

State of New York
Department of Correctional Services

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EARNED ELIGIBILITY PROGRAM SUMMARY

**Semiannual Report
April 2007 – September 2007**



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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 April 2007 – September 2007.

This report focuses on inmates eligible to be evaluated for a Certificate of Earned Eligibility prior to their initial hearing. There were 5,457 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).

Percent Issued Certificates of Earned Eligibility. Of the total 5,457 hearings involving eligible inmates, 73 percent (3,998) were issued a Certificate prior to their initial Board appearance. Seventeen percent (934) were denied Certificates and ten percent (525) were determined to be non-certifiable for Earned Eligibility at the time of review (*see Table 1, page 2*).

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, 57 percent of those inmates who were issued a Certificate were approved for release to parole supervision, compared to 17 percent of those denied a Certificate and 34 percent of those granted non-certifiable status (*see Table 4, page 5*).

Release Approval Rates by Crime Category. The highest release approval rate was for Youthful Offenders who were issued certificates (79%). The lowest release approval rate was for violent offenders who were denied Certificates (2%) (*see Table 5, page 6*).

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 1,403 merit hearings and 887 merit approvals for parole supervision between April 2007 and September 2007, a merit approval release rate of 63 percent (*refer to page 7*).

TABLE OF CONTENTS

INTRODUCTION

Overview of Earned Eligibility Program ----- 1

Earned Eligibility Program Expansion ----- 1

EARNED ELIGIBILITY DECISIONS ----- 2

Reasons for Certificate Denials ----- 2

Reasons for Granting Non-certifiable Status ----- 3

EARNED ELIGIBILITY AND PAROLE APPROVAL DISPOSITIONS ----- 4

CRIME CATEGORY AND RELEASE APPROVAL RATES ----- 5

IMPACT OF MERIT TIME ----- 6

APPENDIX ----- 8

Table A1 Crime Type and Certificate Status by Parole Disposition ----- 9

EARNED ELIGIBILITY PROGRAM SUMMARY

Semiannual Report April 2007 – September 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 appearances¹, 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. All of the tables in this report reflect the parole hearings occurring between April 2007 and September 2007 for inmates with minimum sentences of eight years or less.

¹ 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.

EARNED ELIGIBILITY DECISIONS

From April 2007 through September 2007, 5,457 cases appeared at initial Parole Board hearings after being evaluated for Earned Eligibility Certification. Overall, 73% of cases (3,998) were issued Certificates of Earned Eligibility; 17% (934) were denied Certificates and 10% (525) were non-certifiable (see Table 1).

**Table 1. Distribution of EEP Decisions By Minimum Sentence Category
April 2007 to September 2007**

EEP DECISIONS	Number	Percent
Issued Certificate	3,998	73%
Denied Certificate	934	17%
Non-certifiable	525	10%
<i>Total</i>	<i>5,457</i>	<i>100%</i>

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
April 2007 to September 2007**

EEP CERTIFICATE DENIAL REASON	Number	Percent
Poor Program Participation and Progress	157	17%
Unacceptable Level of Program Attendance	56	6%
Refusal to Participate In Prescribed Programs	92	10%
Poor Disciplinary Record Interfered with Program Participation	629	67%
<i>Total</i>	934	100%

Disciplinary issues that affected program participation accounted for 67% of all Certificate denials, while the remaining 33% 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
April 2007 to September 2007**

EEP NON-CERTIFIABLE STATUS REASON	Number	Percent
Insufficient Time in Programs	359	68%
Hospitalization or Infirmary	5	1%
Protective Custody	1	0%
Out to Court	20	4%
In Reception	140	27%
<i>Total</i>	525	100%

Among the cases that were determined to be non-certifiable, the greatest proportion (68%) 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 5,457 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
April 2007 to September 2007**

EARNED ELIGIBILITY STATUS	PAROLE BOARD DECISION		
	Released	Held	Total
Issued Certificate	57%	43%	100%
	2,296	1,702	3,998
Denied Certificate	17%	83%	100%
	159	775	934
Granted Non-certifiable Status	34%	66%	100%
	181	344	525
TOTAL	48%	52%	100%
	2,636	2,821	5,457

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 72%; in comparison, just 25% 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 (52%). Cases that involved Violent Offenses (10%) 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 (79% and 72%, 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
April 2007 to September 2007**

APPROVAL RATES						
EARNED ELIGIBILITY STATUS	Violent Offenses N=412	Other Coercive N=1,015	Drug Offenses N=1,656	Property Offenses N=2,047	Youthful Offenses N=324	Total N=5,454*
Issued	14%	36%	72%	60%	79%	57%
Denied	2%	8%	25%	21%	22%	17%
Non-certifiable	7%	20%	51%	38%	38%	34%
Total Approved	10%	28%	64%	52%	56%	48%

*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, one juvenile offender was issued a certificate and two were 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 9 provides the raw data needed to calculate the rates in Table 5.

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 date². 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 April 2007 and September 2007 there were 887 merit approvals for parole supervision out of 1,403 merit appearances, resulting in a merit approval release rate of 63%. This rate is slightly higher than the last reporting period (October 2006 to March 2007) when there were 1,188 approvals and 1,941 merit appearances (release rate 61%).

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

APPENDIX

Table A1*

Crime Type and EEP Certificate Status By Parole Disposition EEP Cases
EEP Cases: April 2007 to September 2007

	Approved	%	Denied	%	Total	%
Violent Offenses						
Issued	38	14%	236	86%	274	67%
Denied	3	2%	120	98%	123	30%
Non-Certified	1	7%	14	93%	15	4%
Sub Total	42	10%	370	90%	412	100%
Other Coercive						
Issued	245	36%	436	64%	681	67%
Denied	17	8%	184	92%	201	20%
Non-Certified	27	20%	106	80%	133	13%
Sub Total	289	28%	726	72%	1,015	100%
Drug Offenses						
Issued	971	72%	382	28%	1,353	82%
Denied	57	25%	169	75%	226	14%
Non-Certified	39	51%	38	49%	77	5%
Sub Total	1,067	64%	589	36%	1,656	100%
Property Offenses						
Issued	909	60%	612	40%	1,521	74%
Denied	66	21%	242	79%	308	15%
Non-Certified	83	38%	135	62%	218	11%
Sub Total	1,058	52%	989	48%	2,047	100%
Youthful Offenses						
Issued	133	79%	35	21%	168	52%
Denied	16	22%	58	78%	74	23%
Non-Certified	31	38%	51	62%	82	25%
Sub Total	180	56%	144	44%	324	100%
Total	2,636	48%	2,818	52%	5,454	100%

* Table A1 provides detailed data for Table 5 on page 6.

* 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, one juvenile offender was issued a Certificate and two were denied. None were released.

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