

THE DEPARTMENT OF CORRECTION'S VERSION OF  
HOBSON'S CHOICE <sup>1</sup>  
AND / OR  
JOSEPH HELLER'S "CATCH-22" <sup>2</sup>

For decades, those serving life-without parole sentences had no realistic option other than to die in prison. In 2024, however, the Supreme Judicial Court (SJC) opened the door to all life-without-parole lifers whose crimes had been committed when they were between the ages of 18 and 21. This has affected over 200 lifers, now referred to as the Mattis lifers after the name of the case decided by the SJC.<sup>3</sup> Consequently, the Mattis lifers became eligible for parole after having served fifteen years.<sup>4</sup> Many, if not most, of the Mattis lifers had served from thirty to more than fifty years at the time of the SJC's decision.

The Parole Board has recognized that change occurs over time and that men and women age out of criminal behavior often after their mid-20's.<sup>5</sup> Most Mattis lifers are between forty-five and beyond sixty years old and have served decades in prison. As a result, the Parole Board began to grant paroles to Mattis lifers who were able to demonstrate that they had successfully completed programs which had addressed their needs and that they were no longer threats to the welfare of society.<sup>6</sup>

In addition, the Parole Board often required an approved Mattis lifer to serve a few months in minimum security in order to assist the lifer to prepare to rejoin society after decades in prison. For most people, including the Lifer's Group Inc., that provision seemed to be a reasonable precaution in order to provide the optimum opportunity for a lifer to return to society as a productive citizen.

But, not to the Department of Correction's classification experts who approve transfers of prisoners to minimum security. And, no Parole Board is going to usurp that power. So, what has the DOC done? Inexplicably, the DOC simply has denied Mattis lifers who have already been granted a parole, transfers to minimum security.

Now, the DOC employs a point based classification instrument to determine whether or not a prisoner should be transferred to lower security. Several factors are considered in arriving at a point score. According to the DOC Classification Regulations, the instrument uses "objectively defined criteris" which "are weighted, scored, and organized into a valid and reliable classification instrument."<sup>7</sup> For lifers, however, if the point score falls into the range where a transfer to minimum is called for and DOC classification personnel disagree, then they simply negate the decision using one or more overrides.<sup>8</sup> In essence, the DOC classification personnel simply do not trust the very instrument which had been developed and approved by the Department of Correction.

So, what are the overrides which have been applied to Mattis lifers?

Override R cites the nature of the offense and high notoriety which presents a "seriousness that cannot be captured in the score."<sup>9</sup> It should be noted that this factor is unchangeable and has been proven to have no reliable predictive value as to whether a lifer should be transferred to minimum security.

Override S - "Prior Criminal History - The Criminal History presents a seriousness that cannot be captured in the score."<sup>10</sup>

Override T: "Institutional Negative Adjustment - The institutional adjustment presents a seriousness that cannot be captured in

the score." 11

Override U: "Relates to the Safe Orderly Operation of the Facility - Those inmates whose behavior, while not always negative enough to warrant disciplinary action, may serve to threaten security or undermine the exercise of proper control and maintenance of order within the institution or other correctional facility." 12

Note that the first three deal with factors which "cannot be captured in the score." One has to ask: Why even use the classification instrument if it does not capture those three override factors? The answer is that the factors were considered by those who designed the instrument, but were rejected as having no proven predictive reliability in determining a lifer's suitability for a transfer to minimum security. DOC personnel, however, based solely on subjective hunches, something the valid and reliable classification instrument was designed to eliminate, seem to believe that they know better. What could be more subjective than an override which denies a transfer to minimum security on the grounds that the lifer's institutional adjustment (Code T) or behavior which might threaten and institution's security (Code U) is so seriously egregious, yet it defies definition as what specific behavior is? If a lifer's institutional adjustment or behavior is so bad, then why is that not reflected in the lifer's disciplinary history? Put simply, the DOC classification experts seem to claim that the lifer has a bad institutional adjustment or behavior which has evaded disciplinary action, yet the experts "know" the lifer is guilty of something, even if no one can put a finger on exactly what. Hello "Catch 22"!!

As if the use of overrides was not enough, Mattis lifers have been required to complete a questionnaire used for intaking prisoners

at the beginning of their sentences.<sup>13</sup> By definition, an intake questionnaire addresses issues of a new prisoner's background, especially drug or alcohol use, prior to or during the commission of the crime. An intake questionnaire, therefore, is not appropriate for prisoners who have spent decades in prison and who may already have successfully completed programs to address those very issues over twenty-five or more years of incarceration. Answering the questions truthfully about long past drug and/or alcohol use, according to the DOC, can categorize the Mattis lifer as in need of treatment. At which point, the lifer is offered the option of participating in the DOC's Correctional Recovery Academy Program (CRA).

Who has not used drugs or alcohol twenty-five or more years in the past? It is also possible that drugs or alcohol did play a part in the commission of the crime. But, that was then and this is now. Lifers who have DOC issued certificates attesting to their successful completion of DOC programs, including the CRA, are having those accomplishments disregarded and told they must complete the CRA. Thus, the only way to avoid undergoing programming geared to address issues no longer relevant to a Mattis lifer is to lie on the intake form. To do so, however, should the lifer be discovered as lying, would jeopardize the lifer's chance at a parole. Can you say: "Catch-22"?

One might ask: What could be wrong with this process? First, the DOC simply ignores the fact that the Mattis lifers have already completed the DOC sanctioned programs to address addiction issues and have remained sober for decades. To have to repeat the CRA could take over a year and is nonsensical and unnecessary.

Second, to make matters worse, the CRA, at least at MCI-Norfolk, is a toxic environment. For instance, a prisoner was lured into another prisoner's cell who was high on K2 in the CRA. The prisoner who had been lured in the other prisoner's cell was brutally raped.<sup>14</sup> In addition, drugs are rampant in the CRA which puts lifers into a perilous dilemma - a Hobson's Choice, if you will. As Patricia DeJuneas, a lawyer who specializes in parole, clemency and civil rights cases, opined: "When someone is trying to get sober being surrounded by their drug of choice is torturous. It's like someone with an alcohol problem living in a bar and never being allowed to leave."<sup>15</sup> Adding to the drug problem in the CRA is the fact that a guard assigned to that program was caught trying to smuggle drugs and other contraband, including \$400,000 worth of suboxone, into MCI-Norfolk.<sup>16</sup>

And, if a lifer refuses to participate in the CRA, he will not be transferred to minimum and may lose his job, single cell status, and participation in other programs. Hello again - Hobson's Choice.

One might wonder if the DOC does not transfer qualified lifers to lower security because there is no bed space. Well, if one does wonders such, then one would be wrong. As of December 30, 2024, lower security facilities were running on an average of 45% occupancy. So, bed space is no problem, utilizing the bed space does seem like a major problem to the DOC.

In the 2018 Crime Bill, the DOC and the Parole Board were ordered to work together in classifying prisoners. It is long past time that the DOC is required to heed that legislative mandate. The Lifer's Group Inc. exhorts the DOC to Let Our Mattis lifers go!!!

END NOTES

- 1) Hobson's Choice - an apparently free choice when there is no real alternative. Merriam-Webster's Collegiate Dictionary - Tenth Edition, 1998 at 551.
- 2) Catch-22 - a situation presenting two equally undesirable alternatives. Id at 180.
- 3) Com. v. Mattis, 493 Mass. 216 (2024)
- 4) Those lifers serving life-without-parole sentences for crimes committed when they were between the ages of 18 and 21 had their sentences reduced to second degree life which made them eligible for parole.
- 5) Dirk Greineder, Aging And Risk of Criminal Offenses: Aging Results in Dramatic Reductions in Criminal Behavior. Lifer's Group Inc. December 2024 at 1.
- 6) The criteria for granting a parole are: that the prisoner would not commit a crime if released and that such a release would not be incompatible with the welfare of society. (M.G.L. c. 127, sec. 130)
- 7) 103 CMR 420.05 - Definitions: Objective Point Base Classification System: The standardized evaluation and custody assignment of an inmate on objectively defined criteria. The criteria are weighed, scored, and organized into a valid and reliable classification instrument accompanied by an operational manual for applying the instrument to inmates in a systematic manner.
- 8) 103 CMR 420.05 - Definition: Override: A departure from a scored custody level, based on the professional judgment of trained staff.
- 9) MA DOC Male Objective Point Base Classification Manual at 24.
- 10) Id.
- 11) Id.
- 12) Id.
- 13) The Texas Christian University Developmental Research Intake.
- 14) "There's a real pandemic': Illegal drug known as K2 prevalent across Mass. prisons" Shelley Murphy, et al., Boston Globe, November 21, 2024 at 2.
- 15) Id at 5.
- 16) The Sun Chronicle - September 23, 2022.

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