STATE OF NEW YORK

4422

2023-2024 Regular Sessions

IN ASSEMBLY

February 14, 2023

Introduced by M. of A. O'DONNELL -- 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:

Section 1. Paragraphs (a) and (b) of subdivision 4 of section 259-i of the executive law, paragraph (a) as amended by section 11 of part E of chapter 62 of the laws of 2003 and paragraph (b) as amended by chapter 322 of the laws of 2021, are amended to read as follows:

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

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

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

5. Actions of the board. Any action by the board or by a hearing officer pursuant to this article shall be deemed a judicial function and shall not be reviewable if done in accordance with law **except that upon 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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novo. The court may in its own discretion require an appearance by the petitioner. The court may affirm the decision of the board, modify the decision, order a de novo interview for reconsideration by the board or provide a release date for the petitioner.

§ 3. Subparagraph (i) of paragraph (a) of subdivision 6 of section 259-i of the executive law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

(i) The board shall provide for the making of a verbatim record of each parole release interview **within thirty days of such interview**, except where a decision is made to release the incarcerated individual to parole supervision, and each preliminary and final revocation hearing, except when the decision of the presiding officer after such hearings result in a dismissal of all charged violations of parole, conditional release or post release supervision. **An audio recording shall also be made of each parole release interview in its entirety. All documents submitted to the board shall be included in the hearing record for purposes of appeal.**

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