

State of New York
Department of Correctional Services

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**EARNED ELIGIBILITY PROGRAM SUMMARY
SEMIANNUAL REPORT**

April 2009 – September 2009



**David A. Paterson
Governor**



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Commissioner**

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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 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 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 2009 and September 2009 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 received parole approvals.

Types of Earned Eligibility Review Hearings

Between April 2009 and September 2009, there were 6,300 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 3,877 Initial hearings and the 1,029 Merit hearing cases will be the focus of this report. These 4,906 initial hearings account for 78% of the cases reviewed, while reappearances account for the remaining 22%.

**Table 1: Parole Hearing Type for EEP Cases by Month of Hearing
April 2009 thru September 2009**

Hearing Month	Hearing Type				Total
	Initial*	Merit	Reappearance	Parole Violator Reappearance	
April '09	700 63.2%	203 18.3%	182 16.4%	22 2.0%	1,107 100.0%
May '09	649 59.5%	207 19.0%	205 18.8%	30 2.7%	1,091 100.0%
June '09	670 59.8%	175 15.6%	235 21.0%	40 3.6%	1,120 100.0%
July '09	588 61.3%	152 15.8%	181 18.9%	38 4.0%	959 100.0%
August '09	632 61.4%	156 15.2%	194 18.9%	47 4.6%	1,029 100.0%
September '09	638 64.2%	136 13.7%	182 18.3%	38 3.8%	994 100.0%
Total	3,877 61.5%	1,029 16.3%	1,179 18.7%	215 3.4%	6,300 100.0%

* Initial hearings include 444 hearings for Shock cases

Earned Eligibility Status and Parole Board Hearing Results

Table 2 shows that the Parole Board held 4,906 initial hearings for EEP cases between April 2009 and September 2009. Of these cases, 69% were issued an EEP Certificate, 15% were denied and 16% were non-certifiable.

- DOCS issued 3,384 certificates. The Parole Board approved 43% or 1,442 of these cases.
- EEP cases that were denied Certificates (N=758) were approved for release at a rate of 10%, while non-certifiable cases (N=764) were approved for release at a rate of 19%.
- Overall, the Parole Board approved 34% of the EEP cases for release.

**Table 2: EEP Review Results and Parole Board Approvals at Initial Hearings
April 2009 thru September 2009**

EEP CERTIFICATE	Number of Hearings	Percent of Hearings	Number Approved	Percent Approved
Issued	3,384	69.0%	1,442	42.6%
Denied	758	15.4%	75	9.9%
Non-certifiable	764	15.6%	146	19.1%
Total	4,906	100.0%	1,663	33.9%

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 758 EEP certificate denials were due to poor behavior that interfered with program progress (70%). It also accounted for the lowest Parole Board approval rate of those that were denied at 8%.
- Among the four general denial reasons, inmates not receiving an EEP certificate due to poor participation and / or progress were approved for release at a rate of 21%. This represents the highest rate among denials. Those inmates who refused to participate and those who were denied due to poor program attendance were approved at a rate of 11%.

**Table 3: EEP Certificate Denial Reasons and Parole Board Approvals at Initial Hearings
April 2009 thru September 2009**

REASONS FOR EEP DENIAL	Number	Percent of Denials	Approved	Percent Approved Within Denial Reason
Poor Participation and / or Progress	101	13.3%	21	20.8%
Poor Program Attendance	56	7.4%	6	10.7%
Refusal to Participate	70	9.2%	8	11.4%
Behavior Interfered with Program	531	70.1%	40	7.5%
Total	758	100.0%	75	9.9%

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 764 cases determined to be non-certifiable, 401 (53%) 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 17%, while cases that were non-certifiable due to being in reception were approved for release at a higher rate of 23%.

**Table 4: EEP Non-Certifiable Reasons and Parole Board Approvals at Initial Hearings
April 2009 thru September 2009**

NON-CERTIFIABLE EEP STATUS REASONS	Number	Percent Non-Certifiable	Approved	Percent Approved within Non-Certifiable reason
Insufficient Time in Program	401	52.5%	69	17.2%
Hospital	20	2.6%	2	10.0%
Out to Court	15	2.0%	1	6.7%
In Reception	328	42.9%	74	22.6%
Total	764	100.0%	146	19.1%

Earned Eligibility Status within Offense Type and Parole Board Hearing Results

Table 5 shows the distribution of the 4,096 EEP cases within offense types. Within each offense type, the result of the initial EEP review is matched to the decision of the Parole Board.

- Of the 4,906 initial EEP cases, 2,301 (47%) were Property Offenses, 1,016 (21%) were Other Coercive crimes, 861 (18%) were Drug Offenses, and 398 (8%) were Violent Felonies.
- Overall, the Drug Offense category showed the highest release approval rate at 49%.
- Controlling for EEP status, the highest release approval rate was for the one Juvenile Offender issued an EEP certificate (100%).² Youthful Offenders who were issued an EEP certificate had the next highest approval rate (68%). Drug offenders that were issued an EEP certificate were approved for release at a rate of 56%.
- Among offenders issued an EEP certificate, the lowest approval rate was among Violent Felony offenders (12%).

**Table 5: EEP Status within Crime Category by Initial Parole Board Hearing Result
April 2009 thru September 2009**

OFFENSE TYPE	EEP CERTIFICATE	RELEASE DECISION				TOTAL	
		APPROVED		DENIED			
Violent Felony	Issued	32	12.1%	232	87.9%	264	66.3%
	Denied	2	1.6%	120	98.4%	122	30.7%
	Non-Cert	1	8.3%	11	91.7%	12	3.0%
Total		35	8.8%	363	91.2%	398	100.0%
Other Coercive	Issued	191	28.8%	473	71.2%	664	65.4%
	Denied	9	5.6%	151	94.4%	160	15.7%
	Non-Cert	24	12.5%	168	87.5%	192	18.9%
Total		224	22.0%	792	78.0%	1,016	100.0%
Drug Offenses	Issued	386	56.4%	298	43.6%	684	79.4%
	Denied	20	17.1%	97	82.9%	117	13.6%
	Non-Cert	18	30.0%	42	70.0%	60	7.0%
Total		424	49.2%	437	50.8%	861	100.0%
Property and Other	Issued	737	45.2%	894	54.8%	1,631	70.9%
	Denied	36	12.0%	263	88.0%	299	13.0%
	Non-Cert	73	19.7%	298	80.3%	371	16.1%
Total		846	36.8%	1,455	63.2%	2,301	100.0%
Youthful Offender	Issued	95	67.9%	45	32.1%	140	43.1%
	Denied	8	14.3%	48	85.7%	56	17.2%
	Non-Cert	30	23.3%	99	76.7%	129	39.7%
Total		133	40.9%	192	59.1%	325	100.0%
Juvenile Offender	Issued	1	100.0%	0	0.0%	1	20.0%
	Denied	0	0.0%	4	100.0%	4	80.0%
	Non-Cert	0	0.0%	0	0.0%	0	0.0%
Total		1	20.0%	4	80.0%	5	100.0%
Total	Issued	1,442	42.6%	1,942	57.4%	3,384	69.0%
	Denied	75	9.9%	683	90.1%	758	15.5%
	Non-Cert	146	19.1%	618	80.9%	764	15.6%
Total		1,663	33.9%	3,243	66.1%	4,906	100.0%

² There were five Juvenile Offenders with initial hearings during this time period. However, only one was issued an EEP certificate and was the only case approved for release by the Parole Board.

Conclusion

Overall, in the period between April 2009 and September 2009, there were 6,300 EEP hearings. Seventy-eight 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 (43%) when compared to those who were denied an EEP certificate (10%) or were non-certifiable (19%). Property offenses, Other Coercive offenses 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 at 68% and 56%, respectively. Violent Felony offenders that were denied an EEP certificate had the lowest approval rate (2%).

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