



Corrections and Community Supervision

Earned Eligibility Program Summary Semiannual Report

April 2022 through September 2022

EARNED ELIGIBILITY PROGRAM SUMMARY

Semiannual Report, April 2022 – September 2022

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 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' records are presented to 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 programs and disciplinary records to determine and whether an Earned Eligibility Certificate should be issued, denied, or the case is non-certifiable. 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 interview;
- 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 interview due to insufficient time under custody, being 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 interview, may also be designated non-certifiable.

Evaluation results are provided to the Board of Parole to be used in deciding whether to approve release of 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 April 2022 and September 2022 for individuals with minimum sentences of eight years or less.

Types of Earned Eligibility Review Interviews

Table 1 shows that between April 2022 and September 2022, there were 2,354 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 1,728 Initial interviews and the 294 Merit interviews will be the focus of this report. These 2,022 primary appearance interviews accounted for 86% of the cases reviewed, while reappearances accounted for the remaining 14%.

**Table 1: Parole Interview Type for EEP Cases by Month of Interview
April 2022 through September 2022**

| Interview Month | Interview Type | | | Total |
|-----------------|------------------------------|----------------------------|----------------------------|-------------------------------|
| | Initial* | Merit | Reappearance | |
| Apr '22 | 283 74.3% | 59 15.5% | 39 10.2% | 381 100.0% |
| May '22 | 271 74.7% | 47 12.9% | 45 12.4% | 363 100.0% |
| Jun '22 | 310 69.7% | 68 15.3% | 67 15.1% | 445 100.0% |
| Jul '22 | 277 72.3% | 40 10.4% | 66 17.2% | 383 100.0% |
| Aug '22 | 285 77.4% | 27 7.3% | 56 15.2% | 368 100.0% |
| Sep '22 | 302 72.9% | 53 12.8% | 59 14.3% | 414 100.0% |
| Total | 1,728 73.4% | 294 12.5% | 332 14.1% | 2,354 100.0% |

* Initials include 143 interviews for Shock cases

Earned Eligibility Status and Board of Parole Interview Results

Table 2 shows that the Board of Parole held 2,022 Initial and Merit interviews for EEP cases between April 2022 through September 2022 .

- Of these cases, 52% (1,047) were issued an EEP Certificate, 20% (406) were denied and 28% (569) were non-certifiable.
- DOCCS issued 1,047 EEP certificates. The Board of Parole approved 52% or 545 of these cases.
- Non-Certifiable cases (569) were approved for release at a rate of 23%, while EEP cases that were denied a certificate (406) were approved for release at a rate of 18%.
- Overall, the Board of Parole approved 37% of the EEP eligible cases for release.

**Table 2: EEP Review Results and Board of Parole Approvals at Initial Interviews
April 2022 through September 2022**

| EEP Certificate | Number of Interviews | Percent of Interviews | Approved for Parole | Percent Approved for Parole |
|-----------------|----------------------|-----------------------|---------------------|-----------------------------|
| Issued | 1,047 | 51.8% | 545 | 52.1% |
| Denied | 406 | 20.1% | 74 | 18.2% |
| Non-certifiable | 569 | 28.1% | 130 | 22.8% |
| Total | 2,022 | 100.0% | 749 | 37.0% |

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.

- Forty-four percent (180) of the 406 EEP certificate denials were due to behavior that interfered with program progress. This group had an 11% approval rate.
- Those who were denied due to poor participation and/or progress accounted for 41% of the cases and were approved at a rate of 29%. This represents the highest approval rate among the four general denial reasons.
- Individuals denied an EEP certificate due to poor program attendance accounted for 7% of the group and were approved for release at a rate of 10%.
- Those who refused to participate in their recommended programs accounted for 8% of the denials and had a 9% rate of approval, the lowest rate among the denial reasons.

**Table 3: EEP Certificate Denial Reasons and Board of Parole Approvals at Initial Interviews
April 2022 through September 2022**

| 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 | 165 | 40.6% | 48 | 29.1% |
| Poor Program Attendance | 29 | 7.1% | 3 | 10.3% |
| Refusal to Participate | 32 | 7.9% | 3 | 9.4% |
| Behavior Interfered with Program | 180 | 44.3% | 20 | 11.1% |
| Total | 406 | 100.0% | 74 | 18.2% |

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 569 cases determined to be non-certifiable, 259 individuals (46%) were in reception. These cases had a 19% approval rate.
- 303 individuals (53%) were non-certifiable due to insufficient time in prescribed programs. The approval rate of those individuals was 26%.

**Table 4: EEP Non-Certifiable Reasons and Board of Parole Approvals at Initial Interviews
April 2022 through September 2022**

| Non-Certifiable EEP Status Reasons | Number of Non-Certifiable | Percent Non-certifiable | Approved for Parole | Percent Approved within Non-Certifiable reason |
|------------------------------------|---------------------------|-------------------------|---------------------|--|
| In Reception | 259 | 45.5% | 49 | 18.9% |
| Insufficient Time | 303 | 53.3% | 79 | 26.1% |
| Hospital | 2 | 0.4% | 2 | 100.0% |
| Out to Court | 5 | 0.9% | 0 | 0.0% |
| Total | 569 | 100% | 130 | 22.8% |

Earned Eligibility Status within Offense Type & Board of Parole Interview Results

Table 5 shows the distribution of the 2,022 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 2,022 Initial EEP cases, 1,160 (57%) were Property/Other Offenses and 566 (28%) were Other Coercive Offenses. Violent Offenses (130) comprised 6% of EEP cases, Drug Offense cases (116) represented 6%, and the remaining 2% (49) were Youthful Offender cases. One Juvenile Offender case was included in Initial EEP cases.
- Among cases issued an EEP certificate, Youthful Offender cases were approved for release at the highest rate (75%) excluding the single Juvenile Offender case, followed by Property/Other Offense cases (61%), Drug Offense cases (52%), Other Coercive cases (42%), and Violent Offenses (15%).

**Table 5: EEP Status within Crime Category by Initial Board of Parole Interview Result
April 2022 through September 2022**

| Offense Type | EEP Certificate | Release Decision | | | | Total | |
|-------------------|-----------------|---------------------|---------------|---------------|--------------|--------------|---------------|
| | | Approved for Parole | | Parole Denied | | | |
| Violent Felony | Issued | 12 | 15.4% | 66 | 84.6% | 78 | 60.0% |
| | Denied | 1 | 2.2% | 45 | 97.8% | 46 | 35.4% |
| | Non-Cert | 3 | 50.0% | 3 | 50.0% | 6 | 4.6% |
| | Total | 16 | 12.3% | 114 | 87.7% | 130 | 100.0% |
| Other Coercive | Issued | 112 | 41.9% | 155 | 58.1% | 267 | 47.2% |
| | Denied | 17 | 14.9% | 97 | 85.1% | 114 | 20.1% |
| | Non-Cert | 28 | 15.1% | 157 | 84.9% | 185 | 32.7% |
| | Total | 157 | 27.7% | 409 | 72.3% | 566 | 100.0% |
| Drug Offenses | Issued | 50 | 52.1% | 46 | 47.9% | 96 | 82.8% |
| | Denied | 3 | 20.0% | 12 | 80.0% | 15 | 12.9% |
| | Non-Cert | 1 | 20.0% | 4 | 80.0% | 5 | 4.3% |
| | Total | 54 | 46.6% | 62 | 53.4% | 116 | 100.0% |
| Property/Other | Issued | 361 | 60.9% | 232 | 39.1% | 593 | 51.1% |
| | Denied | 50 | 23.3% | 165 | 76.7% | 215 | 18.5% |
| | Non-Cert | 92 | 26.1% | 260 | 73.9% | 352 | 30.3% |
| | Total | 503 | 43.4% | 657 | 56.6% | 1,160 | 100.0% |
| Youthful Offender | Issued | 9 | 75.0% | 3 | 25.0% | 12 | 24.5% |
| | Denied | 3 | 18.8% | 13 | 81.3% | 16 | 32.7% |
| | Non-Cert | 6 | 28.6% | 15 | 71.4% | 21 | 42.9% |
| | Total | 18 | 36.7% | 31 | 63.3% | 49 | 100.0% |
| Juvenile Offender | Issued | 1 | 100.0% | 0 | 0.0% | 1 | 0.0% |
| | Denied | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| | Non-Cert | 0 | 0.0% | 0 | 0.0% | 0 | 100.0% |
| | Total | 1 | 100.0% | 0 | 0.0% | 1 | 100.0% |
| Total | Issued | 545 | 52.1% | 502 | 47.9% | 1,047 | 51.8% |
| | Denied | 74 | 18.2% | 332 | 81.8% | 406 | 20.1% |
| | Non-Cert | 130 | 22.8% | 439 | 77.2% | 569 | 28.1% |
| | Total | 749 | 37.0% | 1,273 | 63.0% | 2,022 | 100.0% |

Conclusion

Overall, in the period between April 2022 and September 2022, there were 2,354 EEP interviews. Eighty-six percent (2,022 cases) of these interviews were Initial appearances at the Board of Parole.

The overall parole approval rate for the 2,022 Initial and Merit appearances was 37%, down from 38% in the previous six-month period (October 2021 through March 2022) but up from 34% approved for parole during April through September 2021. The rate at which EEP interviews resulted in issued EEP certificates increased to 52% from 49% of Initial and Merit interviews in the previous six-month period.

The 1,047 individuals who earned an EEP certificate were approved for release at the highest rate (52%) when compared to the 406 that were denied an EEP certificate (18%) and the 569 individuals that were non-certifiable (23%).

Between April and September 2022, 44% of the 406 cases denied an EEP certificate were denied due to behavior that interfered with their programming. Of the 569 cases that were non-certifiable, 53% were non-certified due to insufficient time in prescribed programs.

Besides the 1 Juvenile Offender case issued an EEP certificate and approved for release, Youthful offender cases had the highest approval rate among cases issued EEP certificates (75%). Of the 593 Property/Other Offenses issued an EEP certificate, 61% were approved for release. Fifty-two percent of the 96 Drug Offense cases issued an EEP certificate were approved for release. Of the 78 Violent Offense cases issued an EEP certificate, only 15% (12 cases) were approved for release by the Board of Parole, which was the lowest approval rate among crime categories for those issued EEP certificates.

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