

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 2008 – March 2009**



**David A. Paterson  
Governor**



**Brian Fischer  
Commissioner**

# **EARNED ELIGIBILITY PROGRAM SUMMARY**

## **Semiannual Report October 2008 – March 2009**

### **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 October 2008 and March 2009 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 October 2008 and March 2009, there were 8,493 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 3,758 Initial hearings and the 1,293 Merit hearing cases will be the focus of this report. These 5,051 initial hearings account for nearly 60% of the cases reviewed, while reappearances account for the remaining 40%.

**Table 1: Parole Hearing Type for EEP Cases by Month of Hearing  
October 2008 thru March 2009**

Hearing Month	Hearing Type				Total
	Initial*	Merit	Reappearance	Parole Violator Reappearance	
October '08	590 41.8%	201 14.2%	236 16.7%	384 27.2%	1,411 100.0%
November '08	737 46.9%	201 12.8%	252 16.0%	383 24.3%	1,573 100.0%
December '08	564 57.9%	310 14.9%	202 24.7%	369 2.5%	1,445 100.0%
January '09	634 45.3%	211 15.1%	197 14.1%	359 25.6%	1,401 100.0%
February '09	604 45.7%	175 13.2%	199 15.1%	343 26.0%	1,321 100.0%
March '09	629 46.9%	195 14.5%	219 16.3%	299 22.3%	1,342 100.0%
<b>Total</b>	<b>3,758 44.2%</b>	<b>1,293 15.2%</b>	<b>1,305 15.4%</b>	<b>2,137 25.2%</b>	<b>8,493 100.0%</b>

\* Initial hearings include 395 hearings for Shock cases

## Earned Eligibility Status and Parole Board Hearing Results

Table 2 shows that the Parole Board held 5,051 initial hearings for EEP cases between October 2008 and March 2009. Of these cases, 71% were issued an EEP Certificate, 15% were denied and 14% were non-certifiable.

- DOCS issued 3,579 certificates. The Parole Board approved 41% or 1,477 of these cases.
- EEP cases that were denied Certificates (766) were approved for release at a rate of 9%, while non-certifiable cases (706) were approved for release at a rate of 21%.
- Overall, the Parole Board approved 34% of the EEP cases for release.

**Table 2: EEP Review Results and Parole Board Approvals at Initial Hearings  
October 2008 thru March 2009**

EEP CERTIFICATE	Number of Hearings	Percent of Hearings	Number Approved	Percent Approved
Issued	3,579	70.9%	1,477	41.3%
Denied	766	15.2%	69	9.0%
Non-certifiable	706	14.0%	151	21.4%
<b>Total</b>	<b>5,051</b>	<b>100.0%</b>	<b>1,697</b>	<b>33.6%</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 766 EEP certificate denials were due to poor behavior that interfered with program progress (71%).
- Inmates who were denied an EEP certificate due to poor participation and / or progress were approved for release at the highest rate by the Parole Board (22%) while those that were denied a certificate due to poor program attendance were approved for release at a rate of 3%.

**Table 3: EEP Certificate Denial Reasons and Parole Board Approvals at Initial Hearings  
October 2008 thru March 2009**

REASONS FOR EEP DENIAL	Number	Percent of Denials	Approved	Percent Approved Within Denial Reason
Poor Participation and / or Progress	106	13.8%	23	21.7%
Poor Program Attendance	38	5.0%	1	2.6%
Refusal to Participate	82	10.7%	6	7.3%
Behavior Interfered with Program	540	70.5%	39	7.2%
<b>Total</b>	<b>766</b>	<b>100.0%</b>	<b>69</b>	<b>9.0%</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 706 cases determined to be non-certifiable, 381 (54%) 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 20%, while cases that were non-certifiable due to being in reception were approved for release at a slightly higher rate of 23%.

**Table 4: EEP Non-Certifiable Reasons and Parole Board Approvals at Initial Hearings  
October 2008 thru March 2009**

NON-CERTIFIABLE EEP STATUS REASONS	Number	Percent Non-certifiable	Approved	Percent Approved within Non-Certifiable reason
Insufficient Time in Program	381	54.0%	77	20.2%
Hospital	22	3.1%	6	27.3%
Out to Court	17	2.4%	2	11.8%
In Reception	286	40.5%	66	23.1%
Total	706	100.0%	151	21.4%

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

Table 5 shows the distribution of the 5,051 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 5,051 initial EEP cases, 2,273 (45%) were Property Offenses, 1,074 (21%) were Other Coercive crimes, 989 (20%) were Drug Offenses, and 413 (8%) were Violent Felonies.
- Overall, the Drug Offenses category showed the highest release approval rate at 49%.
- Controlling for EEP status, the highest release approval rate was for Youthful Offenders issued an EEP certificate (70%). Drug offenders that were issued an EEP certificate were approved for release at a rate of 58%. Of the 271 Violent Felony cases that were issued certificates, only 6% were approved for released.

**Table 5: EEP Status within Crime Category by Initial Parole Board Hearing Result  
October 2008 thru March 2009**

OFFENSE TYPE	EEP CERTIFICATE	RELEASE DECISION				Total	
		APPROVED		DENIED			
Violent Felony	Issued	15	5.5%	256	94.5%	271	65.6%
	Denied	1	0.8%	132	99.2%	133	32.2%
	Non-Cert	0	0.0%	9	100.0%	9	2.2%
Total		16	3.9%	397	96.1%	413	100.0%
Other Coercive	Issued	184	24.8%	558	75.2%	742	69.1%
	Denied	10	6.3%	148	93.7%	158	14.7%
	Non-Cert	32	18.4%	142	81.6%	174	16.2%
Total		226	21.0%	848	79.0%	1,074	100.0%
Drug Offenses	Issued	455	58.1%	328	41.9%	783	79.2%
	Denied	13	9.2%	128	90.8%	141	14.3%
	Non-Cert	16	24.6%	49	75.4%	65	6.6%
Total		484	48.9%	505	51.1%	989	100.0%
Property and Other	Issued	722	44.1%	915	55.9%	1,637	72.0%
	Denied	40	14.4%	238	85.6%	278	12.2%
	Non-Cert	81	22.6%	277	77.4%	358	15.8%
Total		843	37.1%	1,430	62.9%	2,273	100.0%
Youthful Offender	Issued	101	69.7%	44	30.3%	145	48.7%
	Denied	5	9.1%	50	90.9%	55	18.5%
	Non-Cert	22	22.4%	76	77.6%	98	32.9%
Total		128	43.0%	170	57.0%	298	100.0%
Juvenile Offender	Issued	0	0.0%	1	100.0%	1	25.0%
	Denied	0	0.0%	1	100.0%	1	25.0%
	Non-Cert	0	0.0%	2	100.0%	2	50.0%
Total		0	0.0%	4	100.0%	4	100.0%
Total	Issued	1,477	41.3%	2,102	58.7%	3,579	70.9%
	Denied	69	9.0%	697	91.0%	766	15.2%
	Non-Cert	151	21.4%	555	78.6%	706	14.0%
Total		1,697	33.6%	3,354	66.4%	5,051	100.0%

## **Conclusion**

Overall, in the period between October 2008 and March 2009, there were 8,493 EEP hearings. Sixty percent of these reviews were for initial appearances at the Parole Board. Inmates who earned an EEP certificate were approved for release at the highest rate when compared to those that were denied an EEP certificate or were non-certifiable. Property offenses, Other Coercive crimes and Drug crimes constituted the three largest offense categories considered for an EEP certificate. Youthful Offenders and Drug offenders who were issued an EEP certificate showed the highest release approval rates. Of the 133 Violent Felony cases that were denied an EEP certificate, only 1 was approved for release by the Parole Board.

Prepared by:

Brian Lane  
Program Research Specialist III  
Division of Program Planning, Research and Evaluation

June 2009