

State of New York
Department of Corrections
and
Community Supervision

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**EARNED ELIGIBILITY PROGRAM SUMMARY
SEMIANNUAL REPORT**

April 2011 – September 2011



**Andrew M. Cuomo
Governor**



**Brian Fischer
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 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 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 offenders who have demonstrated an overall pattern of progress in prescribed programs while serving their required minimum sentence. The program administrators evaluate offenders' preparedness for release based on their compliance with sets of minimum standards for behavior and for progress toward satisfying treatment needs.

Prior to an offender'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 offender or to deny parole. This program of standards and review is available to offenders 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 offenders with minimum sentences of six years or less. The Legislature expanded the program to include offenders 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 that occurred between April 2011 and September 2011 for offenders with minimum sentences of eight years or less.

¹ In May 2003, the Legislature authorized offenders to be Presumptively Approved for release by the then Department of Correctional Services to the Division of Parole without a Parole hearing. Presumptively Approved offenders still appear before the Board of Parole to set the conditions of their parole supervision. This report treats the Presumptively Approved offenders as Parole Board appearances who received parole approvals.

Types of Earned Eligibility Review Hearings

Between April 2011 and September 2011, there were 5,701 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 3,832 Initial hearings and the 784 Merit hearing cases will be the focus of this report. These 4,616 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
April 2011 through September 2011**

Hearing Month	Hearing Type				Total
	Initial*	Merit	Reappearance	Parole Violator Reappearance	
April '11	643 68.1%	125 13.2%	145 15.4%	31 3.3%	944 100.0%
May '11	578 64.4%	131 14.6%	157 17.5%	32 3.6%	898 100.0%
June '11	733 69.0%	129 12.1%	169 15.9%	31 2.9%	1,062 100.0%
July '11	606 64.9%	148 15.8%	145 15.5%	35 3.7%	934 100.0%
August '11	621 68.0%	132 14.5%	129 14.1%	31 3.4%	913 100.0%
September '11	651 68.5%	119 12.5%	152 16.0%	28 2.9%	950 100.0%
Total	3,832 67.2%	784 13.8%	897 15.7%	188 3.3%	5,701 100.0%

* Initial hearings include 578 hearings for Shock cases

Earned Eligibility Status and Parole Board Hearing Results

Table 2 shows that the Parole Board held 4,616 initial hearings for EEP cases between April 2011 and September 2011. Of these cases, 62% were issued an EEP Certificate, 20% were denied and 18% were non-certifiable.

- DOCCS issued 2,851 certificates. The Parole Board approved 37% or 1,060 of these cases.
- EEP cases that were denied Certificates (916) were approved for release at a rate of 9%, while non-certifiable cases (849) were approved for release at a rate of 17%.
- Overall, the Parole Board approved 28% of the EEP cases for release.

**Table 2: EEP Review Results and Parole Board Approvals at Initial Hearings
April 2011 through September 2011**

EEP CERTIFICATE	Number of Hearings	Percent of Hearings	Number Approved	Percent Approved
Issued	2,851	61.8%	1,060	37.2%
Denied	916	19.8%	85	9.3%
Non-certifiable	849	18.4%	143	16.8%
Total	4,616	100.0%	1,288	27.9%

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 916 EEP certificate denials were due to poor behavior that interfered with program progress (56%).
- Among the general denial reasons, offenders not receiving an EEP certificate due to poor participation and/or progress were approved for release at a rate of 17%. 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 7%. The offenders who refused to participate in their recommended programs had a 6% rate of approval while those whose behavior interfered with their program had a 5% approval rate.

**Table 3: EEP Certificate Denial Reasons and Parole Board Approvals at Initial Hearings
April 2011 through September 2011**

REASONS FOR EEP DENIAL	Number	Percent of Denials	Approved	Percent Approved Within Denial Reason
Poor Participation and / or Progress	309	33.7%	53	17.2%
Poor Program Attendance	42	4.6%	3	7.1%
Refusal to Participate	53	5.8%	3	5.7%
Behavior Interfered with Program	510	55.7%	25	4.9%
Other	2	0.2%	1	50.0%
Total	916	100.0%	85	9.3%

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 offender's program participation may be due to circumstances beyond the offender's control.

- Of the 849 cases determined to be non-certifiable, 534 (63%) 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 18%. Cases in which offenders were out to court had the lowest approval rate (11%).

**Table 4: EEP Non-Certifiable Reasons and Parole Board Approvals at Initial Hearings
April 2011 through September 2011**

NON-CERTIFIABLE EEP STATUS REASONS	Number	Percent Non- certifiable	Approved	Percent Approved within Non- Certifiable reason
Insufficient Time in Program	534	62.9%	94	17.6%
Hospital	3	0.4%	1	33.3%
Out to Court	18	2.1%	2	11.1%
In Reception	290	34.2%	46	15.9%
Other	4	0.5%	0	0.0%
Total	849	100.0%	143	16.8%

Earned Eligibility Status within Offense Type and Parole Board Hearing Results

Table 5 shows the distribution of the 4,616 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 4,616 initial EEP cases, 2,404 (52%) were Property Offenses, 1,032 (22%) were Other Coercive crimes, 438 (9%) were Drug Offenses, and 323 (7%) were Violent Felonies.
- Overall, the Drug Offenses category showed the highest release approval rate at 39%.
- Compared with the last EEP Semiannual Report, the number of EEP-eligible drug offenders who appeared before the Board of Parole decreased along with their approval rates. Between October 2010 and March 2011, there were 175 drug offenders approved for release with a 40% approval rate. During the current six month period, there were 170 drug offenders approved for release, with a 39% approval rate.
- Among offenders issued an EEP certificate, Youthful Offenders were approved for release at the highest rate (66%), followed by Drug Offenders (47%) and Property Offenders (43%); the lowest approval rate was among Violent Felony Offenders (10%).

**Table 5: EEP Status within Crime Category by Initial Parole Board Hearing Result
April 2011 through September 2011**

OFFENSE TYPE	EEP CERTIFICATE	RELEASE DECISION				Total	
		APPROVED		DENIED			
Violent Felony	Issued	18	9.9%	164	90.1%	182	56.3%
	Denied	1	0.8%	123	99.2%	124	38.4%
	Non-Cert	0	0.0%	17	100.0%	17	5.3%
Total		19	5.9%	304	94.1%	323	100.0%
Other Coercive	Issued	118	18.7%	514	81.3%	632	61.2%
	Denied	8	3.9%	199	96.1%	207	20.1%
	Non-Cert	22	11.4%	171	88.6%	193	18.7%
Total		148	14.3%	884	85.7%	1,032	100.0%
Drug Offenses	Issued	162	47.0%	183	53.0%	345	78.8%
	Denied	6	8.2%	67	91.8%	73	16.7%
	Non-Cert	2	10.0%	18	90.0%	20	4.6%
Total		170	38.8%	268	61.2%	438	100.0%
Property and Other	Issued	660	43.0%	874	57.0%	1,534	63.8%
	Denied	57	14.2%	345	85.8%	402	16.7%
	Non-Cert	101	21.6%	367	78.4%	468	19.5%
Total		818	34.0%	1,586	66.0%	2,404	100.0%
Youthful Offender	Issued	102	66.2%	52	33.8%	154	37.2%
	Denied	13	11.9%	96	88.1%	109	26.3%
	Non-Cert	18	11.9%	133	88.1%	151	36.5%
Total		133	32.1%	281	67.9%	414	100.0%
Juvenile Offender	Issued	0	0.0%	4	100.0%	4	80.0%
	Denied	0	0.0%	1	100.0%	1	20.0%
	Non-Cert	0	0.0%	0	0.0%	0	0.0%
Total		0	0.0%	5	100.0%	5	100.0%
Total	Issued	1,060	37.2%	1,791	62.8%	2,851	61.8%
	Denied	85	9.3%	831	90.7%	916	19.8%
	Non-Cert	143	16.8%	706	83.2%	849	18.4%
Total		1,288	27.9%	3,328	72.1%	4,616	100.0%

Conclusion

Overall, in the period between April 2011 and September 2011, there were 5,701 EEP hearings. Eighty-one percent (81%) of these reviews were for initial appearances at the Parole Board. The overall approval rate for initial appearances was twenty-eight percent (28%). Offenders 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 (9%).

Between April 2011 and September 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 9% 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 (66%) and Drug Offenders (47%) who were issued an EEP certificate showed the highest release approval rates. Of the 124 Violent Felony cases that were denied an EEP certificate, only one was approved for release by the Parole Board.

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