



Corrections and Community Supervision

Earned Eligibility Program Summary Semiannual Report

October 2019 - March 2020

EARNED ELIGIBILITY PROGRAM SUMMARY

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INTRODUCTION

Legislative reporting requirements established in 1992 mandate semiannual reports on the Earned Eligibility Program (EEP). EEP evaluates an eligible incarcerated individual's program progress and overall record of behavior to determine if an Earned Eligibility Certificate (EEC) should be issued for his/her Parole Board interview. The issuance of an EEC reflects an evaluation of attendance, participation and progress as well as institutional behavior related to programming. 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 Board interview 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 Board disposition it is excluded from the analysis. For individuals with more than one interview during the relevant time period (due to postponements at their initial interview), information is provided on each interview 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 individuals who have demonstrated an overall pattern of progress in prescribed programs. The program administrators evaluate individuals' preparedness for release based on their compliance with sets of minimum standards for behavior and for progress toward satisfying treatment needs. The Earned Eligibility Program is governed by Directive 4793, which provides program explanation and eligibility criteria.²

Prior to an incarcerated individual's initial Parole Board interview, the Earned Eligibility Program provides for a review of treatment and disciplinary records to determine

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

² www.DOCCS.ny.gov/Directives/4793.pdf

whether the case is “certifiable” and whether an Earned Eligibility Certificate should be issued or denied. The criteria for these determinations are:

- Issued: Incarcerated individuals who have been programming successfully for 90 days or more at the time of their Parole Board appearance;
- Denied: Incarcerated individuals who have refused recommended programming, have disciplinary records that negatively impact program participation or have been removed from recommended programs for poor attendance and/or poor participation;
- Non-certifiable: Incarcerated individuals with less than 90 days of programming at the time of their Parole Board appearance due to out-to-court, medical restrictions, psychiatric care, or protective custody. Individuals who are unassigned for any of these reasons and whose programming was significantly impacted prior to their Parole Board appearance, may also be designated non-certifiable.

Evaluation results are provided to the Parole Board to be used in deciding whether to release the individual or to deny parole. For eligible individuals, an EEP review is required for each subsequent Parole Board interview. This program of standards and review is available to individuals serving indeterminate sentences with minimum sentences of eight years or less. Individuals serving determinate sentences, who are eligible for Parole Board authorized early release consideration such as Shock Incarceration, Early Conditional Parole for Deportation Only and Medical Parole, are also EEP eligible.

Earned Eligibility Program Expansion

When the Earned Eligibility Program began in 1987, eligibility for the program was limited to incarcerated individuals with minimum sentences of six years or less. The Legislature expanded the program to include individuals with minimum sentences of up to eight years in May 2003. Initial interviews 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 interviews that occurred between October 2019 and March 2020 for individuals with minimum sentences of eight years or less.

Types of Earned Eligibility Review Interviews

Table 1 shows that between October 2019 and March 2020, there were 3,684 interviews for Earned Eligibility cases. Merit interviews and Initial interviews are similar in that both usually represent the first appearance before the Parole Board. However, if an individual is denied at the Merit interview, then he or she will have a subsequent “Initial” interview which would actually be his or her second hearing. The 2,441 Initial interviews and the 567 Merit interviews will be the focus of this report. These 3,008 primary appearance interviews accounted for 82% of the cases reviewed, while reappearances accounted for the remaining 18%.

**Table 1: Parole Interview Type for EEP Cases by Month of Interview
October 2019 to March 2020**

Hearing Month	Interview Type				Total
	Initial*	Merit	Reappearance	Parole Violator Reappearance	
Oct 19	425 65.8%	88 13.6%	128 19.8%	5 0.8%	646 100.0%
Nov 19	430 64.0%	113 16.8%	123 18.3%	6 0.9%	672 100.0%
Dec 19	357 65.3%	89 16.3%	98 17.9%	3 0.5%	547 100.0%
Jan 20	407 66.0%	92 14.9%	109 17.7%	9 1.5%	617 100.0%
Feb 20	423 69.1%	102 16.7%	83 13.6%	4 0.7%	612 100.0%
Mar 20	399 67.6%	83 14.1%	102 17.3%	6 1.0%	590 100.0%
Total	2,441 66.3%	567 15.4%	643 17.5%	33 0.9%	3,684 100.0%

* Initials include 247 interviews for Shock cases

Earned Eligibility Status and Parole Board Interview Results

Table 2 shows that the Parole Board held 3,008 Initial and Merit interviews for EEP cases between October 2019 and March 2020.

- Of these cases, 57% were issued (1,725) an EEP Certificate, 21% were denied (626) and 22% were non-certifiable (657).
- DOCCS issued 1,725 EEP certificates. The Parole Board approved 62% or 1,074 of these cases.
- Non-Certifiable cases (657) were approved for release at a rate of 24%, while EEP cases that were denied a certificate (626) were approved for release at a rate of 20%.
- Overall, the Parole Board approved 45% of the EEP eligible cases for release.

**Table 2: EEP Review Results and Parole Board Approvals at Initial Interviews
October 2019 through March 2020**

EEP CERTIFICATE	Number of Interviews	Percent of Interviews	Approved for Parole	Percent Approved for Parole
Issued	1,725	57.3%	1,074	62.3%
Denied	626	20.8%	128	20.4%
Non-certifiable	657	21.8%	160	24.4%
Total	3,008	100.0%	1,362	45.3%

Earned Eligibility Certificate Denials and Parole Board Interview Results

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

- The majority (55%) of the 626 EEP certificate denials were due to poor behavior that interfered with program progress (342). This group had a 15% approval rate, the lowest rate among the denial reasons.
- Individuals denied an EEP certificate due to poor participation and/or progress accounted for 27% (166) of the group and were approved for release at a rate of 31%. This represents the highest approval rate among the four general denial reasons.
- Those who were denied due to poor program attendance accounted for 12% (77) of the cases and were approved at a rate of 22%.
- Those who refused to participate in their recommended programs accounted for 6% (39) of the denials and had a 21% rate of approval.

**Table 3: EEP Certificate Denial Reasons and Parole Board Approvals at Initial Interview
October 2019 through March 2020**

REASONS FOR EEP DENIAL	Number of EEP Denials	Percent of EEP Denials	Approved for Parole	Percent Approved Within Denial Reason
Poor Participation and / or Progress	166	26.5%	52	31.3%
Poor Program Attendance	77	12.3%	17	22.1%
Refusal to Participate	39	6.2%	8	20.5%
Behavior Interfered with Program	342	54.6%	51	14.9%
Other*	2	0.3%	0	0.0%
Total	626	100.0%	128	20.4%

* Other consists of reasons such as in reception, and LCTA program not satisfied.

Non-Certifiable Earned Eligibility Cases and Parole Board Interview 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 interview. In contrast with EEP denials, non-certification recognizes that deficiencies in the individual's program participation may be due to circumstances beyond the individual's control.

- Of the 657 cases determined to be non-certifiable, 371 individuals (56%) were in reception. These cases had a 19% approval rate.
- 268 individuals (41%) were non-certifiable due to insufficient time in prescribed programs. The approval rate of those individuals was 31%.

**Table 4: EEP Non-Certifiable Reasons and Parole Board Approvals at Initial Interviews
October 2019 through March 2020**

NON-CERTIFIABLE EEP STATUS REASONS	Number of EEP Non-Certifiable	Percent Non-Certifiable	Approved for Parole	Percent Approved within Non-Certifiable reason
In Reception	371	56.5%	72	19.4%
Insufficient Time	268	40.8%	82	30.6%
Hospital	9	1.4%	6	66.7%
Out to Court	6	0.9%	0	0.0%
Other*	3	0.5%	0	0.0%
Total	657	100.0%	160	24.4%

* Other consists of reasons such as protective custody, mental health status, impaired cognitive ability, Shock refusal, facility placement prohibits Merit time, etc.

Earned Eligibility Status within Offense Type and Parole Board Interview Results

Table 5 shows the distribution of the 3,008 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 3,008 initial EEP cases, 1,791 (60%) were Property/Other Offenders and 720 (24%) were convicted of Other Coercive crimes. Drug Offenders (192) made up 6%, Violent Offenders (155) made up 5% of the initial EEP cases, and Youthful Offenders (148) made up 5%.
- Among individuals issued an EEP certificate, Youthful Offenders were approved for release at the highest rate (82%), followed by Property/Other Offenders (69%), Other Coercive Offenders (56%), Drug Offenders (53%), and Violent Offenders (14%). Only 2 Juvenile Offenders were issued EEP certificates, neither of which were approved for parole.

**Table 5: EEP Status within Crime Category by Initial Parole Board Interview Result
October 2019 through March 2020**

OFFENSE TYPE	EEP CERTIFICATE	RELEASE DECISION				Total	
		APPROVED FOR PAROLE		PAROLE DENIED			
Violent	Issued	11	14.5%	65	85.5%	76	49.0%
	Denied	3	4.2%	68	95.8%	71	45.8%
	Non-Cert	1	12.5%	7	87.5%	8	5.2%
	Total	15	9.7%	140	90.3%	155	100.0%
Other Coercive	Issued	231	56.1%	181	43.9%	412	57.2%
	Denied	26	15.7%	140	84.3%	166	23.1%
	Non-Cert	23	16.2%	119	83.8%	142	19.7%
	Total	280	38.9%	440	61.1%	720	100.0%
Drug	Issued	77	53.1%	68	46.9%	145	75.5%
	Denied	6	15.8%	32	84.2%	38	19.8%
	Non-Cert	1	11.1%	8	88.9%	9	4.7%
	Total	84	43.8%	108	56.3%	192	100.0%
Property/ Other	Issued	724	68.7%	330	31.3%	1,054	58.8%
	Denied	79	26.7%	217	73.3%	296	16.5%
	Non-Cert	123	27.9%	318	72.1%	441	24.6%
	Total	926	51.7%	865	48.3%	1,791	100.0%
Youthful Offender	Issued	31	81.6%	7	18.4%	38	25.7%
	Denied	14	26.4%	39	73.6%	53	35.8%
	Non-Cert	12	21.1%	45	78.9%	57	38.5%
	Total	57	38.5%	91	61.5%	148	100.0%
Juvenile Offender	Issued	0	N/A	0	N/A	0	0.0%
	Denied	0	N/A	2	100.0%	2	100.0%
	Non-Cert	0	N/A	0	N/A	0	0.0%
	Total	0	0.0%	2	100.0%	2	100.0%
Total	Issued	1,074	62.3%	651	37.7%	1,725	57.3%
	Denied	128	20.4%	498	79.6%	626	20.8%
	Non-Cert	160	24.4%	497	75.6%	657	21.8%
	Total	1,362	45.3%	1,646	54.7%	3,008	100.0%

Conclusion

Overall, in the period between October 2019 and March 2020, there were 3,684 EEP interviews. Eighty-two percent (3,008 cases) of these reviews were initial appearances at the Parole Board.

The overall parole approval rate for the 3,008 incarcerated individuals at initial appearances was 45%, up from 44% in the previous six-month period (April to September 2019), but a slight decrease from the 49% approved for parole during the same time last year. The rate at which interviews resulted in issued EEP certificates increased to 57% from 53% of initial interviews in the previous six-month period.

The 1,725 individuals who earned an EEP certificate were approved for release at the highest rate (62%) when compared to the 657 that were non-certifiable (24%) and the 626 individuals that were denied an EEP certificate (20%). Approval rates varied from the previous six-month period when those who earned an EEP certificate were approved for release at 60%, those non-certifiable were approved at 31%, and those denied an EEP certificate were approved at 22%.

Between October 2019 and March 2020, the 2,511 “Property/Other” (1,791) and “Other Coercive” (720) Offenders constituted the two largest categories considered for an EEP certificate, which accounted for the majority (83%) of the initial interviews.

As a result of determinate sentencing and Drug Law reform, the 192 Drug Offenders represented only 6% of the initial interviews in this reporting period. This is in contrast to the same time period ending in 2009, when the 989 Drug Offenders represented 20% of the interviews. This represents an 81% decrease in the number of interviews held among drug offenders.

Of the 38 Youthful Offenders who were issued an EEP certificate, 82% were approved for release, which was the highest approval rate among crime categories for those issued EEP certificates. Of the 76 Violent Offenders that were issued an EEP certificate, only 14% (11 cases) were approved for release by the Parole Board, which was the lowest approval rate among crime categories for those issued EEP certificates.

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