

State of New York
Department of Correctional Services

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**EARNED ELIGIBILITY PROGRAM SUMMARY
SEMIANNUAL REPORT**

OCTOBER 2009 – MARCH 2010



**David A. Paterson
Governor**



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Commissioner**

EARNED ELIGIBILITY PROGRAM SUMMARY

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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 October 2009 and March 2010 for inmates with minimum sentences of eight years or less.

Types of Earned Eligibility Review Hearings

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.

Between October 2009 and March 2010, there were 5,692 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 3,741 Initial hearings and the 854 Merit hearing cases will be the focus of this report. These 4,595 initial hearings account for 81% of the cases reviewed, while reappearances account for the remaining 19%.

**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 '09	610 64.0%	129 13.5%	184 19.3%	30 3.1%	953 100.0%
November '09	690 66.0%	143 13.7%	185 17.7%	27 2.6%	1,045 100.0%
December '09	557 57.9%	129 14.9%	153 24.7%	23 2.5%	862 100.0%
January '10	593 62.0%	145 15.2%	186 19.5%	32 3.3%	956 100.0%
February '10	645 66.4%	164 16.9%	127 13.1%	35 3.6%	971 100.0%
March '10	646 71.4%	144 15.9%	100 11.0%	15 1.7%	905 100.0%
Total	3,741 65.7%	854 15.0%	935 16.4%	162 2.8%	5,692 100.0%

* Initial hearings include 494 hearings for Shock cases

Earned Eligibility Status and Parole Board Hearing Results

Table 2 shows that the Parole Board held 4,595 initial hearings for EEP cases between October 2009 and March 2010. Of these cases, 68% were issued an EEP Certificate, 15% were denied and 17% were non-certifiable.

- DOCS issued 3,133 certificates. The Parole Board approved 40% or 1,265 of these cases.
- EEP cases that were denied Certificates (692) were approved for release at a rate of 12%, while non-certifiable cases (770) were approved for release at a rate of 20%.
- Overall, the Parole Board approved 33% of the EEP cases for release.

**Table 2: EEP Review Results and Parole Board Approvals at Initial Hearings
October 2009 thru March 2010**

EEP CERTIFICATE	Number of Hearings	Percent of Hearings	Number Approved	Percent Approved
Issued	3,133	68.2%	1,265	40.4%
Denied	692	15.1%	80	11.6%
Non-certifiable	770	16.8%	151	19.6%
Total	4,595	100.0%	1,496	32.6%

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 692 EEP certificate denials were due to poor behavior that interfered with program progress (73%).
- 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 (32%) while those that were denied a certificate due to poor program attendance were approved for release at a rate of 19%.

**Table 3: EEP Certificate Denial Reasons and Parole Board Approvals at Initial Hearings
October 2009 thru March 2010**

REASONS FOR EEP DENIAL	Number	Percent of Denials	Approved	Percent Approved Within Denial Reason
Poor Participation and / or Progress	97	14.0%	31	32.0%
Poor Program Attendance	27	3.9%	5	18.5%
Refusal to Participate	62	9.0%	4	6.5%
Behavior Interfered with Program	506	73.1%	40	7.9%
Total	692	100.0%	80	11.6%

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 770 cases determined to be non-certifiable, 456 (59.2%) 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 21%.

**Table 4: EEP Non-Certifiable Reasons and Parole Board Approvals at Initial Hearings
October 2009 thru March 2010**

NON-CERTIFIABLE EEP STATUS REASONS	Number	Percent Non-certifiable	Approved	Percent Approved within Non-Certifiable reason
Insufficient Time in Program	456	59.2%	89	19.5%
Hospital	8	1.0%	1	12.5%
Out to Court	15	1.9%	1	6.7%
In Reception	291	37.8%	60	20.6%
Total	770	100.0%	151	19.6%

Earned Eligibility Status within Offense Type and Parole Board Hearing Results

Table 5 shows the distribution of the 4,595 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 4,595 initial EEP cases, 2,203 (48%) were Property Offenses, 993 (22%) were Other Coercive crimes, 724 (16%) were Drug Offenses, and 348 (8%) were Violent Felonies.
- Overall, the Drug Offenses category showed the highest release approval rate at 48%.
- Controlling for EEP status, the highest release approval rate was for Youthful Offenders issued an EEP certificate (73%). Drug offenders that were issued an EEP certificate were approved for release at a rate of 55%. Of the 233 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 2009 thru March 2010**

OFFENSE TYPE	EEP CERTIFICATE	RELEASE DECISION				Total	
		APPROVED		DENIED			
Violent Felony	Issued	14	6.0%	219	94.0%	233	67.0%
	Denied	0	0.0%	103	100.0%	103	29.6%
	Non-Cert	0	0.0%	12	100.0%	12	3.4%
Total		14	4.0%	334	96.0%	348	100.0%
Other Coercive	Issued	160	24.5%	493	75.5%	653	65.8%
	Denied	9	6.0%	141	94.0%	150	15.1%
	Non-Cert	34	17.9%	156	82.1%	190	19.1%
Total		203	20.4%	790	79.6%	993	100.0%
Drug Offenses	Issued	320	55.3%	259	44.7%	579	80.0%
	Denied	19	16.1%	99	83.9%	118	16.3%
	Non-Cert	8	29.6%	19	70.4%	27	3.7%
Total		347	47.9%	377	52.1%	724	100.0%
Property and Other	Issued	678	44.0%	862	56.0%	1,540	69.9%
	Denied	41	15.7%	220	84.3%	261	11.8%
	Non-Cert	79	19.7%	323	80.3%	402	18.2%
Total		798	36.2%	1,405	63.8%	2,203	100.0%
Youthful Offender	Issued	93	73.2%	34	26.8%	127	39.9%
	Denied	11	19.6%	45	80.4%	56	17.6%
	Non-Cert	29	21.5%	106	78.5%	135	42.5%
Total		133	41.8%	185	58.2%	318	100.0%
Juvenile Offender	Issued	0	0.0%	1	100.0%	1	11.1%
	Denied	0	0.0%	4	100.0%	4	44.4%
	Non-Cert	1	25.0%	3	75.0%	4	44.4%
Total		1	11.1%	8	88.9%	9	100.0%
Total	Issued	1,265	40.4%	1,868	59.6%	3,133	68.2%
	Denied	80	11.6%	612	88.4%	692	15.1%
	Non-Cert	151	19.6%	619	80.4%	770	16.8%
	Total	1,496	32.6%	3,099	67.4%	4,595	100.0%

Conclusion

Overall, in the period between October 2009 and March 2010, there were 5,692 EEP hearings. Eighty-one 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 103 Violent Felony cases that were denied an EEP certificate, none were approved for release by the Parole Board.

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