

State of New York
Department of Correctional Services

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EARNED ELIGIBILITY PROGRAM SUMMARY

**Semiannual Report
October 2007 – March 2008**



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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 2007 – March 2008.

This report focuses on cases eligible to be evaluated for a Certificate of Earned Eligibility prior to an initial hearing. There were 5,137 initial parole eligibility hearings during this six month period involving cases evaluated for a Certificate of Earned Eligibility (including Shock participants and Merit Time inmates).

Percent Issued Certificates of Earned Eligibility. Of the total 5,137 hearings, 72 percent (3,711) were issued a Certificate prior to the initial Board appearance. Eighteen percent (919) were denied Certificates and ten percent (507) 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. Cases 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 percent of those cases issued a Certificate were approved for release to parole supervision, compared to 13 percent of those denied a Certificate and 28 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 Offender cases that were issued certificates (75%). The lowest release approval rate was for the 13 Violent Offense cases that were granted non-certifiable status (0%) (*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 their minimum terms 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 1,233 merit hearings and 710 merit approvals for parole supervision between October 2007 and March 2008, a merit approval release rate of 58 percent (*refer to page 7*).

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EARNED ELIGIBILITY PROGRAM SUMMARY

Semiannual Report October 2007 – March 2008

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 administrators evaluate 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 October 2007 and March 2008 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 October 2007 through March 2008, 5,137 cases appeared at initial Parole Board hearings after being evaluated for Earned Eligibility Certification. Overall, 72% of cases (3,711) were issued Certificates of Earned Eligibility; 18% (919) were denied Certificates and 10% (507) were non-certifiable (see Table 1).

**Table 1. Distribution of EEP Decisions By Minimum Sentence Category
October 2007 to March 2008**

| EEP DECISIONS | Number | Percent |
|---------------------------|---------------|----------------|
| Issued Certificate | 3,711 | 72% |
| Denied Certificate | 919 | 18% |
| Non-certifiable | 507 | 10% |
| <i>Total</i> | 5,137 | 100% |

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 2007 to March 2008**

| EEP CERTIFICATE DENIAL REASON | Number | Percent |
|---|---------------|----------------|
| Poor Program Participation and Progress | 156 | 17% |
| Unacceptable Level of Program Attendance | 45 | 5% |
| Refusal to Participate In Prescribed Programs | 97 | 11% |
| Poor Disciplinary Record Interfered with Program Participation | 621 | 68% |
| <i>Total</i> * | 919 | 100% |

*Totals may not equal 100% due to rounding.

Disciplinary issues that affected program participation accounted for 68% of all Certificate denials, while the remaining 32% 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 2007 to March 2008**

| EEP NON-CERTIFIABLE STATUS REASON | Number | Percent |
|--|---------------|----------------|
| Insufficient Time in Programs | 338 | 67% |
| Hospitalization or Infirmary | 4 | 1% |
| Out to Court | 17 | 3% |
| In Reception | 148 | 29% |
| Total* | 507 | 100% |

*Totals may not equal 100% due to rounding.

Among the cases that were determined to be non-certifiable, the greatest proportion (67%) 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 5,137 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 (13%) (see *Table 4*).

Table 4. Earned Eligibility Status by Parole Approval Decision

October 2007 to March 2008

| EARNED ELIGIBILITY STATUS | PAROLE BOARD DECISION | | |
|---------------------------------------|------------------------------|------------|-------------|
| | Released | Held | Total |
| Issued Certificate | 52% | 48% | 100% |
| | 1,940 | 1,771 | 3,711 |
| Denied Certificate | 13% | 87% | 100% |
| | 116 | 803 | 919 |
| Granted Non-certifiable Status | 28% | 72% | 100% |
| | 143 | 364 | 507 |
| TOTAL | 43% | 57% | 100% |
| | 2,199 | 2,938 | 5,137 |

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 64%; in comparison, just 18% 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 (55%), followed by Property Offenses (49%) and Youthful Offenses (48%). Cases that involved Violent Offenses (9%) and Other Coercive Offenses (26%) had the lowest release approval rates.

Considering both earned eligibility status and crime category, cases that involved Youthful Offenses and Drug Offenses that were issued certificates had the highest release rates (75% and 64%, respectively). The 13 Violent Offense cases that were granted non-certifiable status had the lowest release rate (0%).

**Table 5. Summary of Release Approval Rates by EEP Status and Crime of Commitment
October 2007 to March 2008**

| APPROVAL RATES | | | | | | |
|----------------------------------|-----------------------------------|-----------------------------------|----------------------------------|--------------------------------------|------------------------------------|---------------------------|
| EARNED ELIGIBILITY STATUS | Violent Offenses N=433 | Other Coercive N=1,010 | Drug Offenses N=1,294 | Property Offenses N=2,058 | Youthful Offenses N=338 | Total N=5,133* |
| Issued | 14% | 33% | 64% | 57% | 75% | 52% |
| Denied | 3% | 7% | 18% | 20% | 8% | 13% |
| Non-certifiable | 0% | 19% | 42% | 28% | 37% | 28% |
| Total Approved | 9% | 26% | 55% | 49% | 48% | 43% |

*Juvenile Offender cases 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, two juvenile offender cases were issued certificates, one was denied and another was non-certifiable. None of the juvenile offender cases 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 infractions².

To be eligible for Merit Time, an inmate cannot be serving a sentence for a class A-1 felony other than for drugs, 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)).

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.

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. 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 2007 and March 2008 there were 710 merit approvals for parole supervision out of 1,233 merit appearances, resulting in a merit approval release rate of 58%. This rate is slightly lower than the last reporting period (April 2007 to September 2007) when there were 887 approvals and 1,403 merit appearances (release rate 63%).

APPENDIX

Table A1*

**Crime Type and EEP Certificate Status By Parole Disposition EEP Cases
EEP Cases: October 2007 to March 2008**

| | Approved | % | Denied | % | Total | % |
|--------------------------|--------------|------------|--------------|------------|--------------|-------------|
| Violent Offenses | | | | | | |
| Issued | 37 | 14% | 223 | 86% | 260 | 60% |
| Denied | 4 | 3% | 156 | 98% | 160 | 37% |
| Non-Certified | 0 | 0% | 13 | 100% | 13 | 3% |
| Sub Total | 41 | 9% | 392 | 91% | 433 | 100% |
| Other Coercive | | | | | | |
| Issued | 229 | 33% | 457 | 67% | 686 | 68% |
| Denied | 12 | 7% | 172 | 93% | 184 | 18% |
| Non-Certified | 26 | 19% | 114 | 81% | 140 | 14% |
| Sub Total | 267 | 26% | 743 | 74% | 1,010 | 100% |
| Drug Offenses | | | | | | |
| Issued | 649 | 64% | 370 | 36% | 1,019 | 79% |
| Denied | 39 | 18% | 179 | 82% | 218 | 17% |
| Non-Certified | 24 | 42% | 33 | 58% | 57 | 4% |
| Sub Total | 712 | 55% | 582 | 45% | 1,294 | 100% |
| Property Offenses | | | | | | |
| Issued | 906 | 57% | 679 | 43% | 1,585 | 77% |
| Denied | 55 | 20% | 225 | 80% | 280 | 14% |
| Non-Certified | 55 | 28% | 138 | 72% | 193 | 9% |
| Sub Total | 1,016 | 49% | 1,042 | 51% | 2,058 | 100% |
| Youthful Offenses | | | | | | |
| Issued | 119 | 75% | 40 | 25% | 159 | 47% |
| Denied | 6 | 8% | 70 | 92% | 76 | 22% |
| Non-Certified | 38 | 37% | 65 | 63% | 103 | 30% |
| Sub Total | 163 | 48% | 175 | 52% | 338 | 100% |
| Total | 2,199 | 43% | 2,934 | 57% | 5,133 | 100% |

* Table A1 provides detailed data for Table 5 on page 6. Juvenile Offender cases 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, two juvenile offender cases were issued Certificates, one was denied and another was non-certifiable. None were released.

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