DAI Inmates

FROM: Jim Schwochert, Administrator  
Division of Adult Institutions

A handwritten signature in black ink, appearing to read "Jim Schwochert", written over the printed name.

SUBJECT: Changes to Positive Adjustment Time (PAT) & Certain Earned Release (CER)

The Wisconsin Supreme Court decision in *State ex rel. Aman Singh v. Paul Kemper*, 2016 WI 67, and the Wisconsin Court of Appeals decision in *State ex rel. Aman Singh v. Paul Kemper*, 2014 WI App 43, 353 Wis. 2d 520, 846 N.W.2d 820, impact the repeal of 2009 WI Act 28 and the implementation of 2011 WI Act 38.

**I. Positive Adjustment Time (PAT)**

Wisconsin Stat § 973.198 was not found to be unconstitutional other than the time frame for filing the petition; therefore, it is DOC's expectation that inmates shall continue to use the § 973.198 process and the related Court forms.

Eligible inmates may file the petition 90 days prior to the completion of the confinement portion less positive adjustment time earned.

- Eligibility for PAT is determined on when a crime was committed or an offender was convicted or sentenced as follows:
  - An inmate serving a sentence imposed prior to October 1, 2009, for a crime committed after December 30, 1999, who has earned positive adjustment time under s. 302.113, 2009 stats., or under s. 304.06, 2009 stats., may earn PAT, based on the number of days of positive adjustment time earned between October 1, 2009, and August 3, 2011.
  - An inmate serving a sentence for a crime committed, conviction entered, or sentence imposed between October 1, 2009, and August 3, 2011, who has earned positive adjustment time under s. 302.113, 2009 stats., or under s. 304.06, 2009 stats., may earn PAT, based on the number of days of positive adjustment time earned between October 1, 2009, and discharge from the sentence.

In no way is a petition for PAT a guarantee of an early release. **Early release, which is granted by the Court, is a privilege to be earned.**

**II. Certain Earned Release (CER)**

DOC will soon begin the review of eligible inmates for CER. If you believe that you meet the criteria as outlined in DOC § 302.113(9h) Administrative Code, you may contact your Records Office.

- Eligible inmates with an offense committed, or convicted, or sentenced between October 1, 2009, and August 3, 2011, **may** earn CER during the confinement or re-confinement period of a sentence.
- Inmates may be eligible if the release to ES date is not more than 12 months before the inmate's calculated release date.
- DAI 302.00.09 Certain Earned Release outlines exclusions.

In no way is a review for CER a guarantee for an early release. **Early release, which is granted by the DOC, is a privilege to be earned.**

### III. Resources

Please refer to the Singh decisions, 2011 WI Act 38, and 2009 WI Act 28, as well as all related statutes, administrative code sections, and case law for additional information. DOC staff is not able to provide legal advice. You may wish to contact your attorney or the Legal Assistance for Institutionalized Persons (LAIP) for additional assistance.

The Records Office will be working diligently to review all inmates who may be impacted by this process. Please be patient as the Records Office staff work through this process.

cc: Jon E. Litscher, DOC Secretary  
Cathy Jess, DOC Deputy Secretary  
Patrick Hughes, DOC Assistant Deputy Secretary  
Wendy Monfils, DAI OMB Director  
DOC Corrections Complaint Examiners  
DAI Institution Complaint Examiners  
DAI Wardens