

State of New York  
Department of Correctional Services

Building Number 2  
Harriman Office Campus  
Albany, New York 12226

**EARNED ELIGIBILITY PROGRAM SUMMARY**

**Semiannual Report  
October 2006 – March 2007**



**Eliot Spitzer  
Governor**



**Brian Fischer  
Commissioner**

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### EXECUTIVE SUMMARY

In the 1992 legislative session, the section of the correction law governing the Department's Earned Eligibility Program was amended to require two semiannual reports rather than the previous annual report to the legislature. These reports are to be submitted on January 1 and July 1. This report provides a statistical overview of the Earned Eligibility Program for the six month period from October 2006 – March 2007.

This report focuses on inmates eligible to be evaluated for a Certificate of Earned Eligibility prior to their initial hearing. There were 6,427 initial parole eligibility hearings during this six month period involving inmates who had been evaluated for a Certificate of Earned Eligibility (including Shock participants and Merit Time inmates).

**Earned Eligibility Program Expansion.** Initially, the Earned Eligibility Program was available only to inmates with minimum sentences of six years or less. The Legislature expanded the program to include inmates with minimum sentences of up to and not exceeding eight years in May 2003, and the first hearings for cases that resulted from the expansion occurred in June 2003. From October 2006 to March 2007, there were 164 hearings for inmates with minimum sentences that were greater than six (6) and less than eight (8) years. These hearings resulted in 50 approvals (30%), ten (10) more than expected based on the prior approval rate of EEP ineligible inmates (*see Table A, page 2*).

**Percent Issued Certificates of Earned Eligibility.** Of the total 6,427 hearings involving eligible inmates, 77% (4,934) were issued a Certificate prior to their initial Board appearance. Fifteen percent (962) were denied Certificates and 8% (531) were determined to be non-certifiable for Earned Eligibility at the time of review (*see Table 1, page 3*).

**Release Rates For Inmates With Certificates of Earned Eligibility.** Inmates who were issued Certificates of Earned Eligibility were substantially more likely to be granted parole than those denied a Certificate or those granted non-certifiable status. During this period, 52% of inmates who were issued a Certificate were approved for release to parole supervision, compared to 15% of those denied a Certificate and 27% of those granted non-certifiable status (*see Table 4, page 6*).

**Release Approval Rates by Crime Category.** The highest release approval rates were for cases in which certificates were issued, involving youthful offenses and drug offenses (71% and 70%, respectively). The lowest release approval rate was for cases that involved violent offenses and that were denied Certificates (2%) *(see Table 5, page 7)*.

**Impact of Merit Time.** In 1997, the legislature authorized the creation of the Merit Time Program. It allows for inmates who are serving prison sentences for certain non-violent crimes to earn a possible one-sixth reduction of the minimum term if they have achieved certain significant programmatic objectives and have not engaged in any serious disciplinary infractions. The first Merit Time appearances occurred in October 1997. There were 1,941 merit hearings and 1,188 merit approvals for parole supervision between October 2006 and March 2007, a merit approval release rate of 61% *(refer to page 9)*.

**Cumulative Additional Releases and Estimated Cost Savings.** Based on the total additional releases (N=36,734) generated between the beginning of the Earned Eligibility Program (July 1987) and March 2007, there has been a substantial savings in terms of operational and construction costs. With respect to operational costs for the Original EEP cases, it is estimated that the 36,599 additional releases resulted in a savings of over \$658.8 million (assuming a \$27,000 maintenance cost per inmate per year and an average hold of eight months per denial prior to EEP) *(refer to page 10)*. Regarding operational costs for the Expanded EEP cases, it is estimated that the 135 additional releases resulted in a savings of over \$3.9 million (assuming a \$29,000 maintenance cost per inmate per year and an average hold of twelve months for the cases prior to the expansion of EEP) *(refer to page 10)*. Combining the operational savings of over \$658.8 million for the Original EEP cases with the \$3.9 million in operational savings for the Expanded EEP cases results in a total operational savings of more than \$662 million.

Based on a suggestion from auditors in the Office of the State Controller, DOCS' cost avoidance estimates have been modified to amortize the cost of building correctional facilities. For the cost avoidance estimates, we have used the \$75,975,000 cost of a medium security facility, fully double-bunked with a total capacity of 1,302 inmates, depreciable over thirty years, and a 6.35% interest rate. Using this model, the 32,932 additional releases between July 1987 and December 2000 have reduced the need for capital construction by over \$95 million *(refer to page 11)*.

Combining the estimated \$662 million in total operational savings with the \$95 million in construction avoidance savings, the Earned Eligibility Program has reduced the need for the DOCS' expenditures by approximately \$757 million dollars since its inception in 1987 *(refer to page 11)*.

**Return Rate of Earned Eligibility Program Certificate Cases.** The purpose of the Earned Eligibility Program is to increase the number of inmates released at their initial Parole Board hearing without increasing the risk to the community. A three-year follow-up of 1999 through 2002 releases is presented, with comparison groups based on results of the Earned Eligibility assessment. The most striking difference in rates of return to the Department is between those issued Certificates of Earned Eligibility compared to those denied a Certificate.

For each of the four years of release populations, there is a consistent difference in the rate of return between persons issued Certificates and those denied a Certificate. For each release cohort, the inmates issued Certificates return at rates that are lower than return rates for those denied a Certificate. For 1999 releases, inmates who earned a certificate had a return rate of 33 percent within three years compared to 50 percent for inmates denied a certificate. For 2000 releases, inmates who earned a certificate had a return rate of 35 percent within three years compared to 53 percent for inmates denied a certificate. The 2001 release population continued to show a low rate of return at the end of the three-year period for those who earned a Certificate (35%) compared to those denied a Certificate (49%). The 2002 release population showed a similar difference, with 33 percent of those issued certificates and 50 percent of those denied certificates returning (*see Table 6, page 12*).

**Return Rate by Crime Category for 2002 Releases.** Among the 2002 releases that were followed for three years, return rates were examined by primary crime categories (based upon the number of cases in the category). Across all categories, inmates who were issued EEP Certificates returned at lower rates than inmates who were denied Certificates. After three years of release into the community, the lowest return rate occurred in the Violent Felony category for inmates who were issued Certificates (26%). The highest return rates were for property offenders and youthful offenders that were denied certificates, with return rates of 65 percent in each of those groups (*see Table 7, page 13*).

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# **EARNED ELIGIBILITY PROGRAM SUMMARY**

## **Semiannual Report October 2006 - March 2007**

### **INTRODUCTION**

Legislative reporting requirements established in 1992 call for semiannual reports on the Earned Eligibility Program. Each report provides information about the Earned Eligibility Program for the preceding six month period. The January report covers Earned Eligibility activity that took place from April through September, and the July report provides information for the period October through March.

The information in this report is drawn from initial parole hearing dispositions and Earned Eligibility reviews. Data on Earned Eligibility status is maintained by the Department of Correctional Services and the information on parole dispositions is supplied by the Division of Parole. If a case is missing information from either source it is excluded from the analysis. For individuals with more than one parole hearing during the relevant time period (due to postponements at their initial hearing), information is provided on each hearing and corresponding Earned Eligibility status. Consequently, Parole Board appearances<sup>1</sup>, not individuals, are the units of analysis.

### ***Overview of Earned Eligibility Program***

The goal of the Earned Eligibility Program is to increase the rate of safe releases for inmates who have demonstrated an overall pattern of progress in prescribed programs while serving their required minimum sentence. The program evaluates inmates' preparedness for release based on their compliance with sets of minimum standards for behavior and for progress toward satisfying treatment needs.

Prior to an inmate's initial Parole Board hearing, the Earned Eligibility Program provides for a review of treatment and disciplinary records to determine whether the case is certifiable and whether an Earned Eligibility Certificate should be issued or denied. Evaluation results are provided to the Parole Board to be used in deciding whether to release the inmate or to deny parole. This program of standards and review is available to inmates with minimum sentences of eight years or less.

### ***Earned Eligibility Program Expansion***

Eligibility for this program was originally limited to inmates with minimum sentences of six years or less. The Legislature expanded the program to include inmates with minimum sentences of up to eight years in May, 2003. Initial hearings for cases having minimum sentences of more than six (6) years but no more than eight (8) years began in June 2003. Table A shows the total number of appearances and approvals resulting from this expansion. From June 2003 through March 2007, there were 1,695 appearances, resulting in a 32% parole approval rate. The analysis in this report will include the 164 appearances and 50 approvals occurring between October 2006 and March 2007 (Table A).

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<sup>1</sup> In May 2003, the Legislature authorized inmates to be Presumptively Approved for release by the Department of Correctional Services to the Division of Parole without a Parole hearing. Presumptively Approved inmates still appear before the Parole Board to set the conditions of their parole supervision. Therefore, this report treats the Presumptively Approved inmates as Parole Board appearances who get parole approvals.

**Table A. Initial appearances and approvals for cases with minimum sentence lengths greater than six (6) years but no more than eight (8) years**

Month of Initial Parole Appearances	Total Number of Parole Appearances	Expected # of Approvals (24%) *	Total Parole Approvals	Parole Approval Rate
June '03	22	5	11	50%
July	49	12	15	31%
August	52	12	26	50%
September	41	10	11	27%
October	51	12	14	27%
November	43	10	11	26%
December	52	12	16	31%
January '04	32	8	15	47%
February	47	11	19	40%
March	30	7	8	27%
April	37	9	13	35%
May	41	10	14	34%
June	28	7	9	32%
July	47	11	13	28%
August	46	11	7	15%
September	40	10	13	33%
October	39	9	12	31%
November	55	13	20	36%
December	34	8	7	21%
January '05	31	7	13	42%
February	37	9	8	22%
March	41	10	13	32%
April	48	12	20	42%
May	58	14	22	38%
June	61	15	18	30%
July	36	9	10	28%
August	35	8	9	26%
September	42	10	16	38%
October	30	7	10	33%
November	36	9	12	33%
December	28	7	6	21%
January '06	19	5	6	32%
February	35	8	13	37%
March	30	7	7	23%
April	27	6	13	48%
May	25	6	7	28%
June	28	7	7	25%
July	35	8	14	40%
August	32	8	8	25%
September	31	7	6	19%
<b>October</b>	<b>28</b>	<b>7</b>	<b>5</b>	<b>18%</b>
<b>November</b>	<b>34</b>	<b>8</b>	<b>8</b>	<b>24%</b>
<b>December</b>	<b>25</b>	<b>6</b>	<b>7</b>	<b>28%</b>
<b>January '07</b>	<b>24</b>	<b>6</b>	<b>8</b>	<b>33%</b>
<b>February</b>	<b>30</b>	<b>7</b>	<b>13</b>	<b>43%</b>
<b>March</b>	<b>23</b>	<b>6</b>	<b>9</b>	<b>39%</b>
<b>Report Sub Total</b>	<b>164</b>	<b>40</b>	<b>50</b>	<b>30%</b>
<b>Program Total</b>	<b>1,695</b>	<b>407</b>	<b>542</b>	<b>32%</b>

\* Estimate percentages are rounded up to whole numbers

## EARNED ELIGIBILITY DECISIONS

From October 2006 through March 2007, 6,427 cases appeared at initial Parole Board hearings after being evaluated for Earned Eligibility Certification. Of these, 6,263 (97%) were cases with minimum sentences of six years or less and 164 (3%) were cases with minimum sentence lengths greater than six, but no more than eight years. Overall, 77% of cases (4,934) were issued Certificates of Earned Eligibility; 15% (962) were denied Certificates and 8% (531) were non-certifiable (see Table 1). Compared to the original EEP group (cases with minimum sentences of six years or less), a greater proportion of cases resulting from the EEP expansion were denied certificates (15% and 27%, respectively). Eight percent of cases in the original EEP group were non-certifiable; there were no non-certifiable cases in the expanded EEP group.

**Table 1. Distribution of EEP Decisions By Minimum Sentence Category  
October 2006 to March 2007**

EEP DECISIONS	Original EEP: Minimum Sentence of 6 Years or Less		Expanded EEP: Minimum Sentence of over 6, up to 8 years		Total EEP Decisions	
	Number	Percent	Number	Percent	Total Number	Total Percent
Issued Certificate	4,815	77%	119	73%	4,934	77%
Denied Certificate	917	15%	45	27%	962	15%
Non- certifiable	531	8%	0	0%	531	8%
<i>Total</i>	<b>6,263</b>	<b>100%</b>	<b>164</b>	<b>100%</b>	<b>6,427</b>	<b>100%</b>

## **Reasons For Certificate Denials**

During this report period, the most common reasons for denial of an Earned Eligibility certificate included one or more of the following:

- Overall unacceptable level of program participation and progress
- Overall unacceptable level of program attendance
- Refusal to participate in programs or treatment recommended by Department staff
- Poor institutional behavior record that interfered with inmates' participation in or progress through programs

**Table 2. Reasons for EEP Certificate Denial  
October 2006 to March 2007**

<b>EEP CERTIFICATE DENIAL REASON</b>	<b>Original EEP: Minimum Sentence of 6 Years or Less</b>		<b>Expanded EEP: Minimum Sentence of over 6, up to 8 years</b>		<b>TOTAL</b>	<b>Percent</b>
<b>Poor Program Participation and Progress</b>	159	17%	0	0%	159	17%
<b>Unacceptable Level of Program Attendance</b>	47	5%	4	9%	51	5%
<b>Refusal to Participate In Prescribed Programs</b>	93	10%	7	15%	100	10%
<b>Poor Disciplinary Record Interfered with Program Participation</b>	618	67%	34	76%	652	68%
<b>Total *</b>	<b>917</b>	<b>100%</b>	<b>45</b>	<b>100%</b>	<b>962</b>	<b>100%</b>

\* Totals may not equal 100% due to rounding

Disciplinary issues that affected program participation accounted for 68% of all Certificate denials. Considering cases with minimum sentences of six years or less, 67 percent of Certificate denials were based on such disciplinary issues while factors directly related to program engagement (progress, attendance, and refusal to participate) were responsible for the remainder of denials. Among cases resulting from the EEP expansion (minimum sentences greater than six years and less than eight years), 76% of Certificate denials were linked to disciplinary records while 24% were related to inmates' level of engagement in programs.

### **Reasons for Granting Non-certifiable Status**

In some cases, inmates were unable to participate in programs through no fault of their own. Such cases were granted non-certifiable status, which does not include either a positive or a negative recommendation to the Parole Board.

Reasons for granting non-certifiable status most commonly included one or more of the following:

- Insufficient time in programs for an evaluation of progress to be made (i.e. in transit, not yet assigned to a program, less than 3 months opportunity to participate in programs)
- Hospitalization or infirmary confinement interfered with program participation
- Participation in required programs constrained or interrupted because inmates were
  - In protective custody
  - Out to court
  - In reception

**Table 3. Reasons for EEP Non-Certifiable Status  
October 2006 to March 2007**

<b>EEP NON-CERTIFIABLE STATUS REASON</b>	<b>Original EEP: Minimum Sentence of 6 Years or Less</b>		<b>Expanded EEP: Minimum Sentence of over 6, up to 8 years</b>		<b>TOTAL</b>	<b>%</b>
<b>Insufficient Time in Programs</b>	338	64%	0	NA	338	64%
<b>Hospitalization or Infirmary</b>	9	2%	0	NA	9	2%
<b>Protective Custody</b>	0	0%	0	NA	0	0%
<b>Out to Court</b>	22	4%	0	NA	22	4%
<b>In Reception</b>	162	31%	0	NA	162	31%
<b><i>Total*</i></b>	<b>531</b>	<b>100%</b>	<b>0</b>	<b>0%</b>	<b>531</b>	<b>100%</b>

\* Totals may not equal 100% due to rounding

All cases that were determined to be non-certifiable had minimum sentences of six years or less. The greatest proportion of them (64%) was non-certifiable because of insufficient time in programs.

## EARNED ELIGIBILITY AND PAROLE APPROVAL DISPOSITIONS

Table 4 shows Parole Board and Department of Correctional Services Dispositions for the 6,427 cases that had initial parole appearances after being evaluated for an Earned Eligibility Certificate. These cases are grouped according to minimum sentence and Earned Eligibility Certificate status. Parole dispositions are presented as "Released" or "Held". "Released" refers to cases that received a straight parole date or were granted an open parole date. Cases granted open parole dates often have an established residence, employment, verified community treatment plan and/or have successfully completed prescribed programming while incarcerated. "Held" refers to cases that were denied parole or postponed. Overall, cases that were issued a Certificate of Earned Eligibility were more likely to be released (52%) when compared to those cases denied a Certificate (15%) (see Table 4).

**Table 4. Earned Eligibility Status by Parole Approval Decision  
October 2006 to March 2007**

PAROLE BOARD/DOCS DECISION									
STATUS	Original EEP: 6 Year Or Less Min.			Expanded EEP: Over 6, up to 8 Yr.Min.			Total		
	Released	Held	Sub- Total	Released	Held	Sub- Total	Released	Held	%
Issued	<b>53%</b>	<b>47%</b>	<b>100%</b>	<b>39%</b>	<b>61%</b>	<b>100%</b>	<b>52%</b>	<b>48%</b>	<b>100%</b>
	2,530	2,285	4,815	47	72	119	2,577	2,357	4,934
Denied	<b>16%</b>	<b>84%</b>	<b>100%</b>	<b>7%</b>	<b>93%</b>	<b>100%</b>	<b>15%</b>	<b>85%</b>	<b>100%</b>
	146	771	917	3	42	45	149	813	962
Non- certifiable	<b>27%</b>	<b>73%</b>	<b>100%</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>27%</b>	<b>73%</b>	<b>100%</b>
	143	388	531	0	0	0	143	388	531
<b>Total</b>	<b>45%</b>	<b>55%</b>	<b>100%</b>	<b>30%</b>	<b>70%</b>	<b>100%</b>	<b>45%</b>	<b>55%</b>	<b>100%</b>
	2,819	3,444	6,263	50	114	164	2,869	3,558	6,427

## CRIME CATEGORY AND RELEASE APPROVAL RATES

Table 5 shows that in all crime categories, release approval rates were higher for cases issued Earned Eligibility Certificates than for those that were denied. For example, the overall release approval rate for drug offense cases with Certificates was 70%; in comparison, just 22% of drug offense cases that were denied certificates were approved for release. (For raw data, see Table A1 in Appendix).

Seriousness of the commitment crime is one of the factors considered by the Department of Correctional Services and the Parole Board in release decisions. It is expected that inmates with more serious crimes will have lower release approval rates than other offenders. Table 5 shows that the overall release approval rate across crime categories was in the expected direction. Drug Offense cases had the highest overall release approval rate (63%), followed by Youthful Offenses (52%) and Property Offenses (43%). Cases that involved Violent Offenses (8%) and Other Coercive Offenses (22%) had the lowest release approval rates.

Considering both earned eligibility status and crime category, cases that involved Youthful Offenses and Drug Offenses issued certificates had the highest release rates (71% and 70%, respectively). Violent Offense cases that were denied Certificates had the lowest release rate (2%).

**Table 5. Summary of Release Approval Rates by EEP Status and Crime of Commitment  
October 2006 to March 2007**

APPROVAL RATES						
<b>EARNED ELIGIBILITY STATUS</b>	<b>Violent Offenses N=496</b>	<b>Other Coercive N=1,092</b>	<b>Drug Offenses N=2,468</b>	<b>Property Offenses N=2,057</b>	<b>Youthful Offenses N=308</b>	<b>Total N=6,421*</b>
<b>Issued</b>	10%	27%	70%	48%	71%	<b>52%</b>
<b>Denied</b>	2%	5%	22%	22%	28%	<b>16%</b>
<b>Non-certifiable</b>	27%	14%	43%	28%	27%	<b>27%</b>
<b>Total Approved</b>	<b>8%</b>	<b>22%</b>	<b>63%</b>	<b>43%</b>	<b>52%</b>	<b>45%</b>

\*Juvenile Offenders are not included in Table 5. Typically, Juvenile Offenders will have an initial parole hearing prior to transfer from the Office of Children and Family Services. In this period, five juvenile offenders were issued certificates and one was denied. None of the juvenile offenders were approved for release.

**Note:** The Approval Rate percentages are calculated by dividing the number of approvals by the total number of cases considered for parole, which is not shown in this table. Table A1 on page 15 provides the raw data needed to calculate the rates in Table 5.

**Table 5B. Summary of Release Approval Rates By EEP Status and Crime  
(Original EEP Cases with Minimum Sentences of Six Years or Less)  
October 2006 to March 2007**

APPROVAL RATES						
<b>EARNED ELIGIBILITY STATUS</b>	<b>Violent Offenses N=405</b>	<b>Other Coercive N=1,086</b>	<b>Drug Offenses N=2,409</b>	<b>Property Offenses N=2,051</b>	<b>Youthful Offenses N=308</b>	<b>Total N=6,259*</b>
<b>Issued</b>	11%	27%	69%	48%	71%	<b>53%</b>
<b>Denied</b>	3%	5%	22%	22%	28%	<b>16%</b>
<b>Non-certifiable</b>	27%	14%	43%	28%	27%	<b>27%</b>
<b>Total Approved</b>	<b>8%</b>	<b>22%</b>	<b>63%</b>	<b>42%</b>	<b>52%</b>	<b>45%</b>

\* Juvenile Offenders are not included in Table 5B. Typically, Juvenile Offenders will have an initial parole hearing prior to transfer from the Office of Children and Family Services. In this period, EEP cases with minimum sentences of six years or less included four juvenile offenders. Three were issued certificates and one was denied. None were released.

Note: The Approval Rate percentages are calculated by dividing the number of approvals by the total number of cases considered for parole, which is not shown in this table. Table A2 on page 16 provides the raw data used in this table.

Table 5B shows the rates of approval for those cases with minimum sentences of six years or less while Table 5C shows the rates of approval for cases with minimum sentences of more than six years but no greater than eight years. In both groups, similar patterns of approval rates were observed. The highest rates of release generally occurred among cases that were issued Certificates; this pattern was consistent with the exception of Violent Offenses in the original EEP cases, where the highest release rate was for cases that were non-certifiable (27%).

**Table 5C: Summary of Release Approval Rates By EEP Status and Crime  
(Expanded EEP Cases with Minimum Sentences of More than Six But No Greater Than Eight Years)  
October 2006 to March 2007**

APPROVAL RATES						
<b>EARNED ELIGIBILITY STATUS</b>	<b>Violent Offenses N=91</b>	<b>Other Coercive N=6</b>	<b>Drug Offenses N=59</b>	<b>Property Offenses N=6</b>	<b>Youthful Offenses N=0</b>	<b>Total N=162*</b>
<b>Issued</b>	10%	0%	79%	75%	NA	<b>40%</b>
<b>Denied</b>	0%	0%	18%	50%	NA	<b>7%</b>
<b>Non-certifiable</b>	NA	NA	NA	NA	NA	<b>NA</b>
<b>Total Approved</b>	<b>7%</b>	<b>0%</b>	<b>68%</b>	<b>67%</b>	<b>NA</b>	<b>31%</b>

\* Juvenile Offenders are not included in Table 5C. Typically, Juvenile Offenders will have an initial parole hearing prior to transfer from the Office of Children and Family Services. In this period, there were two juvenile offenders among the EEP-eligible cases with minimum sentences of more than six years but no greater than eight years. Both were issued EEP certificates but were not released.

**Note:** The Approval Rate percentages are calculated by dividing the number of approvals by the total number of cases considered for parole, which are not shown in this table. Table A3 on page 17 provides the data for this calculation.

## **THE IMPACT OF MERIT TIME**

Legislation authorizing Merit Time was signed into law by Governor Pataki on August 20, 1997 as Chapter 435 of the Laws of 1997. The legislation specifically amended Correction Law Section 803. It allows for inmates who are serving prison sentences for certain non-violent crimes to earn a one-sixth reduction of the minimum term if they have achieved specified programmatic objectives and have not engaged in behavior that resulted in serious disciplinary infractions.

To be eligible for Merit Time, an inmate cannot be serving a sentence for a class A-1 felony, a violent felony offense, manslaughter in the second degree, vehicular manslaughter in the second degree, vehicular manslaughter in the first degree, criminally negligent homicide, incest, any offense defined in Article 130 of the Penal Law (sex offenses) or any offense defined in Article 263 of the Penal Law (use of a child in a sex performance). If an inmate is serving multiple sentences of imprisonment for different crimes, whether such sentences are concurrent or consecutive, in order for the inmate to possibly receive a Merit Time credit, all of the crimes must be Merit Time eligible crimes. In addition, if a parole violator or conditional release violator is returned to the Department under a new conviction that is a Merit Time eligible crime, but the original crime was an ineligible offense which is still running, the inmate will be ineligible for any Merit Time reduction (see Penal Law Section 70.30(1)).

Any inmate that receives the benefit of Merit Time will appear before the Board of Parole for a possible release to parole or to have the conditions set for the Merit Time Release date<sup>2</sup>. If the Board of Parole grants the inmate parole, he or she will be released to parole supervision. If parole is withheld by the Board, then the inmate will again appear before the Board at the original initial parole hearing date.

The first Merit Time appearances occurred in October 1997. Between October 2006 and March 2007 there were 1,188 merit approvals for parole supervision out of 1,941 merit appearances, resulting in a merit approval release rate of 61%. This rate is slightly higher than the last reporting period (October 2005 to March 2006) when there were 998 approvals and 1,725 merit appearances (release rate 58%). Thirty of the 1,941 merit hearings were cases with minimum sentences of more than six but no more than eight years. Of these, 20 (67%) were approved for release.

## **ESTIMATED SAVINGS SINCE PROGRAM INCEPTION**

As previously stated, one of the objectives of the Earned Eligibility Program is to increase the rate of release for those persons who have served their minimum sentence and have demonstrated documented progress in programs which address problems that have contributed to their incarceration. The assumptions upon which the operational savings are calculated differ between the Original EEP cases and the Expanded EEP cases. Therefore, the savings associated with each group will be discussed separately.

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<sup>2</sup> The Merit Time Release date is calculated as five-sixths of the minimum term for all cases except class A-1 Drug felons. These cases have a Merit Time Release date of two-thirds of the minimum sentence.

### ***Operational Savings – Original EEP Cases***

Prior to the implementation of the Earned Eligibility Program, the average rate of release for persons appearing before the Board for their initial Parole Board hearing was approximately 50 percent. During the period July 1987 through March 2007, the Earned Eligibility Program generated 36,599 releases over the number of releases that would have been expected prior to the program's implementation. Prior to the Earned Eligibility Program, the 36,599 inmates would typically have been held for an additional eight months prior to their next Parole Board hearing. The savings generated by these additional releases can be estimated by a maintenance cost of \$27,000 per inmate per year, or a savings of \$18,000 per inmate for the estimated eight months of additional incarceration. It is estimated that the 36,599 additional releases have resulted in a savings of more than \$658.7 million since the inception of the Earned Eligibility Program.

### ***Operational Savings – Expanded EEP Cases***

Prior to the expansion of the Earned Eligibility Program, the average rate of release for EEP-ineligible inmates appearing before the Board for their initial Parole Board hearing was approximately 24%. During the period June 2003 through March 2007, the Expanded Earned Eligibility Program generated 135 releases over the number of releases that would have been expected prior to the program's implementation. Prior to the Expanded Earned Eligibility Program, these inmates would typically have been held for an additional 12 months prior to their next Parole Board hearing. The savings generated by these additional releases can be estimated by a maintenance cost of \$29,000<sup>3</sup> per inmate per year. It is estimated that the 135 additional releases have resulted in a savings of more than \$3.9 million since the expansion of the Earned Eligibility Program.

### ***Total Operational Savings***

Combining the operational savings of more than \$658.7 million for the Original EEP cases with over \$3.9 million in operational savings for the Expanded EEP cases results in a total operational savings of more than \$662 million.

### ***Construction Avoidance Savings***

The Research Division has decided that beginning January 1, 2001, avoidance of capital expenditure should not be credited to programs until the Department either makes plans for new construction or makes double bunks, placed into emergency status, operational once again. Capital costs avoided and accrued prior to January 1, 2001 will continue to be reported. Therefore, construction avoidance savings calculations will be based on the 32,932 additional releases between July 1987 and December 2000.

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<sup>3</sup> The Department's current per capita cost of \$29,000 is used as the annual operational cost per inmate for the Expanded EEP cases instead of the \$27,000 used for the Original EEP cases. The per capita for the Original EEP cases is lower since it includes prior years when the per capita costs were lower.

Based on a suggestion from auditors in the Office of the State Controller, DOCS cost avoidance estimates were modified to amortize the cost of building correctional facilities. For the cost avoidance estimates, we have used the \$75,975,000 cost of a medium security facility, fully double-bunked with a total capacity of 1,302 inmates, depreciable over thirty years, and a 6.35 percent interest rate. This method shows a monthly cost of \$472,744 per facility, or a monthly cost of \$363 per inmate. For an eight-month period, construction avoidance savings are \$2,905 per inmate for each additional inmate who was released early due to the Earned Eligibility Program over the pre-EEP 50 percent release rate. Using this model, the 32,932 additional releases have reduced the need for capital construction by over \$95 million.

### ***Total Savings***

Combining the estimated \$662 million in operational savings with the \$95 million in construction avoidance savings, the Earned Eligibility Program has reduced these DOCS expenditures by approximately \$757 million dollars since its inception in 1987.

## **EARNED ELIGIBILITY FOLLOW-UP STUDY**

### ***Follow-up Method***

The EEP follow-up method is consistent with the method used for other Department recidivism studies. In most program follow-up studies, comparisons are made between successful program participants and unsuccessful participants. For the Earned Eligibility Program, comparison groups are based on the result of the Earned Eligibility review. As explained earlier, cases are evaluated prior to initial Parole Board appearances and are either: 1) issued a Certificate, 2) denied a Certificate, or 3) found to be non-certifiable.

### **Follow-up Population**

This report includes cases that had an initial hearing in 1999, 2000, 2001 or 2002. The release years are selected to provide the most up-to-date review possible, given adequate exposure time to permit evaluation.

Each yearly cohort includes all cases reviewed for an Earned Eligibility Certificate prior to the initial parole board appearance that were subsequently released within six months of the Parole Eligibility date. There are instances where a case may have had more than one EEP review and more than one Board appearance. For these cases, the result of the last EEP review is used for follow-up purposes. As a result, the unit of analysis for the follow-up portion is individuals.

### **Follow-up Period**

The follow-up period allows for each of the yearly release cohorts to have had the potential of at least three years of follow-up time. Cumulative rates of return to the Department's custody for 36 months of follow-up are presented for each release year cohort according to EEP status at time of release (see Table 6). This allows for comparisons to be made across yearly releases as well as between different EEP categories.

## Follow-up Results

The following table shows the number of inmates tracked according to EEP status and the cumulative rate of return after 3 years of follow-up for EEP releases from 1999 through 2002.

**TABLE 6. 1999-2002 EEP RELEASES**

<b>Return to Custody within 3 Years After Release *</b>				
	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
<b>Issued Certificate</b>				
<b># Released</b>	6,213	7,085	6,753	5,866
<b># Returned</b>	2,070	2,475	2,356	1,942
<b>% Returned</b>	<b>33.3%</b>	<b>34.9%</b>	<b>34.9%</b>	<b>33.1%</b>
<b>Denied Certificate</b>				
<b># Released</b>	1,086	1,159	938	781
<b># Returned</b>	540	614	458	392
<b>% Returned</b>	<b>49.7%</b>	<b>53.0%</b>	<b>48.8%</b>	<b>50.2%</b>
<b>Non-Certified</b>				
<b># Released</b>	678	758	496	481
<b># Returned</b>	257	316	230	199
<b>% Returned</b>	<b>37.9%</b>	<b>41.7%</b>	<b>46.4%</b>	<b>41.4%</b>
<b>Overall Total</b>				
<b># Released</b>	7,977	9,002	8,187	7,128
<b># Returned</b>	2,867	3,405	3,044	2,533
<b>% Returned</b>	<b>35.9%</b>	<b>37.8%</b>	<b>37.2%</b>	<b>35.5%</b>

\* Excludes juvenile offenders

For each of the release year cohorts, inmates who were issued Certificates returned at a lower rate than those inmates denied Certificates, and return rates for inmates assigned non-certifiable status fell in between those issued Certificates and those denied Certificates.

## Return Rates by Earned Eligibility Status and Crime Type for year 2002 Releases

The return rates for year 2002 releases were examined according to earned eligibility status and crime of commitment. The summary data presented in Table 7 show that within each crime type, inmates who were denied Certificates had higher return rates within three years than those inmates who were non-certifiable or issued Certificates. The lowest three-year return rate among major (based upon the number of cases) crime categories fell within the Violent Felony category for inmates with certificates (26%). The highest return rates were for Property Offense and Youthful Offense cases that were non-certifiable (65%). Overall, violent felons had the lowest return rate (29%), followed by drug offenders (33%), and youthful offenders had the highest return rate (46%).

**Table 7. Return Rates by EEP Status and Crime Type for Year 2002 Releases**

	<b>Violent Felonies N=540 Released</b>	<b>Other Coercive N=412 Released</b>	<b>Drug Offenses N=4,605 Released</b>	<b>Property Offenses N=1,301 Released</b>	<b>Youthful Offenders N=270 Released</b>	<b>Total N=7,128* Released</b>
<b>Certificate Issued</b>	<b>25.8%</b> 109	<b>42.9%</b> 143	<b>30.4%</b> 1,171	<b>41.4%</b> 444	<b>39.3%</b> 75	<b>33.1%</b> 1,942
<b>Certificate Denied</b>	<b>44.0%</b> 44	<b>52.6%</b> 20	<b>46.7%</b> 230	<b>65.0%</b> 76	<b>64.7%</b> 22	<b>50.2%</b> 392
<b>Non-certifiable Status</b>	<b>29.4%</b> 5	<b>31.7%</b> 13	<b>39.5%</b> 105	<b>43.8%</b> 49	<b>60.0%</b> 27	<b>41.4%</b> 199
<b>Total Returned After Release</b>	<b>29.3%</b> <b>158</b>	<b>42.7%</b> <b>176</b>	<b>32.7%</b> <b>1,506</b>	<b>43.7%</b> <b>569</b>	<b>45.9%</b> <b>124</b>	<b>35.5%</b> <b>2,533</b>

\* Juvenile Offenders are not included in Table 7. This table represents only those cases that returned to DOCS custody after release. The percentages are calculated by dividing the number of returns by the total number of releases in the crime category not shown in the table. Table A4 on page 18 provides the data needed for these percentage calculations.

# APPENDIX

Table A1\*

**Crime Type and EEP Certificate Status By Parole Disposition EEP Cases  
EEP Cases: October 2006 to March 2007**

	Approved	%	Denied	%	Total	%
<b>Violent Offenses</b>						
Issued	33	10%	284	90%	317	64%
Denied	4	2%	164	98%	168	34%
Non-Certified	3	27%	8	73%	11	2%
<b>Sub Total</b>	<b>40</b>	<b>8%</b>	<b>456</b>	<b>92%</b>	<b>496</b>	<b>100%</b>
<b>Other Coercive</b>						
Issued	208	27%	566	73%	774	71%
Denied	9	5%	184	95%	193	18%
Non-Certified	18	14%	107	86%	125	11%
<b>Sub Total</b>	<b>235</b>	<b>22%</b>	<b>857</b>	<b>78%</b>	<b>1,092</b>	<b>100%</b>
<b>Drug Offenses</b>						
Issued	1,463	70%	642	30%	2,105	85%
Denied	63	22%	220	78%	283	11%
Non-Certified	34	43%	46	58%	80	3%
<b>Sub Total</b>	<b>1,560</b>	<b>63%</b>	<b>908</b>	<b>37%</b>	<b>2,468</b>	<b>100%</b>
<b>Property Offenses</b>						
Issued	751	48%	810	52%	1,561	76%
Denied	55	22%	197	78%	252	12%
Non-Certified	69	28%	175	72%	244	12%
<b>Sub Total</b>	<b>875</b>	<b>43%</b>	<b>1,182</b>	<b>57%</b>	<b>2,057</b>	<b>100%</b>
<b>Youthful Offenses</b>						
Issued	122	71%	50	29%	172	56%
Denied	18	28%	47	72%	65	21%
Non-Certified	19	27%	52	73%	71	23%
<b>Sub Total</b>	<b>159</b>	<b>52%</b>	<b>149</b>	<b>48%</b>	<b>308</b>	<b>100%</b>
<b>Total</b>	<b>2,869</b>	<b>45%</b>	<b>3,552</b>	<b>55%</b>	<b>6,421</b>	<b>100%</b>

\* Table A1 provides detailed data for Table 5 on page 7.

\* Juvenile Offenders are not included in this Table. Typically, Juvenile Offenders will have an initial parole hearing prior to transfer from the Office of Children and Family Services. In this period, five juvenile offenders were issued Certificates and one was denied. None were released.

Table A2\*

**Crime Type and Certificate Status By Parole Disposition**  
**Original EEP Cases: October 2006 to March 2007**

	Approved	%	Denied	%	Total	%
<b>Violent Offenses</b>						
Issued	27	11%	229	89%	256	63%
Denied	4	3%	134	97%	138	34%
Non-Certified	3	27%	8	73%	11	3%
<b>Sub Total</b>	<b>34</b>	<b>8%</b>	<b>371</b>	<b>92%</b>	<b>405</b>	<b>100%</b>
<b>Other Coercive</b>						
Issued	208	27%	562	73%	770	71%
Denied	9	5%	182	95%	191	18%
Non-Certified	18	14%	107	86%	125	12%
<b>Sub Total</b>	<b>235</b>	<b>22%</b>	<b>851</b>	<b>78%</b>	<b>1,086</b>	<b>100%</b>
<b>Drug Offenses</b>						
Issued	1,425	69%	632	31%	2,057	85%
Denied	61	22%	211	78%	272	11%
Non-Certified	34	43%	46	58%	80	3%
<b>Sub Total</b>	<b>1,520</b>	<b>63%</b>	<b>889</b>	<b>37%</b>	<b>2,409</b>	<b>100%</b>
<b>Property Offenses</b>						
Issued	748	48%	809	52%	1,557	76%
Denied	54	22%	196	78%	250	12%
Non-Certified	69	28%	175	72%	244	12%
<b>Sub Total</b>	<b>871</b>	<b>42%</b>	<b>1,180</b>	<b>58%</b>	<b>2,051</b>	<b>100%</b>
<b>Youthful Offenses</b>						
Issued	122	71%	50	29%	172	56%
Denied	18	28%	47	72%	65	21%
Non-Certified	19	27%	52	73%	71	23%
<b>Sub Total</b>	<b>159</b>	<b>52%</b>	<b>149</b>	<b>48%</b>	<b>308</b>	<b>100%</b>
<b>Total</b>	<b>2,819</b>	<b>45%</b>	<b>3,440</b>	<b>55%</b>	<b>6,259</b>	<b>100%</b>

\* Table A2 provides detailed data for Table 5B on page 8.

\* Juvenile Offenders are not included in this table. During this period, EEP reviews were conducted for four juvenile offenders with sentences of six years or less. Three were issued Certificates and one was denied. All were held.

Table A3\*

**Crime Type and Certificate Status By Parole Disposition  
Expanded EEP Cases: October 2006 to March 2007**

	Approved	%	Denied	%	Total	%
<b>Violent Offenses</b>						
Issued	6	10%	55	90%	61	67%
Denied	0	0%	30	100%	30	33%
Non-Certified	0	NA	0	NA	0	0%
<b>Sub Total</b>	<b>6</b>	<b>7%</b>	<b>85</b>	<b>93%</b>	<b>91</b>	<b>100%</b>
<b>Other Coercive</b>						
Issued	0	0%	4	100%	4	67%
Denied	0	0%	2	100%	2	33%
Non-Certified	0	NA	0	NA	0	0%
<b>Sub Total</b>	<b>0</b>	<b>0%</b>	<b>6</b>	<b>100%</b>	<b>6</b>	<b>100%</b>
<b>Drug Offenses</b>						
Issued	38	79%	10	21%	48	81%
Denied	2	18%	9	82%	11	19%
Non-Certified	0	NA	0	NA	0	0%
<b>Sub Total</b>	<b>40</b>	<b>68%</b>	<b>19</b>	<b>32%</b>	<b>59</b>	<b>100%</b>
<b>Property Offenses</b>						
Issued	3	75%	1	25%	4	67%
Denied	1	50%	1	50%	2	33%
Non-Certified	0	NA	0	NA	0	0%
<b>Sub Total</b>	<b>4</b>	<b>67%</b>	<b>2</b>	<b>33%</b>	<b>6</b>	<b>100%</b>
<b>Youthful Offenses</b>						
Issued	0	NA	0	NA	0	NA
Denied	0	NA	0	NA	0	NA
Non-Certified	0	NA	0	NA	0	NA
<b>Sub Total</b>	<b>0</b>	<b>NA</b>	<b>0</b>	<b>NA</b>	<b>0</b>	<b>0%</b>
<b>Total</b>	<b>50</b>	<b>31%</b>	<b>112</b>	<b>69%</b>	<b>162</b>	<b>100%</b>

\* Table A3 provides detailed data for Table 5C on page 8.

\* Juvenile Offenders are not included in this table. During the reporting period, two juvenile offenders sentenced to more than six years but no more than eight were reviewed for EEP eligibility. Certificates were issued to both, but the inmates were not released.

**Table A4\***

**Crime Type and EEP Certificate Status By Return To Custody Status  
Calendar Year 2002 Releases**

<b>Crime Type</b>	<b>Released</b>	<b>Returned</b>	<b>Percent Returned</b>
<b>VFO</b>			
Issued	423	109	25.8%
Denied	100	44	44.0%
Non-Certified	17	5	29.4%
<b>Sub Total</b>	<b>540</b>	<b>158</b>	29.3%
<b>Other Coercive</b>			
Issued	333	143	42.9%
Denied	38	20	52.6%
Non-Certified	41	13	31.7%
<b>Sub Total</b>	<b>412</b>	<b>176</b>	42.7%
<b>Drug Crime</b>			
Issued	3,847	1,171	30.4%
Denied	492	230	46.7%
Non-Certified	266	105	39.5%
<b>Sub Total</b>	<b>4,605</b>	<b>1,506</b>	32.7%
<b>Property Crime</b>			
Issued	1,072	444	41.4%
Denied	117	76	65.0%
Non-Certified	112	49	43.8%
<b>Sub Total</b>	<b>1,301</b>	<b>569</b>	43.7%
<b>Youthful Offender</b>			
Issued	191	75	39.3%
Denied	34	22	64.7%
Non-Certified	45	27	60.0%
<b>Sub Total</b>	<b>270</b>	<b>124</b>	45.9%
<b>Sub Total Issued</b>	<b>5,866</b>	<b>1,942</b>	33.1%
<b>Sub Total Denied</b>	<b>781</b>	<b>392</b>	50.2%
<b>Sub Total Non-Certified</b>	<b>481</b>	<b>199</b>	41.4%
<b>Total</b>	<b>7,128</b>	<b>2,533</b>	35.5%

\* Table A4 provides detailed data for Table 7 on page 13. The table excludes juvenile offenders.

**Prepared by:**

**Lorraine Hogan  
Program Research Specialist II  
Program Planning, Research & Evaluation**

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