

State of New York
Department of Corrections
and
Community Supervision

Building Number 2
Harriman Office Campus
Albany, New York 12226

**EARNED ELIGIBILITY PROGRAM SUMMARY
SEMIANNUAL REPORT**

October 2011 – March 2012



**Andrew M. Cuomo
Governor**



**Brian Fischer
Commissioner**

EARNED ELIGIBILITY PROGRAM SUMMARY

Semiannual Report October 2011 – March 2012

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 October 2011 and March 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 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 October 2011 and March 2012, there were 5,457 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 3,683 Initial hearings and the 890 Merit hearing cases will be the focus of this report. These 4,573 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
October 2011 through March 2012**

Hearing Month	Hearing Type				Total
	Initial*	Merit	Reappearance	Parole Violator Reappearance	
October '11	572 68.1%	127 15.1%	116 13.8%	25 3.0%	840 100.0%
November '11	643 68.8%	131 14.0%	131 14.0%	30 3.2%	935 100.0%
December '11	579 62.3%	173 18.6%	148 15.9%	29 3.1%	929 100.0%
January '12	653 66.0%	186 18.8%	127 12.8%	23 2.3%	989 100.0%
February '12	633 71.0%	125 14.0%	113 12.7%	21 2.4%	892 100.0%
March '12	603 69.2%	148 17.0%	106 12.2%	15 1.7%	872 100.0%
Total	3,683 67.5%	890 16.3%	741 13.6%	143 2.6%	5,457 100.0%

* Initial hearings include 478 hearings for Shock cases

Earned Eligibility Status and Parole Board Hearing Results

Table 2 shows that the Parole Board held 4,573 initial hearings for EEP cases between October 2011 and March 2012. Of these cases, 64% were issued an EEP Certificate, 18% were denied and 18% were non-certifiable.

- DOCCS issued 2,921 certificates. The Parole Board approved 37% or 1,092 of these cases.
- EEP cases that were denied Certificates (825) were approved for release at a rate of 11%, while non-certifiable cases (827) were approved for release at a rate of 18%.
- 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 2011 through March 2012**

EEP CERTIFICATE	Number of Hearings	Percent of Hearings	Number Approved	Percent Approved
Issued	2,921	63.9%	1,092	37.4%
Denied	825	18.0%	90	10.9%
Non-certifiable	827	18.1%	145	17.5%
Total	4,573	100.0%	1,327	29.0%

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 825 EEP certificate denials were due to poor behavior that interfered with program progress (53%).
- 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 23%. 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 15%. 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
October 2011 through March 2012**

REASONS FOR EEP DENIAL	Number	Percent of Denials	Approved	Percent Approved Within Denial Reason
Poor Participation and / or Progress	282	34.2%	64	22.7%
Poor Program Attendance	59	7.2%	9	15.3%
Refusal to Participate	37	4.5%	1	2.7%
Behavior Interfered with Program	440	53.3%	15	3.4%
Other	7	0.8%	1	14.3%
Total	825	100.0%	90	10.9%

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 827 cases determined to be non-certifiable, 517 (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 19%. Cases in which offenders were still in reception had a 17% approval rate.

**Table 4: EEP Non-Certifiable Reasons and Parole Board Approvals at Initial Hearings
October 2011 through March 2012**

NON-CERTIFIABLE EEP STATUS REASONS	Number	Percent Non- certifiable	Approved	Percent Approved within Non- Certifiable reason
Insufficient Time in Program	517	62.5%	97	18.8%
Hospital	4	0.5%	0	0.0%
Out to Court	15	1.8%	0	0.0%
In Reception	290	35.1%	48	16.6%
Other	1	0.1%	0	0.0%
Total	827	100.0%	145	17.5%

Earned Eligibility Status within Offense Type and Parole Board Hearing Results

Table 5 shows the distribution of the 4,573 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 4,573 initial EEP cases, 2,510 (55%) were Property Offenders, 1,056 (23%) were convicted for “Other Coercive” crimes, 392 (9%) were Youthful Offenders, 331 (7%) were Drug Offenders, and 282 (6%) were Violent Felony Offenders.
- Overall, the Property Offenses and Youthful Offender categories showed the highest release approval rates at 35% each.
- 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 April 2011 and October 2011, there were 170 drug offenders approved for release with a 39% approval rate. During the current six month period, there were 112 drug offenders approved for release, with a 34% approval rate.
- Among offenders issued an EEP certificate, Youthful Offenders were approved for release at the highest rate (64%), followed by Property Offenders (43%) and Drug Offenders (41%); the lowest approval rate was among Violent Felony Offenders (6%).

**Table 5: EEP Status within Crime Category by Initial Parole Board Hearing Result
October 2011 through March 2012**

OFFENSE TYPE	EEP CERTIFICATE	RELEASE DECISION				Total	
		APPROVED		DENIED			
Violent Felony	Issued	9	5.8%	146	94.2%	155	55.0%
	Denied	1	0.9%	111	99.1%	112	39.7%
	Non-Cert	0	0.0%	15	100.0%	15	5.3%
	Total	10	3.5%	272	96.5%	282	100.0%
Other Coercive	Issued	147	22.3%	513	77.7%	660	62.5%
	Denied	11	5.9%	174	94.1%	185	17.5%
	Non-Cert	24	11.4%	187	88.6%	211	20.0%
	Total	182	17.2%	874	82.8%	1,056	100.0%
Drug Offenses	Issued	102	40.6%	149	59.4%	251	75.8%
	Denied	5	7.9%	58	92.1%	63	19.0%
	Non-Cert	5	29.4%	12	70.6%	17	5.1%
	Total	112	33.8%	219	66.2%	331	100.0%
Property and Other	Issued	730	43.1%	963	56.9%	1,693	67.5%
	Denied	64	17.6%	299	82.4%	363	14.5%
	Non-Cert	93	20.5%	361	79.5%	454	18.1%
	Total	887	35.3%	1,623	64.7%	2,510	100.0%
Youthful Offender	Issued	104	64.2%	58	35.8%	162	41.3%
	Denied	9	9.0%	91	91.0%	100	25.5%
	Non-Cert	23	17.7%	107	82.3%	130	33.2%
	Total	136	34.7%	256	65.3%	392	100.0%
Juvenile Offender	Issued	0	--	0	--	0	0.0%
	Denied	0	0.0%	2	100.0%	2	100.0%
	Non-Cert	0	--	0	--	0	0.0%
	Total	0	0.0%	2	100.0%	2	100.0%
Total	Issued	1,092	37.4%	1,829	62.6%	2,921	63.9%
	Denied	90	10.9%	735	89.1%	825	18.0%
	Non-Cert	145	17.5%	682	82.5%	827	18.1%
	Total	1,327	29.0%	3,246	71.0%	4,573	100.0%

Conclusion

Overall, in the period between October 2011 and March 2012, there were 5,457 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 twenty-nine percent (29%). Offenders who earned an EEP certificate were approved for release at the highest rate (37%) when compared to those that were non-certifiable (18%) or denied an EEP certificate (11%).

Between October 2011 and March 2012, Property and Other Coercive offenses constituted the two largest categories considered for an EEP certificate, accounting for over three-quarters (78%) of the hearings.

As a result of determinate sentencing and Drug Law reform, Drug offenses represented only 7% 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 (64%) and Property Offenders (43%) who were issued an EEP certificate showed the highest release approval rates. Of the 112 Violent Felony cases that were denied an EEP certificate, only one was approved for release by the Parole Board.

Prepared by:

**Kimberly L. Keyser
Program Research Specialist II
Program Planning, Research and Evaluation
April 2012**