

State of New York
Department of Corrections
and
Community Supervision

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**EARNED ELIGIBILITY PROGRAM SUMMARY
SEMIANNUAL REPORT**

April 2012 – September 2012



**Andrew M. Cuomo
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 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 2012 and September 2012 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 Board 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 2012 and September 2012, there were 5,344 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 3,599 Initial hearings and the 896 Merit hearing cases will be the focus of this report. These 4,495 initial hearings account for 84% of the cases reviewed, while reappearances account for the remaining 16%.

**Table 1: Parole Hearing Type for EEP Cases by Month of Hearing
April 2012 through September 2012**

Hearing Month	Hearing Type				Total
	Initial*	Merit	Reappearance	Parole Violator Reappearance	
April '12	607 69.3%	142 16.2%	108 12.3%	19 2.2%	876 100.0%
May '12	599 63.9%	170 18.1%	154 16.4%	14 1.5%	937 100.0%
June '12	590 65.0%	153 16.9%	150 16.5%	15 1.7%	908 100.0%
July '12	592 69.4%	143 16.8%	103 12.1%	15 1.8%	853 100.0%
August '12	643 69.2%	148 15.9%	132 14.2%	6 0.6%	929 100.0%
September '12	568 67.5%	140 16.6%	122 14.5%	11 1.3%	841 100.0%
Total	3,599 67.3%	896 16.8%	769 14.4%	80 1.5%	5,344 100.0%

* Initial hearings include 386 hearings for Shock cases

Earned Eligibility Status and Parole Board Hearing Results

Table 2 shows that the Parole Board held 4,495 initial hearings for EEP cases between April 2012 and September 2012. Of these cases, 62% were issued an EEP Certificate, 18% were denied and 21% were non-certifiable.

- DOCCS issued 2,768 certificates. The Parole Board approved 37% or 1,035 of these cases.
- EEP cases that were denied Certificates (797) were approved for release at a rate of 10%, while non-certifiable cases (930) were approved for release at a rate of 16%.
- 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 2012 through September 2012**

EEP CERTIFICATE	Number of Hearings	Percent of Hearings	Number Approved	Percent Approved
Issued	2,768	61.6%	1,035	37.4%
Denied	797	17.7%	77	9.7%
Non-certifiable	930	20.7%	148	15.9%
Total	4,495	100.0%	1,260	28.0%

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 797 EEP certificate denials were due to poor behavior that interfered with program progress (60%).
- 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 25%. 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 14%. The offenders who refused to participate in their recommended programs had a 3% rate of approval. Those whose behavior interfered with their program also had a 3% approval rate.

**Table 3: EEP Certificate Denial Reasons and Parole Board Approvals at Initial Hearings
April 2012 through September 2012**

REASONS FOR EEP DENIAL	Number	Percent of Denials	Approved	Percent Approved Within Denial Reason
Poor Participation and / or Progress	219	27.5%	54	24.7%
Poor Program Attendance	63	7.9%	9	14.3%
Refusal to Participate	33	4.1%	1	3.0%
Behavior Interfered with Program	481	60.4%	13	2.7%
Other	1	0.1%	0	0.0%
Total	797	100.0%	77	9.7%

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 930 cases determined to be non-certifiable, 502 (54%) 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 19%. Cases in which offenders were still in reception had a 13% approval rate.

**Table 4: EEP Non-Certifiable Reasons and Parole Board Approvals at Initial Hearings
April 2012 through September 2012**

NON-CERTIFIABLE EEP STATUS REASONS	Number	Percent Non- certifiable	Approved	Percent Approved within Non- Certifiable reason
Insufficient Time in Program	502	54.0%	93	18.5%
Hospital	4	0.4%	0	0.0%
Out to Court	14	1.5%	0	0.0%
In Reception	408	43.9%	55	13.5%
Other	2	0.2%	0	0.0%
Total	930	100.0%	148	15.9%

Earned Eligibility Status within Offense Type and Parole Board Hearing Results

Table 5 shows the distribution of the 4,495 EEP cases within offense types. Within each offense type, the result of the initial EEP review is cross referenced with the decision of the Parole Board.

- Of the 4,495 initial EEP cases, 2,476 (55%) were Property Offenses and 1,085 (24%) were Other Coercive crimes. Violent Felony Offenses (292) and Drug Offenses (278) each made up 6% of the initial EEP cases.
- Overall, the Youthful Offender category showed the highest release approval rate at 37%.
- 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 2011 and March 2012, there were 112 drug offenders approved for release with a 34% approval rate. During the current six month period, there were 79 drug offenders approved for release, with a 28% approval rate.
- Among offenders issued an EEP certificate, Youthful Offenders were approved for release at the highest rate (70%), followed by Property Offenders (44%); the lowest approval rate was among Violent Felony Offenders (6%).

**Table 5: EEP Status within Crime Category by Initial Parole Board Hearing Result
April 2012 through September 2012**

OFFENSE TYPE	EEP CERTIFICATE	RELEASE DECISION				Total	
		APPROVED		DENIED			
Violent Felony	Issued	9	5.6%	151	94.4%	160	54.8%
	Denied	2	1.7%	115	98.3%	117	40.1%
	Non-Cert	0	0.0%	15	100.0%	15	5.1%
Total		11	3.8%	281	96.2%	292	100.0%
Other Coercive	Issued	150	23.5%	489	76.5%	639	58.9%
	Denied	10	4.9%	195	95.1%	205	18.9%
	Non-Cert	28	11.6%	213	88.4%	241	22.2%
Total		188	17.3%	897	82.7%	1,085	100.0%
Drug Offenses	Issued	74	33.8%	145	66.2%	219	78.8%
	Denied	2	5.0%	38	95.0%	40	14.4%
	Non-Cert	3	15.8%	16	84.2%	19	6.8%
Total		79	28.4%	199	71.6%	278	100.0%
Property and Other	Issued	701	43.6%	905	56.4%	1,606	64.9%
	Denied	55	15.0%	311	85.0%	366	14.8%
	Non-Cert	93	18.5%	411	81.5%	504	20.4%
Total		849	34.3%	1,627	65.7%	2,476	100.0%
Youthful Offender	Issued	100	70.4%	42	29.6%	142	39.6%
	Denied	8	11.6%	61	88.4%	69	19.2%
	Non-Cert	24	16.2%	124	83.8%	148	41.2%
Total		132	36.8%	227	63.2%	359	100.0%
Juvenile Offender	Issued	1	50.0%	1	50.0%	2	40.0%
	Denied	0	--	0	--	0	--
	Non-Cert	0	0.0%	3	100.0%	3	60.0%
Total		1	20.0%	4	80.0%	5	100.0%
Total	Issued	1,035	37.4%	1,733	62.6%	2,768	61.6%
	Denied	77	9.7%	720	90.3%	797	17.7%
	Non-Cert	148	15.9%	782	84.1%	930	20.7%
Total		1,260	28.0%	3,235	72.0%	4,495	100.0%

Conclusion

Overall, in the period between April 2012 and September 2012, there were 5,344 EEP hearings. Eighty-four percent (84%) of these reviews were for initial appearances at the Parole Board. The overall approval rate for initial appearances was 28%. Offenders who earned an EEP certificate were approved for release at the highest rate (37%) when compared to those that were non-certifiable (16%) or denied an EEP certificate (10%).

Between April 2012 and September 2012, Property and Other Coercive offenses constituted the two largest categories considered for an EEP certificate, accounting for over three-quarters (79%) of the hearings.

As a result of determinate sentencing and Drug Law reform, Drug offenses represented only 6% 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 (70%) who were issued an EEP certificate showed the highest release approval rate. Of the 117 Violent Felony cases that were denied an EEP certificate, only two (or 1.7%) were approved for release by the Parole Board.

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