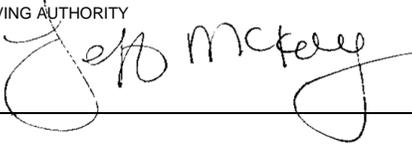


 <p>Corrections and Community Supervision</p> <p>DIRECTIVE</p>	TITLE Earned Eligibility		NO. 4793
			DATE 2/29/2016
SUPERSEDES DIR #4793 Dtd. 6/11/2014	DISTRIBUTION A B	PAGES PAGE 1 OF 3	DATE LAST REVISED
REFERENCES (Include but are not limited to) §805 Added L. 1987, c 261, §13 Amended 1987 c 262, §2 Amended 1995 c 3, §28 Amended 2003 c 26 part E, §4, 7NYCRR Part 2100	APPROVING AUTHORITY 		

I. PURPOSE: The Earned Eligibility Program provides inmates with an incentive for addressing the reason for their incarceration. The program recognizes that inmates are motivated to achieve a positive change in their lives and the program increases the likelihood of making a successful transition to the community upon release. Thus, one of the goals of the Earned Eligibility Program is to increase the number of inmates with indeterminate sentences who are released at their initial Parole Board Hearings without increasing the risk to the community.

Consideration is given no earlier than six months prior to the inmate's eligibility to be paroled. Pursuant to subdivision one of section 70.40 of the Penal Law, the Commissioner or designee shall review the inmate's institutional record to determine whether he or she has complied with the assigned program and has maintained a satisfactory disciplinary record. If the Commissioner or designee determines that the inmate has met the above criteria a Certificate of Earned Eligibility may be issued to the inmate. Any action by the Commissioner or designee pursuant to section 70.40 of the Penal Law shall be deemed a judicial function and shall not be reviewable if done in accordance with the law.

II. ELIGIBILITY: Upon entering the Department, inmates serving a sentence with a minimum term of no more than eight years shall be assigned an Earned Eligibility Program Plan.

Programs may include Academic, Vocational, Work, Substance Abuse, Aggression Replacement Training, Sex Offender Counseling and Treatment, and Transitional Services Phase I, II, and III.

Note: The term Earned Eligibility Program Plan is used for inmates eligible for Earned Eligibility Certificate consideration.

A. Programmatic Criteria

1. Satisfactorily pursue current established Earned Eligibility Program; and
2. No unsatisfactory program removals, refusals, or regressions.

B. Disciplinary Criteria

1. Maintained acceptable institutional behavior; and
2. No long-term Keeplock or SHU sanctions.

III. EFFECT ON THE SENTENCE: Consideration is available to inmates serving an indeterminate and/or determinate sentence with a minimum term of not more than eight years. Earned Eligibility determinations are made when inmates are being considered by the Parole Board for a discretionary release. Attendance, participation, and institutional behavior related to programming are evaluated. Based on the assessment's outcome, inmates are issued certificates, denied certificates, or assigned non-certifiable status.

Non-certifiable status represents neither a positive nor negative recommendation to the Parole Board. It is the status generally granted to eligible inmates who, through no fault of their own, have been unable to participate in programs for a significant amount of time. Non-certifiable status may be granted if inmates have insufficient time in programs for evaluation, have been hospitalized or in the infirmary, in protective custody, out to court for an extended period of time, or in a reception center or transit unit and have not programmed or will not achieve 90 days in programs at the time of the Parole Board appearance.

Notwithstanding any other provision of law, an inmate who is serving a sentence with a minimum of not more than eight years who has been issued a Certificate of Earned Eligibility shall be granted parole release at the expiration of the minimum term or successful participation in the Shock Incarceration Program, unless the Board of Parole determines that there is a reasonable probability that if such inmate is released, he or she will not live and remain at liberty without violating the law, and that his or her release is not compatible with the welfare of society.

IV. PROCEDURE: Persons committed to the custody of the Department under an indeterminate or determinate sentence of imprisonment shall be assigned work and/or treatment programs as soon as practicable.

A. Earned Eligibility Reviews

1. Upon entering the Department, a preliminary Earned Eligibility Plan is developed for each inmate.
2. To ensure each inmate has an Earned Eligibility Plan that identifies their needs, an inmate will be seen by the assigned Offender Rehabilitation Coordinator within five business days of arrival to the facility and the Earned Eligibility Plan will be reviewed on a quarterly basis.
3. Prior to the parole eligibility date, the Earned Eligibility review for eligible inmates will be completed using the criteria set forth in Section II above. The inmate's program history and record will be reviewed by a Supervising Offender Rehabilitation Coordinator and the Deputy Superintendent for Program Services or their respective designees. Factors which will be viewed negatively include:
 - a. Poor program participation;
 - b. Disciplinary removals; and
 - c. Refusal to participate in any recommended program.

B. Earned Eligibility Determination

1. Earned Eligibility determinations shall be made by the Commissioner or designee after Central Office review.
2. The decision of the Commissioner or designee to grant or withhold a Certificate of Earned Eligibility is final, except when the inmate fails to adhere to a recommended program plan and maintain acceptable custodial adjustment as indicated in Section IV-B-4 below. In lieu of an appeal mechanism, the Earned Eligibility Program provides ongoing opportunities for inmates to review and sign off on their Earned Eligibility Program Plan at the first general confinement facility and on a quarterly basis during the COMPAS Case Plan.

3. When issued, the Earned Eligibility determination notice shall be sent by the Offender Rehabilitation Coordinator to the inmate. Inmates who are denied or granted non-certifiable status shall have their decisions hand delivered by the Offender Rehabilitation Coordinator. The notice is to be received by the inmate within one week following the Commissioner's or designee's review. Copies shall be placed in the inmate's Guidance and Community Supervision folders. In addition, a chronological entry for Guidance is to be made.
4. The Certificate of Earned Eligibility may be revoked prior to the Parole Board Hearing if the inmate fails to continue to perform and actively pursue his or her assigned Earned Eligibility Plan.