

State of New York
Department of Corrections
and
Community Supervision

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**EARNED ELIGIBILITY PROGRAM SUMMARY
SEMIANNUAL REPORT**

October 2012 – March 2013



**Andrew M. Cuomo
Governor**



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Acting Commissioner**

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INTRODUCTION

Legislative reporting requirements established in 1992 mandate 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 statuses and Parole Board dispositions are 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 EEP is to increase the rate of safe releases for offenders who have demonstrated an overall pattern of progress in prescribed programs. 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 2012 and March 2013 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 October 2012 and March 2013, there were 5,008 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 3,479 Initial hearings and the 737 Merit hearings will be the focus of this report. These 4,216 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 2012 through March 2013**

Hearing Month	Hearing Type				Total
	Initial*	Merit	Reappearance	Parole Violator Reappearance	
October '12	577 68.4%	123 14.6%	126 14.9%	18 2.1%	844 100.0%
November '12	616 69.6%	123 13.9%	135 15.3%	11 1.2%	885 100.0%
December '12	488 71.2%	103 15.0%	82 12.0%	12 1.8%	685 100.0%
January '13	677 69.7%	143 14.7%	145 14.9%	7 0.7%	972 100.0%
February '13	522 67.3%	128 16.5%	119 15.3%	7 0.9%	776 100.0%
March '13	599 70.8%	117 13.8%	122 14.4%	8 0.9%	846 100.0%
Total	3,479 69.5%	737 14.7%	729 14.6%	63 1.3%	5,008 100.0%

* Initial hearings include 449 hearings for Shock cases

Earned Eligibility Status and Parole Board Hearing Results

Table 2 shows that the Parole Board held 4,216 initial hearings for EEP cases between October 2012 and March 2013. Of these cases, 62% were issued an EEP Certificate, 18% were denied and 20% were non-certifiable.

- DOCCS issued 2,622 certificates. The Parole Board approved 36% or 946 of these cases.
- EEP cases that were denied Certificates (758) were approved for release at a rate of 6%, while non-certifiable cases (836) were approved for release at a rate of 14%.
- Overall, the Parole Board approved 26% of the EEP cases for release.

**Table 2: EEP Review Results and Parole Board Approvals at Initial Hearings
October 2012 through March 2013**

EEP CERTIFICATE	Number of Hearings	Percent of Hearings	Number Approved	Percent Approved
Issued	2,622	62.2%	946	36.1%
Denied	758	18.0%	48	6.3%
Non-certifiable	836	19.8%	116	13.9%
Total	4,216	100.0%	1,110	26.3%

Earned Eligibility Certificate Denials and Parole Board Hearing Results

Table 3 shows the general reasons that a case may be denied an EEP certificate.

- The majority (65%) of the 758 EEP certificate denials were due to poor behavior that interfered with program progress. This group of offenders had a 5% approval rate.
- Among the general denial reasons, offenders not receiving an EEP certificate due to poor participation and/or progress accounted for 25% of the group and were approved for release at a rate of 11%. This represents the highest approval rate among the four general denial reasons.
- Those who were denied due to poor program attendance accounted for 6% of the cases and were approved at a rate of 7%. Those who refused to participate in their recommended programs accounted for 4% of the denials and had a 3% rate of approval.

**Table 3: EEP Certificate Denial Reasons and Parole Board Approvals at Initial Hearings
October 2012 through March 2013**

REASONS FOR EEP DENIAL	Number	Percent of Denials	Approved	Percent Approved Within Denial Reason
Poor Participation and / or Progress	187	24.7%	21	11.2%
Poor Program Attendance	44	5.8%	3	6.8%
Refusal to Participate	34	4.5%	1	2.9%
Behavior Interfered with Program	492	64.9%	23	4.7%
Other	1	0.1%	0	0.0%
Total	758	100.0%	48	6.3%

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 836 cases determined to be non-certifiable, 502 (60%) were non-certifiable due to insufficient time in prescribed programs. These cases had a 16% approval rate.
- Although 1% of the cases were non-certifiable due to a hospital stay they were approved for release at a rate of 40%.

**Table 4: EEP Non-Certifiable Reasons and Parole Board Approvals at Initial Hearings
October 2012 through March 2013**

NON-CERTIFIABLE EEP STATUS REASONS	Number	Percent Non- certifiable	Approved	Percent Approved within Non- Certifiable reason
Insufficient Time in Program	502	60.0%	78	15.5%
Hospital	10	1.2%	4	40.0%
Out to Court	15	1.8%	0	0.0%
In Reception	304	36.4%	34	11.2%
Other	5	0.6%	0	0.0%
Total	836	100.0%	116	13.9%

Earned Eligibility Status within Offense Type and Parole Board Hearing Results

Table 5 shows the distribution of the 4,216 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 4,216 initial EEP cases, 2,323 (55%) were Property Offenses and 962 (23%) were Other Coercive crimes. Drug Offenses (296) made up 7% of the initial EEP cases while Violent Felony Offenses (244) made up 6%.
- Overall, the Property Offender category showed the highest release approval rate at 32%.
- Compared with the last EEP Semiannual Report, the number of EEP-eligible drug offenders who appeared before the Board of Parole increased (from 278 to 296), while their approval rates declined. Between April 2012 and September 2012, there were 79 drug offenders approved for release, with a 28% approval rate. During the current six month period, there were 66 drug offenders approved for release, with a 22% approval rate.
- Among offenders issued an EEP certificate, Youthful Offenders were approved for release at the highest rate (63%), followed by Property Offenders (42%); the lowest approval rate was among Violent Felony Offenders (5%), while no Juvenile Offenders were approved.

**Table 5: EEP Status within Crime Category by Initial Parole Board Hearing Result
October 2012 through March 2013**

OFFENSE TYPE	EEP CERTIFICATE	RELEASE DECISION				Total	
		APPROVED		DENIED			
Violent Felony	Issued	6	4.7%	122	95.3%	128	52.5%
	Denied	0	0.0%	96	100.0%	96	39.3%
	Non-Cert	0	0.0%	20	100.0%	20	8.2%
Total		6	2.5%	238	97.5%	244	100.0%
Other Coercive	Issued	150	24.5%	462	75.5%	612	63.6%
	Denied	6	3.6%	160	96.4%	166	17.3%
	Non-Cert	18	9.8%	166	90.2%	184	19.1%
Total		174	18.1%	788	81.9%	962	100.0%
Drug Offenses	Issued	61	26.4%	170	73.6%	231	78.0%
	Denied	2	4.5%	42	95.5%	44	14.9%
	Non-Cert	3	14.3%	18	85.7%	21	7.1%
Total		66	22.3%	230	77.7%	296	100.0%
Property and Other	Issued	641	42.5%	869	57.5%	1,510	65.0%
	Denied	35	9.6%	329	90.4%	364	15.7%
	Non-Cert	76	16.9%	373	83.1%	449	19.3%
Total		752	32.4%	1,571	67.6%	2,323	100.0%
Youthful Offender	Issued	88	62.9%	52	37.1%	140	36.2%
	Denied	5	5.8%	81	94.2%	86	22.2%
	Non-Cert	19	11.8%	142	88.2%	161	41.6%
Total		112	28.9%	275	71.1%	387	100.0%
Juvenile Offender	Issued	0	0.0%	1	100.0%	1	25.0%
	Denied	0	0.0%	2	100.0%	2	50.0%
	Non-Cert	0	0.0%	1	100.0%	1	25.0%
Total		0	0.0%	4	100.0%	4	100.0%
Total	Issued	946	36.1%	1,676	63.9%	2,622	62.2%
	Denied	48	6.3%	710	93.7%	758	18.0%
	Non-Cert	116	13.9%	720	86.1%	836	19.8%
Total		1,110	26.3%	3,106	73.7%	4,216	100.0%

Conclusion

Overall, in the period between October 2012 and March 2013, there were 5,008 EEP hearings. Eighty-four percent (84%) of these reviews were for initial appearances at the Parole Board.

The overall approval rate for the 4,216 offenders at initial appearances was 26%. The 2,622 offenders who earned an EEP certificate were approved for release at the highest rate (36%) when compared to the 836 that were non-certifiable (14%) or the 758 offenders denied an EEP certificate (6%).

Between October 2012 and March 2013, the 3,285 “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, the 296 Drug offenses represented only 7% of the hearings in this report period. This is in contrast to 2005, when drug offenses represented 47% of the hearings.

Of the 140 Youthful Offenders who were issued an EEP certificate, 63% were approved for release, the highest approval rate. Of the 128 Violent Felony cases that were issued an EEP certificate, only six (5%) were approved for release by the Parole Board.

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