

State of New York  
Department of Correctional Services

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**EARNED ELIGIBILITY PROGRAM SUMMARY  
SEMIANNUAL REPORT**

**April 2010 – September 2010**



**Andrew M. Cuomo  
Governor**



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Commissioner**

# **EARNED ELIGIBILITY PROGRAM SUMMARY**

## **Semiannual Report April 2010 – September 2010**

### **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 2010 and September 2010 for inmates with minimum sentences of eight years or less.

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<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 2010 and September 2010, there were 6,488 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 3,976 initial hearings and the 957 Merit hearing cases will be the focus of this report. These 4,933 initial hearings account for 76% of the cases reviewed, while reappearances account for the remaining 24%.

**Table 1: Parole Hearing Type for EEP Cases by Month of Hearing  
April 2010 thru September 2010**

Hearing Month	Hearing Type				Total
	Initial*	Merit	Reappearance	Parole Violator Reapearance	
April '10	639 68.5%	150 16.1%	118 12.6%	26 2.8%	933 100.0%
May '10	668 58.9%	189 16.7%	255 22.5%	23 2.0%	1,135 100.0%
June '10	620 54.7%	144 12.7%	340 30.0%	29 2.6%	1,133 100.0%
July '10	637 58.2%	180 16.5%	243 22.2%	34 3.1%	1,094 100.0%
August '10	684 63.2%	151 13.9%	223 20.6%	25 2.3%	1,083 100.0%
September '10	728 65.6%	143 12.9%	205 18.5%	34 3.1%	1,110 100.0%
Total	3,976 61.3%	957 14.8%	1,384 21.3%	171 2.6%	6,488 100.0%

\* Initial hearings include 507 hearings for Shock cases

## Earned Eligibility Status and Parole Board Hearing Results

Table 2 shows that the Parole Board held 4,933 initial hearings for EEP cases between April 2010 and September 2010. Of these cases, 65% were issued an EEP Certificate, 16% were denied and 19% were non-certifiable.

- DOCS issued 3,220 certificates. The Parole Board approved 38% or 1,222 of these cases.
- EEP cases that were denied Certificates (N=794) were approved for release at a rate of 9%, while non-certifiable cases (N=919) were approved for release at a rate of 19%.
- Overall, the Parole Board approved 30% of the EEP cases for release.

**Table 2: EEP Review Results and Parole Board Approvals at Initial Hearings  
April 2010 thru September 2010**

EEP CERTIFICATE	Number of Hearings	Percent of Hearings	Number Approved	Percent Approved
Issued	3,220	<b>65.3%</b>	1,222	<b>38.0%</b>
Denied	794	<b>16.1%</b>	70	<b>8.8%</b>
Non-certifiable	919	<b>18.6%</b>	175	<b>19.0%</b>
<b>Total</b>	<b>4,933</b>	<b>100.0%</b>	<b>1,467</b>	<b>29.7%</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 794 EEP certificate denials were due to poor behavior that interfered with program progress (71%). This category also accounted for the lowest Parole Board approval rate of those that were denied at 5%.
- 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 30%. 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 rates of 8% and 14%, respectively.

**Table 3: EEP Certificate Denial Reasons and Parole Board Approvals at Initial Hearings  
April 2010 thru September 2010**

REASONS FOR EEP DENIAL	Number	Percent of Denials	Approved	Percent Approved Within Denial Reason
Poor Participation and / or Progress	87	<b>11.0%</b>	26	<b>29.9%</b>
Poor Program Attendance	37	<b>4.7%</b>	5	<b>13.5%</b>
Refusal to Participate	104	<b>13.1%</b>	8	<b>7.7%</b>
Behavior Interfered with Program	566	<b>71.3%</b>	31	<b>5.5%</b>
<b>Total</b>	<b>794</b>	<b>100.0%</b>	<b>70</b>	<b>8.8%</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 919 cases determined to be non-certifiable, 543 (59%) 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 rate of 18%.

**Table 4: EEP Non-Certifiable Reasons and Parole Board Approvals at Initial Hearings  
April 2010 thru September 2010**

NON-CERTIFIABLE EEP STATUS REASONS	Number	Percent Non-Certifiable	Approved	Percent Approved within Non-Certifiable reason
Insufficient Time in Program	543	<b>59.1%</b>	110	<b>20.3%</b>
Hospital	5	<b>0.5%</b>	0	<b>0.0%</b>
Protective Custody	2	<b>0.2%</b>	0	<b>0.0%</b>
Out to Court	17	<b>1.8%</b>	1	<b>5.9%</b>
In Reception	352	<b>38.3%</b>	64	<b>18.2%</b>
<b>Total</b>	<b>919</b>	<b>100.0%</b>	<b>175</b>	<b>19.0%</b>

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

Table 5 shows the distribution of the 4,933 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 4,933 initial EEP cases, 2,366 (48%) were Property Offenses, 1,134 (23%) were Other Coercive crimes, 604 (12%) were Drug Offenses, and 440 (9%) were Violent Felonies.
- Overall, the Youthful Offender category showed the highest release approval rate at 43%.
- Compared with the last EEP Semiannual Report, the number and approval rate of drug offenders has decreased. Between October 2009 and March 2010, there were 347 drug offenders approved for release which represented a 48% approval rate. During the latest six month period, there were only 218 drug offenders approved for release, which represents a 36% approval rate.
- Among offenders issued an EEP Certificate, Youthful Offenders were approved for release at the highest rate (67%), followed by Property Offenders (45%) and Drug Offenders (43%); the lowest approval rate was among Violent Felony offenders (6%).

**Table 5: EEP Status within Crime Category by Initial Parole Board Hearing Result  
April 2010 thru September 2010**

OFFENSE TYPE	EEP CERTIFICATE	RELEASE DECISION				TOTAL	
		APPROVED		DENIED			
Violent Felony	Issued	16	6.2%	241	93.8%	257	58.4%
	Denied	0	0.0%	167	100.0%	167	38.0%
	Non-Cert	3	18.8%	13	81.3%	16	3.6%
Total		19	4.3%	421	95.7%	440	100.0%
Other Coercive	Issued	148	22.0%	525	78.0%	673	59.3%
	Denied	9	5.3%	161	94.7%	170	15.0%
	Non-Cert	30	10.3%	261	89.7%	291	25.7%
Total		187	16.5%	947	83.5%	1,134	100.0%
Drug Offenses	Issued	192	42.5%	260	57.5%	452	74.8%
	Denied	15	12.6%	104	87.4%	119	19.7%
	Non-Cert	11	33.3%	22	66.7%	33	5.5%
Total		218	36.1%	386	63.9%	604	100.0%
Property and Other	Issued	747	45.0%	912	55.0%	1,659	70.1%
	Denied	33	12.7%	226	87.3%	259	10.9%
	Non-Cert	99	22.1%	349	77.9%	448	18.9%
Total		879	37.2%	1,487	62.8%	2,366	100.0%
Youthful Offender	Issued	119	66.9%	59	33.1%	178	47.1%
	Denied	13	17.3%	62	82.7%	75	19.8%
	Non-Cert	32	25.6%	93	74.4%	125	33.1%
Total		164	43.4%	214	56.6%	378	100.0%
Juvenile Offender	Issued	0	0.0%	1	100.0%	1	9.1%
	Denied	0	0.0%	4	100.0%	4	36.4%
	Non-Cert	0	0.0%	6	0.0%	6	54.5%
Total		0	0.0%	11	100.0%	11	100.0%
Total	Issued	1,222	38.0%	1,998	62.0%	3,220	65.3%
	Denied	70	8.8%	724	91.2%	794	16.1%
	Non-Cert	175	19.0%	744	81.0%	919	18.6%
Total		1,467	29.7%	3,466	70.3%	4,933	100.0%

## **Conclusion**

Overall, in the period between April 2010 and September 2010, there were 6,488 EEP hearings. Seventy-six 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 (38%) when compared to those who were denied an EEP certificate (9%) or were non-certifiable (19%).

Property, Other Coercive, and Drug offenses constituted the three largest offense categories considered for an EEP certificate. Most recently, the Property and Other Coercive categories accounted for nearly three-quarters (71%) of the hearings. Due to determinate sentencing and Drug Law reform, Drug offenses presently represent only 13% of the hearings in this report period. This is in contrast to 2005, when Property and Other Coercive offenses accounted for only 41% of the hearings, while drug offenses represented 47% of the hearings. Youthful Offenders and Property and Other offenders who were issued an EEP certificate showed the highest release approval rates. Of the 167 violent felony cases that were denied an EEP certificate, none were approved for release by the Parole Board.

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November 2010