

# STATE OF NEW YORK

7445

2019-2020 Regular Sessions

## IN ASSEMBLY

May 3, 2019

Introduced by M. of A. O'DONNELL, WEPRIN, DE LA ROSA -- read once and referred to the Committee on Correction

AN ACT to amend the executive law, in relation to appeals of parole determination

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraphs (a) and (b) of subdivision 4 of section 259-i of  
2 the executive law, paragraph (a) as amended by section 11 of part E of  
3 chapter 62 of the laws of 2003 and paragraph (b) as added by chapter 904  
4 of the laws of 1977, are amended to read as follows:

5 (a) Except for determinations made upon preliminary hearings upon  
6 allegations of violation of presumptive release, parole, conditional  
7 release or post-release supervision, all determinations made pursuant to  
8 this section may be appealed in accordance with rules promulgated by the  
9 board except that a decision by the board denying parole release shall  
10 be a final decision for the purposes of article seventy-eight of the  
11 civil practice laws and rules. Any board member who participated in the  
12 decision from which the appeal is taken may not participate in the  
13 resolution of that appeal. The rules of the board may specify a time  
14 within which any appeal shall be taken and resolved.

15 (b) Upon an appeal [~~to the~~] from a board decision, the inmate may be  
16 represented by an attorney. Where the inmate is financially unable to  
17 provide for his own or her attorney, upon request an attorney shall be  
18 assigned pursuant to the provisions of subparagraph (v) of paragraph (f)  
19 of subdivision three of this section.

20 § 2. Subdivision 5 of section 259-i of the executive law, as amended  
21 by chapter 166 of the laws of 1991, is amended to read as follows:

22 5. Actions of the board. Any action by the board or by a hearing offi-  
23 cer pursuant to this article shall be deemed a judicial function and  
24 shall not be reviewable if done in accordance with law except that upon  
25 an appropriate petition the court may consider a release decision de

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[~~-~~] is old law to be omitted.

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1 novο. The court may in its own discretion require an appearance by the  
2 petitioner. The court may affirm the decision of the board, modify the  
3 decision, order a de novo interview for reconsideration by the board or  
4 provide a release date for the petitioner.

5 § 3. Subparagraph (i) of paragraph (a) of subdivision 6 of section  
6 259-i of the executive law, as amended by chapter 363 of the laws of  
7 2012, is amended to read as follows:

8 (i) The board shall provide for the making of a verbatim record of  
9 each parole release interview within thirty days of such interview,  
10 except where a decision is made to release the inmate to parole super-  
11 vision, and each preliminary and final revocation hearing, except when  
12 the decision of the presiding officer after such hearings result in a  
13 dismissal of all charged violations of parole, conditional release or  
14 post release supervision. An audio recording shall also be made of each  
15 parole release interview in its entirety. All documents submitted to the  
16 board shall be included in the hearing record for purposes of appeal.

17 § 4. This act shall take effect on the one hundred eightieth day after  
18 it shall have become a law.