

State of New York  
Department of Correctional Services

Building Number 2  
Harriman Office Campus  
Albany, New York 12226

**EARNED ELIGIBILITY PROGRAM SUMMARY  
SEMIANNUAL REPORT**

**April 2008 – September 2008**



**David A. Paterson  
Governor**



**Brian Fischer  
Commissioner**

# **EARNED ELIGIBILITY PROGRAM SUMMARY**

## **Semiannual Report April 2008 – September 2008**

### **INTRODUCTION**

Legislative reporting requirements established in 1992 call for semiannual reports on the Earned Eligibility Program (EEP). Each report provides information regarding the operation of the Earned Eligibility Program for the preceding six month period.

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 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 serving indeterminate sentences with minimum sentences of eight years or less.

### **Earned Eligibility Program Expansion**

In 1987, 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 2008 and September 2008 for inmates with minimum sentences of eight years or less.

---

<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 received parole approvals.

## Types of Earned Eligibility Review Hearings

Between April 2008 and September 2008, there were 8,636 hearings for earned eligibility cases (Table 1). Merit hearings and Initial hearings are similar in that both represent the first appearance before the Parole Board. The 4,947 Initial hearings and the 1,523 Merit hearing cases will be the focus of this report. These 6,470 initial hearings account for 75% of the cases reviewed, while reappearances account for the remaining 25%.

**Table 1: Parole Hearing Type for EEP Cases by Month of Hearing  
April 2008 to September 2008**

Hearing Month	Hearing Type				Total
	Initial*	Merit	Reappearance	Parole Violator Reappearance	
April	684 58.1%	224 19.0%	233 19.8%	36 3.1%	1,177 100.0%
May	1,107 57.2%	371 19.2%	418 21.6%	41 2.1%	1,937 100.0%
June	1,138 57.9%	293 14.9%	486 24.7%	49 2.5%	1,966 100.0%
July	695 55.7%	220 17.6%	289 23.2%	43 3.4%	1,247 100.0%
August	611 55.7%	211 19.3%	236 21.5%	38 3.5%	1,096 100.0%
September	712 58.7%	204 16.8%	260 21.4%	37 3.1%	1,213 100.0%
Total	4,947 57.3%	1,523 17.6%	1,922 22.3%	244 2.8%	8,636 100.0%

\* Initial hearings include 348 hearings for Shock cases

## Earned Eligibility Status and Parole Board Hearing Results

Table 2 shows that the Parole Board held 6,470 initial hearings for EEP cases between April 2008 and September 2008. Of these cases, 70% were issued an EEP Certificate, 17% were denied and 12% were non-certifiable.

- DOCS issued 4,555 certificates. The Parole Board approved 39% or 1,797 of these cases.
- EEP cases that were denied Certificates (1,110) were approved for release at a rate of 10%, while non-certifiable cases (805) were approved for release at a rate of 22%.
- Overall, the Parole Board approved 32% of the EEP cases.

**Table 2: EEP Review Results and Parole Board Approvals at Initial Hearings  
April 2008 to September 2008**

EEP CERTIFICATE	Number of Hearings	Percent of Hearings	Number Approved	Percent Approved
Issued	4,555	70.4%	1,797	39.5%
Denied	1,110	17.2%	108	9.7%
Non-certifiable	805	12.4%	177	22.0%
<b>Total</b>	<b>6,470</b>	<b>100.0%</b>	<b>2,082</b>	<b>32.2%</b>

## Earned Eligibility Certificate Denials and Parole Board Hearing Results

Table 3 shows the four general reasons that a case may be denied an EEP certificate.

- The majority of the 1,110 EEP certificate denials were due to behavior that interfered with program progress (69%).
- Cases that were denied due to Poor Participation and / or Progress were approved at the highest rate by the Parole Board (23%) while those that were denied a certificate due to a refusal to participate were approved for release at a rate of 6%.

**Table 3: EEP Certificate Denial Reasons and Parole Board Approvals at Initial Hearings  
April 2008 to September 2008**

REASONS FOR EEP DENIAL	Number	Percent of Denials	Approved	Percent Approved Within Denial Reason
Poor Participation and / or Progress	157	14.1%	36	22.9%
Poor Program Attendance	73	6.6%	13	17.8%
Refusal to Participate	118	10.6%	7	5.9%
Behavior Interfered with Program	762	68.6%	52	6.8%
<b>Total</b>	<b>1,110</b>	<b>100.0%</b>	<b>108</b>	<b>9.7%</b>

## Non-Certifiable Earned Eligibility Cases and Parole Board Hearing Results

Table 4 shows the four general reasons that an EEP case would be determined to be non-certifiable and the results of the initial Parole Board hearing. In contrast with EEP denials, non-certification recognizes that deficiencies in the inmate's program participation may be due to circumstances beyond the inmate's control.

- Of the 805 cases determined to be non-certifiable, 524 (65%) were non-certifiable due to insufficient time in prescribed programs.
- Cases that were non-certifiable due to insufficient time in program were approved for release at a rate of 22%, while cases that were non-certifiable due to being in reception were approved for release at a slightly higher rate of 24%.

**Table 4: EEP Non-Certifiable Reasons and Parole Board Approvals at Initial Hearings April 2008 to September 2008**

NON-CERTIFIABLE EEP STATUS REASONS	Number	Percent Non-certifiable	Approved	Percent Approved within Non-Certifiable reason
Insufficient Time in Program	524	65.1%	116	22.1%
Hospital	23	2.9%	1	4.3%
Out to Court	16	2.0%	1	6.3%
In Reception	242	30.1%	59	24.4%
Total	805	100.0%	177	22.0%

## Earned Eligibility Status within Offense Type and Parole Board Hearing Results

Table 5 shows the distribution of the 6,470 EEP cases within offense types. Within each offense type, the result of the initial EEP review is cross referenced to the decision of the Parole Board.

- Of the 6,470 EEP cases, 2,762 (43%) were Property Offenses, 1,406 (22%) were Drug Offenses, 1,282 (20%) were Other Coercive crimes and 592 (9%) were Violent Felonies.
- Overall, the Drug Offenses category showed the highest approval rate at 46%.
- Controlling for EEP status, the highest release rate was for Youthful Offenders issued an EEP certificate (64%). Drug offenders that were issued an EEP certificate were approved for release at a rate of 54%. Of the 379 Violent Felony cases that were issued certificates, 8% were released.

**Table 5: EEP Status within Crime Category by Initial Parole Board Hearing Result  
April 2008 to September 2008**

OFFENSE TYPE	EEP CERTIFICATE	RELEASE DECISION				Total	
		APPROVED		DENIED			
Violent Felony	Issued	29	7.7%	350	92.3%	379	64.0%
	Denied	0	0.0%	197	100.0%	197	33.3%
	Non-Cert	0	0.0%	16	100.0%	16	2.7%
Total		29	4.9%	563	95.1%	592	100.0%
Other Coercive	Issued	195	23.0%	652	77.0%	847	66.1%
	Denied	13	5.6%	220	94.4%	233	18.2%
	Non-Cert	26	12.9%	176	87.1%	202	15.8%
Total		234	18.3%	1,048	81.7%	1,282	100.0%
Drug Offenses	Issued	595	54.4%	499	45.6%	1,094	77.8%
	Denied	29	12.4%	205	87.6%	234	16.6%
	Non-Cert	23	29.5%	55	70.5%	78	5.5%
Total		647	46.0%	759	54.0%	1,406	100.0%
Property and Other	Issued	858	41.9%	1,188	58.1%	2,046	74.1%
	Denied	52	14.4%	310	85.6%	362	13.1%
	Non-Cert	89	25.1%	265	74.9%	354	12.8%
Total		999	36.2%	1,763	63.8%	2,762	100.0%
Youthful Offender	Issued	120	64.2%	67	35.8%	187	44.6%
	Denied	14	17.7%	65	82.3%	79	18.9%
	Non-Cert	39	25.5%	114	74.5%	153	36.5%
Total		173	41.3%	246	58.7%	419	100.0%
Juvenile Offender	Issued	0	0.0%	2	100.0%	2	22.2%
	Denied	0	0.0%	5	100.0%	5	55.6%
	Non-Cert	0	0.0%	2	100.0%	2	22.2%
Total		0	0.0%	9	100.0%	9	100.0%
Total	Issued	1,797	39.5%	2,758	60.5%	4,555	70.4%
	Denied	108	9.7%	1,002	90.3%	1,110	17.2%
	Non-Cert	177	22.0%	628	78.0%	805	12.4%
Total		2,082	32.2%	4,388	67.8%	6,470	100.0%

## **Conclusion**

Overall, in the period between April 2008 and September 2008, there were 8,636 EEP hearings. The majority (75%) of these reviews were for initial appearances at the Parole Board. Cases that had an EEP certificate issued were approved for release at the highest rate when compared to those cases that were denied a certificate or were non-certifiable. Property, Drug crimes and Other Coercive crimes constituted the three largest categories of offense types considered for an EEP certificate. Youthful offender and Drug offender cases that were issued an EEP certificate showed the highest release rates. Violent Felony cases that were denied an EEP certificate were not approved for release by the Parole Board.

Prepared by:

Brian Lane  
Program Research Specialist III  
Program Planning, Research & Evaluation  
April 2009