I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

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 Ohio Department of Rehabilitation and Correction (ODRC) who are responsible for providing mitigation hearings pursuant to the consent decree in Kellogg.

IV. DEFINITIONS

The definitions for the below listed terms can be found at the top of the policies page on the ODRC Intranet at the following:

Definitions Link

- Kellogg Eligible Incarcerated Individual(s)
- Mitigation Evidence
- Mitigation Hearing

V. POLICY

It is the policy of the ODRC to provide mitigation hearings to Kellogg eligible individuals pursuant to the terms of the consent decree entered into in that case.
VI. PROCEDURE

A. Within thirty (30) days of an individual’s arrival at an ODRC reception center, a Kellogg eligible person shall be identified by staff personnel at the Bureau of Sentence Computation (BOSC). Upon identification, BOSC shall designate the person as a Kellogg incarcerated individual in the appropriate screen within DOTS Portal.

B. A designated Parole Board staff person shall retrieve a weekly list of incarcerated individuals identified by BOSC as Kellogg eligible individuals who have not yet received a Kellogg hearing. Within fifteen (15) business days, the individual shall be interviewed by a parole board hearing officer to determine whether the person will exercise their right to the Kellogg mitigation hearing.

C. Kellogg eligible individuals who do not desire a mitigation hearing shall execute a waiver of the same. In the event that an individual elects to waive the mitigation hearing but is unable to read the waiver, the waiver shall be read to the individual and the designated hearing officer shall document on the waiver the fact that the waiver was read to the individual. The person shall indicate on the waiver an acknowledgement that the waiver was read to them.

D. Following the execution of the Kellogg waiver, the hearing officer shall complete the PVR/Kellogg Screening (DRC3462) 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 individuals 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 incarcerated individuals requesting representation from the Ohio Public Defender’s Office. The hearing officer at the reception center shall notify the incarcerated individual 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 (7) days, post notification, to facilitate preparation of mitigation evidence by the individual. The hearing shall be scheduled within thirty (30) days of the notification to the individual by the hearing officer and shall provide the individual the right to appear and present the mitigation evidence on their 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 and Reception (BOCR) 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 BOCR and the Bureau of Sentence Computation (BOSC) 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 incarcerated individual 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 parole board chair/designee.

Referenced Forms:

Kellogg Hearing Digest                 DRC3004  
PVR/Kellogg Screening                   DRC3462