

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT:	PAGE <u> 1 </u> OF <u> 3 </u>
Kellogg Hearings	NUMBER: 105-PBD-02
RULE/CODE REFERENCE:	SUPERSEDES: 105-PBD-02 dated 07/19/10
RELATED ACA STANDARDS:	EFFECTIVE DATE: June 17, 2013
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish a standard procedure for providing mitigation hearings to those recommissioned offenders affected by the consent decree in *Kellogg, et al., v Shoemaker, et al., (1996), 927 F. Supp 244.*

III. APPLICABILITY

This policy applies to the Parole Board and other employees of the Department of Rehabilitation and Correction who are responsible for providing mitigation hearings pursuant to the consent decree in *Kellogg.*

IV. DEFINITIONS

Kellogg Eligible Inmate(s) - An inmate who has been identified as a bon-a-fide member of the class as established in *Kellogg.* The following criteria must be met for an inmate to be considered *Kellogg* eligible:

- The inmate must have committed a felony offense prior to September 1, 1992, for which the inmate was subsequently convicted, incarcerated and paroled.
- The inmate must be subsequently convicted of a new felony while on parole.
- The inmate must be subject to parole revocation based upon the new felony conviction.
- The inmate must not have had a violation hearing where parole was revoked on the parole period during which the new felony was committed.

Mitigation Evidence - Documentary or testimonial evidence relevant to the question whether there are substantial reasons which justify or mitigate the violation and make revocation inappropriate which an inmate can subpoena for submission at the hearing.

Mitigation Hearing - A hearing before a Parole Board hearing officer in which a *Kellogg* eligible inmate may present evidence relevant to the question whether there are substantial reasons which justified or mitigated the parole violation and make revocation inappropriate.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction to provide mitigation hearings to *Kellogg* eligible inmates pursuant to the terms of the consent decree entered into in that case.

VI. PROCEDURE

- A. Within thirty (30) days of an inmate's arrival at a Department of Rehabilitation and Correction reception center, *Kellogg* eligible inmates shall be identified by staff personnel at the Bureau of Sentence Computation (BOSC). Upon identification, BOSC shall designate the inmate as a *Kellogg* inmate in the appropriate screen within DOTS Portal.
- B. A designated Parole Board staff person shall retrieve a weekly list of inmates identified by BOSC as *Kellogg* eligible inmates who have not yet received a *Kellogg* hearing. Within fifteen (15) business days, the inmate shall be interviewed by a Parole Board hearing officer to determine whether the inmate will exercise his/her right to the *Kellogg* mitigation hearing.
- C. *Kellogg* eligible inmates who do not desire a mitigation hearing shall execute a waiver of the same. In the event that an inmate elects to waive the mitigation hearing but is unable to read the waiver, the waiver shall be read to the inmate and the designated hearing officer shall document on the waiver the fact that the waiver was read to the inmate. The inmate shall indicate on the waiver an acknowledgement that the waiver was read to him/her.
- D. Following the execution of the *Kellogg* waiver, the hearing officer shall complete the PVR/Kellogg Screening (DRC 3462R) and fill out the appropriate revocation action. The screening shall be forwarded to the Parole Board Chairperson/designee for final disposition. Once a final disposition is made, parole board minutes shall be completed.
- E. Hearings requested by *Kellogg* eligible inmates who do not execute waivers shall be scheduled by the hearing officer. The hearing officer shall make a referral to the Ohio Public Defender's Office for certification of those *Kellogg* eligible inmates requesting representation from the Ohio Public Defender's Office. The hearing officer at the reception center shall notify the inmate of the time and date when the mitigation hearing will be conducted. Said notification shall be in compliance with the procedural limitations as expressed in the decree of *Kellogg vs. Shoemaker, et. al.*, and shall afford (unless waived) a minimum of seven days, post notification, to facilitate preparation of mitigation evidence by the inmate. The hearing shall be scheduled within thirty days of the notification to the inmate by the hearing officer, and shall provide the inmate the right to appear and present the mitigation evidence on his/her own behalf.

- F. The hearing officer who services the applicable reception center shall ensure that requested witnesses are notified of the time and date of the intended hearing. The hearing officer shall ensure that necessary and relevant documentation is available, upon request for examination at the hearing.
- G. The Bureau of Classification shall be notified by the chief hearing officer/designee to ensure that eligible *Kellogg* members who have hearings are not transported from the reception center until the hearing is completed. The chief hearing officer/designee shall notify the Bureau of Classification and the Bureau of Sentence Computation upon final disposition of the case.
- H. Following the mitigation hearing, the hearing officer shall complete the report with recommendation and forward to the Parole Board Chairperson/designee to meaningfully consider the merits of the mitigation presented before rendering a final decision. (Kellogg Hearing Digest DRC3004)
- I. The inmate shall be notified in writing of the final decision by the Chief Hearing Officer/designee.
- J. The Chief Hearing Officer/designee shall submit monthly statistics regarding the number of *Kellogg* interviews and hearings completed to the Chair of the Parole Board/designee.

Related Department Forms:

Kellogg Hearing Digest
PVR/Kellogg Screening

DRC3004
DRC3462R