



Corrections and Community Supervision

Earned Eligibility Program Summary Semiannual Report

October 2020 to March 2021

EARNED ELIGIBILITY PROGRAM SUMMARY

Semiannual Report, October 2020 – March 2021

INTRODUCTION

Legislative reporting requirements established in 1992 mandate semiannual reports on the Earned Eligibility Program (EEP), as defined in Correction Law section 805. 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 their Board of Parole interview. The issuance of an EEC reflects an evaluation of attendance, participation and progress as well as institutional behavior related to programming, and increases the likelihood of being granted parole. 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 Board of Parole interview dispositions and Earned Eligibility reviews. Data on Earned Eligibility statuses and Board of Parole dispositions are maintained by the Department of Corrections and Community Supervision (DOCCS). If a case is missing information on either Earned Eligibility status or Board of Parole 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, Board of Parole 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

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 Board of Parole interview. Presumptively approved individuals still appear before the Board of Parole to set the conditions of their parole supervision. This report treats the presumptively approved individuals as Board of Parole appearances who received parole approvals.

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

Prior to an incarcerated individual's initial Board of Parole interview, 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. The criteria for these determinations are:

- Issued: Incarcerated individuals who have been programming successfully for 90 days or more at the time of their Board of Parole 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 Board of Parole appearance due to insufficient time under custody, 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 Board of Parole appearance, may also be designated non-certifiable.

Evaluation results are provided to the Board of Parole 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 Board of Parole 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 Board of Parole 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 the tables in this report reflect the interviews that occurred between October 2020 and March 2021 for individuals with minimum sentences of eight years or less.

Types of Earned Eligibility Review Interviews

Table 1 shows that between October 2020 and March 2021, there were 2,496 interviews for Earned Eligibility cases. Merit interviews and Initial interviews are similar in that both usually represent the first appearance before the Board of Parole. However, if an individual is denied at the Merit interview, then that person will have a subsequent “Initial” interview which would actually be a second appearance. The 1,588 Initial interviews and the 375 Merit interviews will be the focus of this report. These 1,963 primary appearance interviews accounted for 79% of the cases reviewed, while reappearances accounted for the remaining 21%.

**Table 1: Parole Interview Type for EEP Cases by Month of Interview
October 2020 to March 2021**

Hearing Month	Interview Type				Total
	Initial*	Merit	Reappearance	Parole Violator Reappearance	
Oct 20	289 63.2%	61 13.3%	103 22.5%	4 0.9%	457 100.0%
Nov 20	303 65.6%	79 17.1%	74 16.0%	6 1.3%	462 100.0%
Dec 20	279 64.1%	73 16.7%	82 18.8%	2 0.5%	436 100.0%
Jan 21	238 62.1%	61 15.9%	81 21.1%	3 0.8%	383 100.0%
Feb 21	257 65.9%	53 13.6%	78 20.0%	2 0.5%	390 100.0%
Mar 21	222 60.3%	48 13.0%	96 26.1%	2 0.5%	368 100.0%
Total	1,588 63.6%	375 15.0%	514 20.6%	19 0.8%	2,496 100.0%

* Initials include 110 interviews for Shock cases

Earned Eligibility Status and Board of Parole Interview Results

Table 2 shows that the Board of Parole held 1,963 Initial and Merit interviews for EEP cases between October 2020 and March 2021.

- Of these cases, 56% (1,107) were issued an EEP Certificate, 23% (454) were denied and 20% (402) were non-certifiable.
- DOCCS issued 1,107 EEP certificates. The Board of Parole approved 61% or 677 of these cases.
- Non-Certifiable cases (402) were approved for release at a rate of 29%, while EEP cases that were denied a certificate (454) were approved for release at a rate of 20%.
- Overall, the Board of Parole approved 45% of the EEP eligible cases for release.

**Table 2: EEP Review Results and Board of Parole Approvals at Initial Interviews
October 2020 through March 2021**

EEP CERTIFICATE	Number of Interviews	Percent of Interviews	Approved for Parole	Percent Approved for Parole
Issued	1,107	56.4%	677	61.2%
Denied	454	23.1%	89	19.6%
Non-certifiable	402	20.5%	118	29.4%
Total	1,963	100.0%	884	45.0%

Earned Eligibility Certificate Denials and Board of Parole Interview Results

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

- The majority (66%) of the 454 EEP certificate denials were due to poor behavior that interfered with program progress. This group had a 12% approval rate, the lowest rate among the denial reasons.
- Individuals denied an EEP certificate due to poor participation and/or progress accounted for 24% of the group and were approved for release at a rate of 41%. This represents the highest approval rate among the four general denial reasons.
- Those who were denied due to poor program attendance accounted for 4% of the cases and were approved at a rate of 20%.
- Those who refused to participate in their recommended programs accounted for 5% of the denials and had a 21% rate of approval.

**Table 3: EEP Certificate Denial Reasons and Parole Board Approvals at Initial Interview
October 2020 through March 2021**

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	110	24.2%	45	40.9%
Poor Program Attendance	20	4.4%	4	20.0%
Refusal to Participate	24	5.3%	5	20.8%
Behavior Interfered with Program	300	66.1%	35	11.7%
Total	454	100.0%	89	19.6%

Non-Certifiable Earned Eligibility Cases and Board of Parole 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 Board of Parole 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 402 cases determined to be non-certifiable, 280 individuals (70%) were in reception. These cases had a 24% approval rate.
- 113 individuals (28%) were non-certifiable due to insufficient time in prescribed programs. The approval rate of those individuals was 43%.

**Table 4: EEP Non-Certifiable Reasons and Board of Parole Approvals at Initial Interviews
October 2020 through March 2021**

NON-CERTIFIABLE EEP STATUS REASONS	Number of EEP Non-Certifiable	Percent Non-Certifiable	Approved for Parole	Percent Approved within Non-Certifiable reason
In Reception	280	69.7%	67	23.9%
Insufficient Time	113	28.1%	49	43.4%
Hospital	3	0.7%	2	66.7%
Out to Court	6	1.5%	0	0.0%
Total	402	100.0%	118	29.4%

* 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 & Board of Parole Interview Results

Table 5 shows the distribution of the 1,963 EEP cases within offense types. Within each offense type, the result of the initial EEP review is cross referenced with the decision of the Board of Parole.

- Of the 1,963 initial EEP cases, 1,131 (58%) were Property/Other Offenses and 441 (22%) were Other Coercive Offenses. Drug Offenses (182) made up of 9% of EEP cases, and Violent Offenses (154) made up 8%, and Youthful Offender cases (54) made up 3%.
- Among cases issued an EEP certificate, Property/Other Offense cases were approved for release at the highest rate (68%), followed by Drug Offense cases (64%), Other Coercive Offenses (55%), Youthful Offender cases (44%), and Violent Offenses (23%). No Juvenile Offender cases were issued EEP certificates.

**Table 5: EEP Status within Crime Category by Initial Board of Parole Interview Result
October 2020 through March 2021**

OFFENSE TYPE	EEP CERTIFICATE	RELEASE DECISION				Total	
		APPROVED FOR PAROLE		PAROLE DENIED			
Violent	Issued	16	22.5%	55	77.5%	71	46.1%
	Denied	5	6.9%	67	93.1%	72	46.8%
	Non-Cert	1	9.1%	10	90.9%	11	7.1%
	Total	22	14.3%	132	85.7%	154	100.0%
Other Coercive	Issued	148	54.8%	122	45.2%	270	61.2%
	Denied	16	15.5%	87	84.5%	103	23.4%
	Non-Cert	17	25.0%	51	75.0%	68	15.4%
	Total	181	41.0%	260	59.0%	441	100.0%
Drug	Issued	82	63.6%	47	36.4%	129	70.9%
	Denied	8	19.5%	33	80.5%	41	22.5%
	Non-Cert	3	25.0%	9	75.0%	12	6.6%
	Total	93	51.1%	89	48.9%	182	100.0%
Property/ Other	Issued	427	68.0%	201	32.0%	628	55.5%
	Denied	57	25.2%	169	74.8%	226	20.0%
	Non-Cert	91	32.9%	186	67.1%	277	24.5%
	Total	575	50.8%	556	49.2%	1,131	100.0%
Youthful Offender	Issued	4	44.4%	5	55.6%	9	16.7%
	Denied	3	27.3%	8	72.7%	11	20.4%
	Non-Cert	6	17.6%	28	82.4%	34	63.0%
	Total	13	24.1%	41	75.9%	54	100.0%
Juvenile Offender	Issued	0	N/A	0	N/A	0	0.0%
	Denied	0	N/A	1	100.0%	1	100.0%
	Non-Cert	0	N/A	0	N/A	0	0.0%
	Total	0	0.0%	1	100.0%	1	100.0%
Total	Issued	677	61.2%	430	38.8%	1,107	56.4%
	Denied	89	19.6%	365	80.4%	454	23.1%
	Non-Cert	118	29.4%	284	70.6%	402	20.5%
	Total	884	45.0%	1,079	55.0%	1,963	100.0%

Conclusion

The 1,107 individuals who earned an EEP certificate were approved for release at the highest rate (61%) when compared to the 454 that were denied an EEP certificate (20%) and the 402 individuals that were non-certifiable (29%).

Between October 2020 and March 2021, the “Property/Other” (1,131) and “Other Coercive” (441) Offenses constituted the two largest categories considered for an EEP certificate, which accounted for the majority (80%) of the initial interviews.

As a result of determinate sentencing and Drug Law reform, the 182 Drug Offenses represented only 9% of the initial interviews in this reporting period. This is in contrast to the same time period ending in 2009, when Drug Offenses represented 20% of the interviews.

Of the 628 Property/Other Offenses issued an EEP certificate, 68% were approved for release, which was the highest approval rate among crime categories for those issued EEP certificates. Of the 71 Violent Offense cases issued an EEP certificate, only 23% (16 cases) were approved for release by the Board of Parole, which was the lowest approval rate among crime categories for those issued EEP certificates.

Overall, in the period between October 2020 and March 2021, there were 2,496 EEP interviews. Seventy-nine percent (1,963 cases) of these interviews were initial appearances at the Board of Parole.

The overall parole approval rate for the 1,963 incarcerated individuals at initial appearances was 45%, down from 49% in the previous six-month period (April to September 2020), and the same rate approved for parole during the same time period a year ago. The rate at which EEP interviews resulted in issued EEP certificates remained largely unchanged at 56%, down from 58% of initial interviews in the previous six-month period.

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