



Corrections and Community Supervision

Earned Eligibility Program Summary Semiannual Report

October 2021 through March 2022

EARNED ELIGIBILITY PROGRAM SUMMARY

Semiannual Report, October 2021 – March 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 whether an Earned Eligibility Certificate should be issued, denied, or 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 October 2021 and March 2022 for individuals with minimum sentences of eight years or less.

Types of Earned Eligibility Review Interviews

Table 1 shows that between October 2021 and March 2022, there were 2,403 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 1,774 Initial interviews and the 262 Merit interviews will be the focus of this report. These 2,036 primary appearance interviews accounted for 85% of the cases reviewed, while reappearances and parole violation interviews accounted for the remaining 15%.

**Table 1: Parole Interview Type for EEP Cases by Month of Interview
October 2021 through March 2022**

Interview Month	Interview Type				Total
	Initial*	Merit	Reappearance	Parole Violator Reappearance	
Oct '21	312 73.1%	46 10.8%	68 15.9%	1 0.2%	427 100.0%
Nov '21	306 76.5%	42 10.5%	48 12.0%	4 1.0%	400 100.0%
Dec '21	318 78.3%	32 7.9%	52 12.8%	4 1.0%	406 100.0%
Jan '22	302 74.8%	32 7.9%	66 16.3%	4 1.0%	404 100.0%
Feb '22	245 75.6%	31 9.6%	48 14.8%	0 0.0%	324 100.0%
Mar '22	291 65.8%	79 17.9%	71 16.1%	1 0.2%	442 100.0%
Total	1,774 73.8%	262 10.9%	353 14.7%	14 0.6%	2,403 100.0%

* Initials include 132 interviews for Shock cases

Earned Eligibility Status and Board of Parole Interview Results

Table 2 shows that the Board of Parole held 2,036 Initial and Merit interviews for EEP cases between October 2021 through March 2022 .

- Of these cases, 49% (990) were issued an EEP Certificate, 23% (459) were denied and 29% (587) were non-certifiable.
- DOCCS issued 990 EEP certificates. The Board of Parole approved 57% or 564 of these cases.
- Non-Certifiable cases (587) were approved for release at a rate of 24%, while EEP cases that were denied a certificate (459) were approved for release at a rate of 17%.
- Overall, the Board of Parole approved 38% of the EEP eligible cases for release.

**Table 2: EEP Review Results and Board of Parole Approvals at
October 2021 through March 2022**

EEP CERTIFICATE	Number of Interviews	Percent of Interviews	Approved for Parole	Percent Approved for Parole
Issued	990	48.6%	564	57.0%
Denied	459	22.5%	79	17.2%
Non-certifiable	587	28.8%	138	23.5%
Total	2,036	100.0%	781	38.4%

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.

- Just over half (51%) of the 459 EEP certificate denials were due to behavior that interfered with program progress. This group had a 13% approval rate, the lowest rate among the denial reasons.
- Those who were denied due to poor participation and/or progress accounted for 39% of the cases and were approved at a rate of 21%.
- 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 27%. This represents the highest approval rate among the four general denial reasons.
- Those who refused to participate in their recommended programs accounted for 4% of the denials and had a 21% rate of approval.

**Table 3: EEP Certificate Denial Reasons and Board of Parole Approvals at Initial
October 2021 through March 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	178	38.8%	38	21.3%
Poor Program Attendance	30	6.5%	8	26.7%
Refusal to Participate	19	4.1%	4	21.1%
Behavior Interfered with Program	232	50.5%	29	12.5%
Total	459	100.0%	79	17.2%

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 587 cases determined to be non-certifiable, 245 individuals (42%) were in reception. These cases had a 20% approval rate.
- 334 individuals (57%) 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 October 2021 through March 2022

NON-CERTIFIABLE EEP STATUS REASONS	Number	Percent Non-certifiable	Approved for Parole	Percent Approved within Non-Certifiable reason
In Reception	245	41.7%	48	19.6%
Insufficient Time	334	56.9%	88	26.3%
Hospital	2	0.3%	2	100.0%
Out to Court	5	0.9%	0	0.0%
Shock Refusal	1	0.2%	0	0.0%
Total	587	100%	138	23.5%

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

Table 5 shows the distribution of the 2,036 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 2,036 initial EEP cases, 1,202 (59%) were Property/Other Offenses and 516 (25%) were Other Coercive Offenses. Violent Offenses (137) comprised 7% of EEP cases, Drug Offense cases (125) represented 6%, and the remaining 3% (55) cases were Youthful Offender cases.
- Among cases issued an EEP certificate, Youthful Offender cases were approved for release at the highest rate (80%), followed by Property/Other Offense cases (62%), Drug Offense cases (58%), Other Coercive cases (53%), and Violent Offenses (29%). No Juvenile Offender cases were issued EEP certificates.

**Table 5: EEP Status within Crime Category by Initial Board of Parole Interview Result
October 2021 through March 2022**

OFFENSE TYPE	EEP CERTIFICATE	RELEASE DECISION				Total	
		APPROVED FOR PAROLE		PAROLE DENIED			
Violent	Issued	21	28.8%	52	71.2%	73	53.3%
	Denied	2	3.4%	57	96.6%	59	43.1%
	Non-Cert	1	20.0%	4	80.0%	5	3.6%
	Total	24	17.5%	113	82.5%	137	100.0%
Other Coercive	Issued	132	52.8%	118	47.2%	250	48.4%
	Denied	17	17.2%	82	82.8%	99	19.2%
	Non-Cert	33	19.8%	134	80.2%	167	32.4%
	Total	182	35.3%	334	64.7%	516	100.0%
Drug	Issued	53	57.6%	39	42.4%	92	73.6%
	Denied	3	11.1%	24	88.9%	27	21.6%
	Non-Cert	1	16.7%	5	83.3%	6	4.8%
	Total	57	45.6%	68	54.4%	125	100.0%
Property/Other	Issued	350	61.9%	215	38.1%	565	47.0%
	Denied	54	20.8%	205	79.2%	259	21.5%
	Non-Cert	95	25.1%	283	74.9%	378	31.4%
	Total	499	41.5%	703	58.5%	1,202	100.0%
Youthful Offender	Issued	8	80.0%	2	20.0%	10	18.2%
	Denied	3	20.0%	12	80.0%	15	27.3%
	Non-Cert	7	23.3%	23	76.7%	30	54.5%
	Total	18	32.7%	37	67.3%	55	100.0%
Juvenile Offender	Issued	0	0.0%	0	0.0%	0	0.0%
	Denied	0	0.0%	0	0.0%	0	0.0%
	Non-Cert	1	100.0%	0	0.0%	1	100.0%
	Total	1	100.0%	0	0.0%	1	100.0%
Total	Issued	564	57.0%	426	43.0%	990	48.6%
	Denied	79	17.2%	380	82.8%	459	22.5%
	Non-Cert	138	23.5%	449	76.5%	587	28.8%
	Total	781	38.4%	1,255	61.6%	2,036	100.0%

Conclusion

Overall, in the period between October 2021 and March 2022, there were 2,403 EEP interviews. Eighty-five percent (2,036 cases) of these interviews were Initial interviews at the Board of Parole.

The overall parole approval rate for the 2,036 Initial and Merit interviews was 38%, up from 34% in the previous six-month period (April through September 2021), but down from 45% approved for parole during October 2020 through March 2021. The rate at which EEP interviews resulted in issued EEP certificates increased to 49% from 40% of Initial and Merit interviews in the previous six-month period.

The 990 individuals who earned an EEP certificate were approved for release at the highest rate (57%) when compared to the 459 that were denied an EEP certificate (17%) and the 587 individuals that were non-certifiable (24%).

Between October 2021 and March 2022, half of the 459 cases denied an EEP certificate were denied due to behavior that interfered with their programming. Of the 587 cases that were non-certifiable, 57% were non-certified due to insufficient time in prescribed programs.

Of the 565 Property/Other Offenses issued an EEP certificate, 62% were approved for release, which was the highest approval rate among crime categories for those issued EEP certificates, besides the 8 of 10 approved Youthful Offense cases. Of the 73 Violent Offense cases issued an EEP certificate, only 29% (21 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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