

**SB**

**287**



# SENATOR LOREN LEMAN

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## SPONSOR STATEMENT SB 287: Parole Considerations

In 1994, the Legislature passed, and the voters approved a constitutional amendment that strengthened the rights of victims of crimes. Among the rights enumerated is the right of a victim to be present at parole hearings.

Senate Bill 287 addresses the emotional trauma for victims when an inmate, eligible for parole, waives that parole hearing and essentially ends up on an automatic schedule of reappearances before the Parole Board.

This situation is not a common one, but it is still traumatic for the victim or the victim's family to gird themselves up for a planned parole hearing and to have that hearing canceled within 24 hours at the direction of the inmate, only then to be rescheduled and canceled every 30 days.

This bill puts the inmate on a schedule set by the Board, while meeting the ex post facto requirements of Alaska's Constitution in Article 1, Sections 1 and 7 and the U.S. Constitution in Article 1, Section 15.

This bill is supported by Victims for Justice.

Regulation

20.145

22 AAC 20.150 DEPARTMENT OF CORRECTIONS 22 AAC 20.150

(2) continue the applicant's case for review at any subsequent board hearing;

(3) deny the application for discretionary parole and require the prisoner to serve the remainder of the sentence without further review; or

(4) defer action as set out in 22 AAC 20.170. (Eff. 1/30/91, Register 117)

Authority: AS 33.16.060  
AS 33.16.100  
AS 33.30.130

22 AAC 20.150. APPLICANT'S RESPONSIBILITIES AND PROCEDURAL OPPORTUNITIES. (a) The parole applicant shall provide the department's staff with all information requested for inclusion in the parole progress report.

(b) The applicant shall completely and truthfully fill out a parole application. The completed application must be turned in to the parole officer a minimum of seven weeks before the week of the scheduled board hearing. Failure to submit the completed application in a timely manner constitutes the applicant's waiver of the right to apply until the following hearing at the institution where the applicant is housed.

(c) The applicant shall obtain and provide the department's staff with written documentation of the parole plan. This should include verification of employment, job training, educational plan, treatment plan, housing, and other letters of reference relevant to the applicant's plan. An applicant expecting to return to a small community where no parole officer is located should obtain documentation from the community's governing body of its willingness to receive the applicant in the community.

(d) The applicant should be prepared to discuss any topic that could reasonably relate to the applicant's possible success or failure on parole. These topics include present offense, prior criminal or antisocial behavior, family situation, possible emotional problems, employment, training or treatment plans, institutional record, alcohol and drug use, relationships with other people, financial solvency, and release plans.

(e) The applicant should also be prepared to discuss possible conditions of parole if released and how these might relate to the applicant's adjustment in the community.

(f) The applicant should be prepared to discuss possible mandatory parole conditions if discretionary parole is denied and if the applicant is subject to mandatory parole.

(g) Payment for the residence, sustenance, transportation, programming, treatment, or education of the applicant granted parole is

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solely the responsibility of the applicant. Under no circumstances is the board responsible for these costs.

(h) Discretionary parole release hearings are non-adversary hearings and an applicant is not entitled to legal representation except as set out in (n) of this section. The applicant has no right to present witnesses. The applicant may present any relevant written information from any interested person, group, or agency.

(i) The applicant must present written documentation of the proposed parole plan. This documentation should be supplied to the board through the applicant's institutional parole officer if the applicant is incarcerated in an Alaska correctional facility. This documentation should be sent directly to the board office by an applicant residing in a contract correctional facility outside of Alaska.

(j) The applicant will be interviewed by a quorum of the board. The applicant may make any relevant comments to the board, subject to 22 AAC 20.095(d).

(k) The applicant may waive the board's consideration of his or her case by signing a waiver. An applicant who, after notice, does not come to the hearing when requested will be deemed to have waived his or her hearing.

(l) The applicant may request reconsideration under 22 AAC 20.175 of a decision to continue the applicant's case or deny the applicant further parole consideration.

(m) The applicant may request a special review under 22 AAC 20.185 — 22 AAC 20.190.

(n) The applicant may be represented by an attorney at the hearing. No person other than an attorney licensed to practice law in the State of Alaska may represent the applicant. If the applicant is housed in a contract correctional facility outside Alaska, the applicant may be represented by an attorney licensed to practice law in that jurisdiction. It is the applicant's responsibility to obtain such representation. Neither the board, the department, nor the staff of any contract correctional facility have any responsibility to help arrange for or pay for representation. No other prisoner advocate is allowed.

(o) The applicant will be provided a copy of the parole progress report and attachments and have access to other records to be considered by the board, subject to AS 33.16.170(b). The applicant will be given a summary of any document provided to the board but withheld from the applicant under AS 33.16.170(c).

(p) The applicant may make any relevant comments about possible supplemental conditions of discretionary parole, subject to 22 AAC 20.095(d).

(q) The applicant may make any relevant comments about possible mandatory parole conditions if the applicant is subject to mandatory parole, subject to 22 AAC 20.095(d).

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(r) The applicant is entitled to access to and may make any relevant comments about the applicability of numerical guidelines that the board might consider in making its parole release decision.

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(s) The applicant may not question a victim who testifies before the board under 22 AAC 20.105(c) and 22 AAC 20.155(c). (Eff. 1/30/91, Register 117)

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Authority: AS 33.16.060 AS 33.16.150  
AS 33.16.100 AS 33.16.170  
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**22 AAC 20.155. VICTIM'S RESPONSIBILITIES AND PROCEDURAL OPPORTUNITIES.**

(a) A victim who has requested notification of a discretionary parole or parole rescission hearing and who has provided the commissioner with a current, valid mailing address will be advised in writing of the prisoner's discretionary parole release hearing 30 days before the hearing.

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(b) The victim will be provided a copy of the prisoner's parole application that does not include the proposed residence and employment addresses of the applicant.

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(c) The victim will be advised of the victim's right to personally appear at the hearing and to submit written comment to the board regarding the impact of the crime on the victim or the victim's family, the applicant's suitability for parole, and the conditions of parole, subject to 22 AAC 20.105.

2 AAC

(d) The victim will be advised of board regulations regarding appearance at a discretionary parole release or parole rescission hearing and of the victim's responsibilities under 22 AAC 20.105 if the victim wishes to appear at the hearing. The victim is responsible for any costs associated with appearing at the hearing.

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(e) The victim will be notified of the victim's right to receive the following information, if applicable, once the board makes the decision to grant parole, continue the applicant's case to a future date, or deny the application for parole for the remainder of the sentence:

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(1) the decision of the board on the prisoner's application for discretionary parole;

(2) the expected date of release of the prisoner;

(3) the expected geographic area of release of the prisoner;

(4) the conditions of parole of the prisoner;

(5) the address of the parole office in Alaska that is expected to be responsible for the supervision of the prisoner.

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(f) The victim does not have the right to notification of or appearance at a revocation hearing of the parolee conducted under AS 33.16.220.

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(g) The victim of a crime other than one described in 22 AAC 20.105(a), who has complied with (a) of this section, will be notified of

Statute

that crime, the board shall send notice of the hearing to the victim at least 30 days before the hearing. The notice must be accompanied by a copy of the prisoner's application for parole submitted under AS 33.16.130(a). However, the copy of the application sent to the victim may not include the prisoner's proposed residence and employment addresses.

(b) A victim who requests notice under this section shall maintain a current, valid mailing address on file with the board. The board shall send the notice required by this section to the last known address of the victim. The victim's address may not be disclosed to the prisoner or the prisoner's attorney.

(c) The victim has a right to attend meetings of the parole board in which the status of the prisoner convicted of the crime against that victim is officially considered and to comment, in writing or in person, on the proposed action of the board. Copies of any written comments shall be provided to the prisoner and the prisoner's attorney before action by the board.

(d) The board shall consider the comments presented under (c) of this section in deciding whether to release the prisoner on parole.

(e) If the victim requests, the board shall make every reasonable effort to notify the victim as soon as practicable in writing of its decision to grant or deny discretionary parole or to release the prisoner under AS 33.16.010(c). The notice under this subsection must include the expected date of the prisoner's release, the geographic area in which the prisoner is required to reside, and other pertinent information concerning the prisoner's conditions of parole that may affect the victim.

(f) Upon request of the victim, if a prisoner is released under AS 33.16.010(c), the board shall make every reasonable effort to notify the victim before the prisoner's release date. Notification under this subsection must include the expected date of the prisoner's release, the geographic area in which the prisoner is required to reside, and other pertinent information concerning the prisoner's conditions of parole that may affect the victim.

(g) A victim of a crime involving domestic violence shall be informed by the board at least 30 days in advance of a scheduled hearing to review or consider discretionary parole for a prisoner. The board shall inform the victim of any decision to grant or deny discretionary parole or to release the prisoner under AS 33.16.010(c). If the prisoner is to be released, the victim shall be notified of the expected date of the release, the geographic area in which the prisoner will reside, and any other information concerning conditions of parole that may affect the victim. The victim shall also be informed of any changes in the conditions of parole that may affect the victim. The board shall send the notice required to the last known address of the victim. A person may not bring a civil action for damages for a failure to comply with the provisions of this subsection. (§ 2 ch 88 SLA 1985; am §§ 12 — 15 ch 59 SLA 1989; am § 51 ch 64 SLA 1996)

↙ Cross references. — For rights of victims generally, see AS 12.61.

Effect of amendments. — The 1996 amendment, effective July 1, 1996, added subsection (g).

**Sec. 33.16.130. Application for discretionary parole.** (a) A prisoner eligible for discretionary parole may apply to the board for discretionary parole. As part of the application for parole, the prisoner shall submit to the board a parole release plan that includes the prisoner's plan for employment, residence, and other information concerning the prisoner's rehabilitative plans if released on parole.

(b) Before the board determines a prisoner's suitability for discretionary parole, the prisoner is entitled to a hearing before the board. The prisoner shall be furnished a copy of the preparole reports listed in AS 33.16.110, and permitted access to all records that will be considered by the board in making its decision except those that are made confidential by law. The prisoner may also respond in writing to all materials considered by the board, be present at the hearing, and present evidence to the board.

at least 30 days before  
prisoner's application for  
parole application sent to the  
parole board addresses.  
maintain a current, valid  
address required by this  
section may not be disclosed

and in which the status  
of the prisoner is fully  
considered and to the  
parole board. Copies of any  
written report of the  
prisoner's attorney before

(c) of this section in  
making every possible  
effort to notify the  
prisoner or deny discretionary  
parole under this subsection  
in the geographic area in which the  
prisoner is confined concerning the prisoner's

AS 33.16.010(c), the board  
shall determine the  
prisoner's release date,  
the date of the prisoner's  
parole, and other  
factors that may affect the

determined by the board at  
the discretion of the parole  
board to grant or deny  
parole. (c) If the prisoner is to  
be released, the geographic  
area concerning conditions  
of release of any changes in  
the area shall send the notice  
to bring a civil action for  
violation. (§ 2 ch 88 SLA  
1995)

amendments. — The 1996 amendment,  
added subsection (g)

(a) A prisoner eligible for  
parole. As part of the  
parole release plan that  
contains information concerning

discretionary parole, the  
parole board shall be furnished a copy  
of access to all records that  
except those that are made  
available to all materials considered  
for release to the board.

(c) The board shall issue its decision in writing and provide the basis for a denial of discretionary parole. A copy of the decision shall be provided to the prisoner. (§ 2 ch 88 SLA 1985)

*new section added here*

#### NOTES TO DECISIONS

**Section inapplicable to mandatory parolee.** Mandatory parolees are not denied equal protection of the laws because they are not permitted to appear before the parole board prior to their release while discretionary parolees are granted the right of an in-person appearance; the purpose of the parole hearing under this section is to allow the discretionary parolee an opportunity to persuade the board for

release on parole whereas the mandatory parolee must be released on parole at the end of the parolee's sentence less time deducted for good conduct. Accordingly, there is nothing for the board to consider with regard to whether a mandatory parolee should be released. *Smith v. State, Dep't of Cors., 872 P.2d 1218 (Alaska 1994).*

**Sec. 33.16.140. Order for parole.** An order for parole issued by the board, setting out the conditions imposed under AS 33.16.150(a) and (b) and the date parole custody ends, shall be furnished to each prisoner released on special medical, discretionary, or mandatory parole. (§ 2 ch 88 SLA 1985; am § 6 ch 70 SLA 1995)

**Effect of amendments.** — The 1995 amendment, effective September 3, 1995, inserted "special medical," near the end and made minor stylistic changes.

**Sec. 33.16.150. Conditions of parole.** (a) As a condition of parole, a prisoner released on special medical, discretionary, or mandatory parole

(1) shall obey all state, federal, or local laws or ordinances, and any court orders applicable to the parolee;

(2) shall make diligent efforts to maintain steady employment or meet family obligations;

(3) shall, if involved in education, counseling, training, or treatment, continue in the program unless granted permission from the parole officer assigned to the parolee to discontinue the program;

(4) shall report

(A) upon release to the parole officer assigned to the parolee;

(B) at other times, and in the manner, prescribed by the board or the parole officer assigned to the parolee;

(5) shall reside at a stated place and not change that residence without notifying, and receiving permission from, the parole officer assigned to the parolee;

(6) shall remain within stated geographic limits unless written permission to depart from the stated limits is granted the parolee;

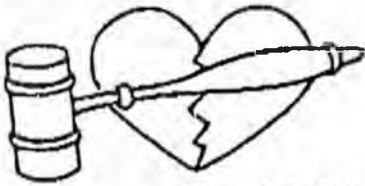
(7) may not use, possess, handle, purchase, give, distribute, or administer a controlled substance as defined in AS 11.71.900 or under federal law or a drug for which a prescription is required under state or federal law without a prescription from a licensed medical professional to the parolee;

(8) may not possess or control a firearm; in this paragraph, "firearm" has the meaning given in AS 11.81.900;

(9) may not enter into an agreement or other arrangement with a law enforcement agency or officer that will place the parolee in the position of violating a law or parole condition without the prior approval of the board;

(10) may not contact or correspond with anyone confined in a correctional facility of any type serving any term of imprisonment or a felon without the permission of the parole officer assigned to a parolee;

(11) shall agree to waive extradition from any state or territory of the United States and to not contest efforts to return the parolee to the state.

**VICTIMS**

**for Justice** 619 East Fifth Avenue • Anchorage, AK 99501  
(907) 278-0977 • Fax: (907) 258-0740

February 4, 1998

Senator Loren Leman  
716 W. 4th Ave. Suite 520  
Anchorage, Alaska 99501

Dear Senator Leman,

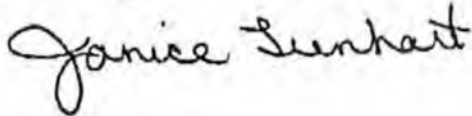
Thank you for sponsoring a bill that will lessen some of the trauma that is created by the criminal justice system. Victims for Justice has fought for victims' rights issues over the years with the goal of ensuring that victims' rights are equal to those of the defendant. Victims for Justice supports the legislation you are proposing regarding parole hearings. A defendant should not be able to use parole hearings as a way to manipulate the system.

It is rewarding to see the criminal justice system gain new insights and try to consider victims in their process; however, it is a slow process and many victims' rights are violated without any recourse. The victim cannot sue the state nor does the victim have an attorney to represent their violations. A beneficial component to this bill would be one that places limits on the defendants' ability to apply for parole and then reapply at a later date. An additional step that would be beneficial to the victim is one that would require the judge to consider the victim when making decisions about continuances. The victim needs to be a component on each part of the process. Restorative justice includes all parties, especially the victim.

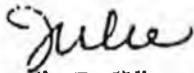
I also ask you to consider adding a section that limits the delays that seem to be commonplace throughout the trial process. After a homicide or violent crime, survivors experience a plethora of feelings related to their loss and to relearning a new way to live. This is a challenging feat in and of itself. Add to it the notification of continuances and delays in the trial process and one can imagine the pain, frustration, and stress that a victim experiences. Victims, according to their constitutional rights, are allowed to be present and make impact statements at the hearings in which a defendant is present. In order to be present and be heard, a victim must prepare both emotionally and spiritually prior to every hearing that takes place. The preparation process is often very draining and requires the victim to relive, in a sense, the loss of their loved one or the traumatic event that occurred. Imagine, if you will, how it must feel to prepare one's self for this and to then be informed that the hearing has been delayed. Multiply that two or three times and one can imagine

the pain, frustration, and anger a victim often feels when being exposed to this kind of victimization. I urge you to consider the Constitutional Rights of victims, especially the one that gives them the right to timely disposition of the case following the arrest of the defendant. It is time for victims' rights to be considered with as much concern and respect as defendants' right are in the criminal justice system.

Sincerely,



Janice Lienhart  
Executive Director



Julie D. Winsor  
Victim Services Advocate  
Victims for Justice