

 Corrections and Community Supervision DIRECTIVE	TITLE Board of Parole Interviews Held in Absentia		NO. 8610
			DATE XX/XX/22
SUPERSEDES DIR # 8610 Dtd. 3/12/20	DISTRIBUTION A B	PAGES PAGE 1 OF 3	DATE LAST REVISED
REFERENCES (Include but are not limited to) Executive Law 259-c, 259-i; 9 NYCRR(CC), Parts 8002, 8006	APPROVING AUTHORITY DRAFT – --/22		

- I. PURPOSE:** To instruct facility staff and the Board of Parole (“Board”) regarding *in absentia* parole release consideration due to an incarcerated individual’s waiver of a scheduled appearance before the Board as defined in section III.B. of this directive.
- II. POLICY:** Executive Law § 259-i(2)(a)(i) generally requires the Board to personally interview incarcerated individuals serving indeterminate sentences and determine whether they should be paroled, regardless of any other potential release mechanism, with the exception of active participants in the shock incarceration program. When *in absentia* parole release consideration is warranted, the Board and facility staff will conduct such appearances in accordance with this procedure.
- III. DEFINITIONS**
- A. *In Absentia* Release Consideration: An *in-absentia* parole release consideration is one that occurs without the presence and participation of the parole eligible incarcerated individual.
- B. Waiver: An incarcerated individual may waive an appearance before the Board under the following circumstances:
1. The incarcerated individual has refused to appear before the interviewing panel for no stated reason;
 2. The incarcerated individual has refused to appear before the interviewing panel but stated in writing their desire that the Board proceed with discretionary consideration in their absence;
 3. The incarcerated individual has appeared before the Board for a parole release interview but then refused to continue participating;
 4. The incarcerated individual, because of medical, cognitive or mental health reasons which are unlikely to abate within the reasonably foreseeable future, is incapacitated to such an extent that they are unable to:
 - a. attend the interview; OR
 - b. meaningfully communicate with the Board.
- C. Postponement: A postponement is an adjournment of a parole release interview granted by a panel of the Board for reasons including, but not limited to, the unavailability of an incarcerated individual, completion of records or a request by the incarcerated individual that relates to pending litigation or an administrative appeal.
- D. Another Jurisdiction: Another jurisdiction refers to any other state, the District of Columbia, or a federal correctional authority.

IV. ELIGIBILITY: Incarcerated individuals who are confined in another jurisdiction for sentences that are running concurrent with the New York State sentence cannot request that the Board conduct a parole release interview *in absentia*. The individual must be received by a New York State correctional facility before such an interview will be conducted.

V. PROCEDURE

A. Facility Staff

1. Where an incarcerated individual waives their appearance before a panel of the Parole Board prior to the appearance, the facility staff will:
 - a. interview the incarcerated individual and obtain the incarcerated individual's signature on [Form #8610A \(Page 1\)](#), "Waiver of Appearance." One staff member shall sign the form acknowledging they witnessed the incarcerated individual signing the waiver of appearance. If the incarcerated individual fails or refuses to sign the document, such refusal shall be noted on the document by checking the box "REFUSED TO SIGN." The form shall be signed and dated by two facility staff members when the incarcerated individual fails to or refuses to sign. The second signor must verify the individual's decision to waive their appearance.
 - b. confirm an incarcerated individual's waiver either the day before or on the day of the scheduled interview. Confirmation shall be indicated by the incarcerated individual signing and dating the executed Form #8610A (Page 2). Staff shall ensure the appropriate statement is checked. One staff member shall sign the form acknowledging they witnessed the incarcerated individual signing the confirmation of waiver of appearance. If the incarcerated individual refuses to do so, such refusal shall be noted on the document by checking the box "REFUSED TO SIGN." Again, , the form shall be signed and dated by two facility staff members if the incarcerated individual fails to or refuses to sign. The second signor must verify the individual's decision to waive their appearance.
 - c. If the incarcerated individual chooses to withdraw the waiver, the incarcerated individual will be allowed to appear as scheduled. The incarcerated individual will be instructed to sign and date the withdrawal of the waiver, Form #8610A (Page 3). One staff member shall sign the form acknowledging they witnessed the incarcerated individual signing the withdrawal of their waiver of appearance. If for whatever reason, the incarcerated individual wants to withdraw the waiver, yet not sign it, this refusal shall be noted on the document by checking the box "REFUSAL TO SIGN." The form shall be signed and dated by one facility staff member.
 - d. If the incarcerated individual notifies facility the day of that they wish to waive their appearance, Facility staff shall obtain incarcerated individual signature on Form #8610A (Page 2 Confirmation of Waiver). Staff shall ensure the appropriate statement is checked. If the incarcerated individual refuses to do so, such refusal shall be noted on the document by checking the box "REFUSED TO SIGN." Again, the form shall be signed and dated by two

facility staff members if the incarcerated individual fails to or refuses to sign. The second signor must verify the individual's decision to waive their appearance.

- e. Whenever possible, staff should encourage incarcerated individuals to appear before the Board as it is their statutory right to speak to the Parole Board Commissioners.
2. Where an incarcerated individual is unable to respond due to medical or mental health reasons, the facility staff will fill out [Form #8610B](#), "Non-Appearance Due to Medical Incapacitation," which states that the incarcerated individual because of medical, cognitive or mental health reasons which are unlikely to abate within the reasonably foreseeable future, is incapacitated to such an extent that they are unable to meaningfully communicate with or appear before the Board of Parole. This will be noted on the document by the facility staff.
3. All activity regarding the incarcerated individual's signing of [Form #8610A](#), or their refusal to sign such form, or in the case of [Form #8610B](#), shall be recorded in the incarcerated individual's case management system (CMS) record.
4. Please note that a postponement is not the same as a waiver of appearance. Thus, the attached forms are not to be signed when an incarcerated individual is simply seeking a postponement. The incarcerated individual must appear before the Board in the event of a postponement whenever possible.

B. Board of Parole

1. Where an incarcerated individual waives their appearance by refusing to continue after an interview commences, the Board shall make a record of such waiver. Form #8610A is not required.
2. If an incarcerated individual waives their appearance before a panel of the Board under any circumstance defined in section IIIB of this directive, the Board shall conduct the release consideration *in absentia*.
3. When the Board conducts its parole release consideration *in absentia*, it shall make a record of such consideration and the reasons for the decision pursuant to Executive Law § 259-i.

In the event the Board denies parole release, the incarcerated individual may appeal the decision as authorized by Executive Law 259-i(4) and 9 NYCRR § 8006.3(a), except that the incarcerated individual cannot challenge the decision on the grounds that it was made without a personal interview or that the decision was defective for reasons which reasonably could have been addressed during the interview or assert other procedural challenges. In addition, that an incarcerated individual waived their appearance before the Board due to an anticipated conditional release date is not a basis to disturb a Board decision rendered following consideration *in absentia*.