

State of New York  
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**EARNED ELIGIBILITY PROGRAM SUMMARY  
SEMIANNUAL REPORT**

**October 2010 – March 2011**



**Andrew M. Cuomo  
Governor**



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Commissioner**

# **EARNED ELIGIBILITY PROGRAM SUMMARY**

## **Semiannual Report October 2010 – March 2011**

### **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 parole hearing dispositions and Earned Eligibility reviews. Data on Earned Eligibility status and the information on parole dispositions is maintained by the Department of Corrections and Community Supervision (DOCCS). If a case is missing information on either Earned Eligibility status or parole disposition 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 Board of Parole 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 2010 and March 2011 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 then Department of Correctional Services to the Division of Parole without a Parole hearing. Presumptively Approved inmates still appear before the Board of Parole to set the conditions of their parole supervision. This report treats the Presumptively Approved inmates as Parole Board appearances who received parole approvals.

## Types of Earned Eligibility Review Hearings

Between October 2010 and March 2011, there were 5,485 hearings for earned eligibility cases (Table 1). Merit hearings and Initial hearings are similar in that both represent the first appearance before the Board of Parole. The 3,596 Initial hearings and the 770 Merit hearing cases will be the focus of this report. These 4,366 initial hearings account for 80% of the cases reviewed, while reappearances account for the remaining 20%.

**Table 1: Parole Hearing Type for EEP Cases by Month of Hearing  
October 2010 thru March 2011**

Hearing Month	Hearing Type				Total
	Initial*	Merit	Reappearance	Parole Violator Reappearance	
October '10	597 65.0%	123 13.4%	165 18.0%	34 3.7%	919 100.0%
November '10	659 65.1%	147 14.5%	180 17.8%	26 2.6%	1,012 100.0%
December '10	544 57.9%	131 14.9%	141 24.7%	20 2.5%	836 100.0%
January '11	594 64.8%	146 15.9%	152 16.6%	24 2.6%	916 100.0%
February '11	532 63.3%	123 14.6%	155 18.4%	31 3.7%	841 100.0%
March '11	670 69.7%	100 10.4%	164 17.1%	27 2.8%	961 100.0%
Total	3,596 65.6%	770 14.0%	957 17.4%	162 3.0%	5,485 100.0%

\* Initial hearings include 503 hearings for Shock cases

## Earned Eligibility Status and Parole Board Hearing Results

Table 2 shows that the Parole Board held 4,366 initial hearings for EEP cases between October 2010 and March 2011. Of these cases, 66% were issued an EEP Certificate, 16% were denied and 17% were non-certifiable.

- DOCCS issued 2,899 certificates. The Parole Board approved 37% or 1,083 of these cases.
- EEP cases that were denied Certificates (719) were approved for release at a rate of 7%, while non-certifiable cases (748) were approved for release at a rate of 17%.
- Overall, the Parole Board approved 29% of the EEP cases for release.

**Table 2: EEP Review Results and Parole Board Approvals at Initial Hearings  
October 2010 thru March 2011**

EEP CERTIFICATE	Number of Hearings	Percent of Hearings	Number Approved	Percent Approved
Issued	2,899	<b>66.4%</b>	1,083	<b>37.4%</b>
Denied	719	<b>16.5%</b>	47	<b>6.5%</b>
Non-certifiable	748	<b>17.1%</b>	124	<b>16.6%</b>
<b>Total</b>	<b>4,366</b>	<b>100.0%</b>	<b>1,254</b>	<b>28.7%</b>

## Earned Eligibility Certificate Denials and Parole Board Hearing Results

Table 3 shows the general reasons that a case may be denied an EEP certificate. Some are denied for other reasons such as facility placement criteria which may preclude earning an EEP certificate.

- The majority of the 719 EEP certificate denials were due to poor behavior that interfered with program progress (65%).
- Among the general denial reasons, inmates not receiving an EEP certificate due to poor participation and/or progress were approved for release at a rate of 9%. This represents the highest rate among the four general denial reasons. Those who were denied due to poor program attendance were approved at a rate of 8%. Inmates whose behavior interfered with their program had a 6% approval rate. None of the inmates who refused to participate in their recommended programs were approved for release.

**Table 3: EEP Certificate Denial Reasons and Parole Board Approvals at Initial Hearings  
October 2010 thru March 2011**

REASONS FOR EEP DENIAL	Number	Percent of Denials	Approved	Percent Approved Within Denial Reason
Poor Participation and / or Progress	162	22.5%	15	9.3%
Poor Program Attendance	25	3.5%	2	8.0%
Refusal to Participate	61	8.5%	0	0.0%
Behavior Interfered with Program	468	65.1%	29	6.2%
Other	3	0.4%	1	33.3%
<b>Total</b>	<b>719</b>	<b>100.0%</b>	<b>47</b>	<b>6.5%</b>

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

Table 4 shows the 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 748 cases determined to be non-certifiable, 443 (59%) were non-certifiable due to insufficient time in prescribed programs.
- Cases that were non-certifiable due to hospitalization were approved for release at the highest rate (29%), while cases that were non-certifiable due to insufficient time in program were approved for release at a rate of 19%. Cases in which inmates were out to court had the lowest approval rate (5%).

**Table 4: EEP Non-Certifiable Reasons and Parole Board Approvals at Initial Hearings  
October 2010 thru March 2011**

NON-CERTIFIABLE EEP STATUS REASONS	Number	Percent Non- certifiable	Approved	Percent Approved within Non- Certifiable reason
Insufficient Time in Program	443	59.2%	85	19.2%
Hospital	7	0.9%	2	28.6%
Out to Court	21	2.8%	1	4.8%
In Reception	266	35.6%	35	13.2%
Other	11	1.5%	1	9.1%
Total	748	100.0%	124	16.6%

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

Table 5 shows the distribution of the 4,366 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 4,366 initial EEP cases, 2,219 (51%) were Property Offenses, 991 (23%) were Other Coercive crimes, 433 (10%) were Drug Offenses, and 359 (8%) were Violent Felonies.
- Overall, the Drug Offenses category showed the highest release approval rate at 40%.
- Compared with the last EEP Semiannual Report, the number of EEP-eligible drug offenders who appeared before the Board of Parole decreased, while their approval rate increased. Between April 2010 and September 2010, there were 218 drug offenders approved for release which represented a 36% approval rate. During the current six month period, there were 175 drug offenders approved for release, with a 40% approval rate.
- Among offenders issued an EEP certificate, Youthful Offenders were approved for release at the highest rate (55%), followed by Drug Offenders (48%) and Property Offenders (43%); the lowest approval rate was among Violent Felony Offenders (4%).

**Table 5: EEP Status within Crime Category by Initial Parole Board Hearing Result  
October 2010 thru March 2011**

OFFENSE TYPE	EEP CERTIFICATE	RELEASE DECISION				Total	
		APPROVED		DENIED			
Violent Felony	Issued	8	3.8%	203	96.2%	211	58.8%
	Denied	0	0.0%	138	100.0%	138	38.4%
	Non-Cert	1	10.0%	9	90.0%	10	2.8%
Total		9	2.5%	350	97.5%	359	100.0%
Other Coercive	Issued	147	23.9%	469	76.1%	616	62.2%
	Denied	9	5.5%	155	94.5%	164	16.5%
	Non-Cert	18	8.5%	193	91.5%	211	21.3%
Total		174	17.6%	817	82.4%	991	100.0%
Drug Offenses	Issued	166	47.8%	181	52.2%	347	80.1%
	Denied	6	9.2%	59	90.8%	65	15.0%
	Non-Cert	3	14.3%	18	85.7%	21	4.8%
Total		175	40.4%	258	59.6%	433	100.0%
Property and Other	Issued	669	43.0%	888	57.0%	1,557	70.2%
	Denied	26	9.2%	257	90.8%	283	12.8%
	Non-Cert	84	22.2%	295	77.8%	379	17.1%
Total		779	35.1%	1,440	64.9%	2,219	100.0%
Youthful Offender	Issued	92	55.4%	74	44.6%	166	46.4%
	Denied	6	9.2%	59	90.8%	65	18.2%
	Non-Cert	18	14.2%	109	85.8%	127	35.5%
Total		116	32.4%	242	67.6%	358	100.0%
Juvenile Offender	Issued	1	50.0%	1	50.0%	2	33.3%
	Denied	0	0.0%	4	100.0%	4	66.7%
	Non-Cert	0	0.0%	0	0.0%	0	0.0%
Total		1	16.7%	5	83.3%	6	100.0%
Total	Issued	1,083	37.4%	1,816	62.6%	2,899	66.4%
	Denied	47	6.5%	672	93.5%	719	16.5%
	Non-Cert	124	16.6%	624	83.4%	748	17.1%
Total		1,254	28.7%	3,112	71.3%	4,366	100.0%

## **Conclusion**

Overall, in the period between October 2010 and March 2011, there were 5,485 EEP hearings. Eighty 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 (37%) when compared to those that were non-certifiable (17%) or denied an EEP certificate (7%).

Between October 2010 and March 2011, Property and Other Coercive offenses constituted the two largest categories considered for an EEP certificate, accounting for nearly three-quarters (74%) of the hearings.

As a result of determinate sentencing and Drug Law reform, Drug offenses represented only 10% 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 (55%) and Drug Offenders (48%) who were issued an EEP certificate showed the highest release approval rates. Of the 138 Violent Felony cases that were denied an EEP certificate, none were approved for release by the Parole Board.

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