

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 Assem-
bly, 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 amended by chapter
4 322 of the laws of 2021, 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 law 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 incarcerated
16 individual may be represented by an attorney. Where the incarcerated
17 individual is financially unable to provide for his or her own attorney,
18 upon request an attorney shall be assigned pursuant to the provisions of
19 subparagraph (v) of paragraph (f) 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 novo. 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 322 of the laws of
7 2021, 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 incarcerated individual
11 to parole supervision, and each preliminary and final revocation hear-
12 ing, except when the decision of the presiding officer after such hear-
13 ings result in a dismissal of all charged violations of parole, condi-
14 tional release or post release supervision. An audio recording shall
15 also be made of each parole release interview in its entirety. All docu-
16 ments submitted to the board shall be included in the hearing record for
17 purposes of appeal.

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