STATE OF MINNESOTA

IN SUPREME COURT

A17-0863

Court of Appeals

Anderson, J.
Concurring, Hudson, J.
Dissenting, Lillehaug, McKeig, Thissen, JJ.
Dissenting, Thissen, J.

Donald G. Heilman

Appellant,

vs.

Filed: April 24, 2019
Office of Appellate Courts

Patrick C. Courtney, as Program Manager
for Minnesota Department of Corrections,

Respondent.

A. L. Brown, Capitol City Law Group, LLC, Saint Paul, Minnesota, for appellant.

Keith Ellison, Attorney General, Janine Kimble, Assistant Attorney General, Saint Paul, Minnesota, for respondent.

William Ward, Minnesota State Public Defender, Cathryn Middlebrook, Chief Appellate Public Defender, Saint Paul, Minnesota, for amicus curiae Minnesota Board of Public Defense.

Mahesha P. Subbaraman, Minneapolis, Minnesota, for amicus curiae Appellate Practice Section of the Minnesota State Bar Association.

S Y L L A B U S

1. The issue of when a felon's conditional-release term began under Minn. Stat. § 169A.276, subd. 1(d) (2018), was sufficiently raised below and was properly before the court of appeals.

2. A felon who participated in the Challenge Incarceration Program, Minn. Stat. §§ 244.17–.173 (2018), was "released from prison" for purposes of his conditional-release term under Minn. Stat. § 169A.276, subd. 1(d), when he entered phase II of the Program.

Reversed and remanded.

O P I N I O N

ANDERSON, Justice.

Appellant Donald Heilman, a participant in the Challenge Incarceration Program administered by the Department of Corrections (Department), contends that he was "released from prison" within the meaning of Minn. Stat. § 169A.276, subd. 1(d) (2018), when he entered phase II of that program. Heilman asserts that, under the correct statutory analysis, the State failed to calculate his conditional-release term correctly and revoked his conditional release improperly after it had already ended.[1] The district court granted judgment on the pleadings to the State on Heilman's ensuing false-imprisonment and negligence claims, and the court of appeals affirmed. *Heilman v. Courtney*, 906 N.W.2d 521, 526 (Minn. App. 2017). We reverse and remand to the court of appeals.

[1] Although respondent Patrick Courtney was named as a defendant in his individual capacity, it is undisputed that he was acting at all times in his capacity as an employee of the State of Minnesota.

FACTS

On September 13, 2004, Heilman was sentenced to a stayed 51-month prison sentence for a conviction of first-degree driving while impaired (DWI). *See* Minn. Stat. § 169A.24 (2018). The district court also imposed a 5-year conditional-release term as required by law. *See* Minn. Stat. § 169A.276, subd. 1(d) ("[W]hen the court commits a person to the custody of the commissioner of corrections [for first-degree DWI], it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years."). Following a probation revocation hearing, Heilman's prison sentence was executed on May 22, 2007.

In December 2007, Heilman entered the Department's Challenge Incarceration Program (Program). *See* Minn. Stat. §§ 244.17–.173 (2018). The Program consists of three statutory phases. *See* Minn. Stat. § 244.172 (laying out phases). Phase I, commonly called "boot camp," restricts participants to confinement "at the Minnesota Correctional Facility - Willow River/Moose Lake or the Minnesota Correctional Facility - Togo[.]" *Id.*, subd. 1. While confined, phase I participants receive "[i]ntensive instruction in military drill and ceremony, military bearing, customs, and courtesy." Minn. Dep't of Corr., *Policies, Directives and Instructions Manual*, Policy 204.060, at (C)(4) (Nov. 7, 2017) [opinion attachment]. They also participate in chemical-dependency-treatment programs and work programs. Minn. Stat. § 244.172, subd. 1.

Heilman finished phase I boot camp in July 2008 and entered phase II of the Program, which allowed him to live at his home. Though at his home, Heilman remained subject to "intensive supervision and surveillance." Minn. Stat. § 244.172, subd. 2. The

Department characterizes a phase II participant as committed to "house arrest." Minn. Dep't of Corr., *Policies, Directives and Instructions Manual*, Division Directive 204.061, at (J)(4) (July 26, 2016) [opinion attachment]. The phase II participant is subject to random drug testing. Minn. Stat. § 244.172, subd. 2. Department agents "must have reasonable access to the offender's residence on an ongoing basis." Division Directive 204.061, at (J)(2). "Access may occur any time of the day or night." *Id.* A phase II participant has limited social time. *See id.* at (J)(4) (allowing more social time as progress is made through phases II and III). The Department sets a curfew, limits visitors, and must preapprove social activities, including religious worship. *Id.* at (J)(4)–(6). Much of the participant's phase II time must be spent engaging in "constructive activity." *See id.* at (J)(7) ("All offenders must spend a minimum of 40 hours weekly in pre-approved constructive activity which includes employment, employment-seeking, education, treatment, Sentencing to Service, or community service work.").

Heilman moved to North Branch as he entered phase II. During the subsequent 18 months, Heilman secured work with several employers. He progressed from phase II to phase III in January 2009. Had Heilman successfully completed phase III, he would have been "placed on supervised release for the remainder of the sentence." *See* Minn. Stat. § 244.172, subd. 3. But, in April 2009, the Department returned him to phase II because he failed to remain sober. A few months later, Heilman again failed to remain sober. The Department then revoked his conditional release and ordered his return to custody.

On December 27, 2010, the Department released Heilman. By this date, Heilman had served two-thirds of his original 51-month sentence, the statutorily required minimum

"term of imprisonment." *See* Minn. Stat. § 244.101, subd. 1 (2018). The parties stipulated that Heilman began his supervised release on this date.

On March 12, 2014, Heilman was arrested for failing to complete inpatient chemical dependency treatment. On March 25, the Department held a hearing and revoked Heilman's release for 180 days from the date of arrest, but the Department then released Heilman on May 14. Why the Department released Heilman 50 days after this hearing, and 63 days after his arrest, is not clear from the record.

In July 2016, Heilman filed a complaint against Courtney, the Department's program manager, asserting claims against the State for negligence and false imprisonment. His complaint alleged the following:

- "By law, the conditional release period began after the plaintiff was released from prison."
- "Plaintiff was released from prison on July 9, 2008, to the Challenge Incarceration Program (also know[n] as 'Boot Camp.')."
- "Release to the boot camp program triggers the start of the conditional release period."
- "Five years from July 2008 is July 2013."
- "The plaintiff's conditional release period therefore expired sometime in July of 2013."
- "In the plaintiff's case, he was imprisoned until May of 2014—nearly a year beyond his lawful sentence."

Heilman asserts, consequently, that he had served his conditional-release term, and his incarceration for approximately 60 days in March, April, and May 2014 was not authorized by law.

The district court granted the State's motion for judgment on the pleadings and dismissed Heilman's claims with prejudice, concluding that Heilman failed to establish

that the State intentionally caused his confinement beyond his release date or owed him a duty. Additionally, the district court held that Heilman's confinement was legally justifiable, which is a defense to a claim of false imprisonment, and that Heilman's common-law claims were barred by *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994) (holding that actions under 42 U.S.C. § 1983 that necessarily invalidate the existence or duration of a sentence are not cognizable).

Heilman appealed the dismissal of his negligence and false-imprisonment claims. Concluding that Heilman's conditional release was properly revoked, the court of appeals affirmed. *Heilman*, 906 N.W.2d at 526. The court first reclassified the district court's order as a grant of summary judgment because the parties relied on documents outside the pleadings. *See id.* at 524. The court then turned to Minn. Stat. § 169A.276, subd. 1(d), and in particular the meaning of "released from prison." The court analogized the Challenge Incarceration Program to work release, another program administered by the Department. *Heilman*, 906 N.W.2d at 525; *see* Minn. Stat. § 241.26 (2018). It "rejected the idea that simply leaving the confines of a correctional facility constitutes a 'release from prison,' and concluded that the physical location of the inmate is not determinative." *Heilman*, 906 N.W.2d at 525 (citing *State ex rel. Huseby v. Roy*, 903 N.W.2d 633, 636–38 (Minn. App. 2017), *petition for rev. dismissed as moot* (Minn. Dec. 27, 2017)). The court relied on its own precedent that held that " 'both conditional release and supervised release are mandated to begin at the same time, i.e., the offender's release from prison.' " *Id.* (quoting *Maiers v. Roy*, 847 N.W.2d 524, 530 (Minn. App. 2014), *rev. denied* (Minn. Aug. 19, 2014)). Based on the parties' stipulation that Heilman's supervised

release began in December 2010, the court concluded that his "conditional-release term also commenced in December 2010[.]" *Id*. Then, because "appellant's conditional-release term did not expire until December 2015, and appellant's reincarceration between March and May of 2014 was lawful," it affirmed. *Id.* at 526.

Heilman petitioned for review, which we granted.

ANALYSIS

We are presented with two issues. First, did the court of appeals err when it affirmed the legality of Heilman's 2014 incarceration by interpreting Minn. Stat. § 169A.276, subd. 1(d)? Second, does a Challenge Incarceration Program participant begin a conditional-release term under Minn. Stat. § 169A.276, subd. 1(d), when entering phase II of the Program?

I.

We first address whether the court of appeals erred by interpreting Minn. Stat. § 169A.276, subd. 1(d), "sua sponte." Heilman claims that the court of appeals "sua sponte engaged in statutory interpretation of Minn. Stat. § 169A.276, subd. 1(d) to dispose of the case, even though the interpretation of Minn. Stat. § 169A.276, subd. 1(d) was not at issue below."[2] In assigning error, he cites *Thiele v. Stich*, 425 N.W.2d 580 (Minn. 1988), and *State v. Morse*, 878 N.W.2d 499 (Minn. 2016). The State agrees that the court of appeals'

[2] Heilman also argues that he was denied due process and a right to be heard. But he also expressly concedes that any violation of his constitutional due-process rights has been remedied by his opportunity to brief the issue here, and the State agrees. We need not, and do not, address Heilman's due-process and right-to-be-heard claims. *Cf. Day Masonry v. Indep. Sch. Dist. 347*, 781 N.W.2d 321, 327 n.7 (Minn. 2010).

statutory interpretation was undertaken sua sponte, because the court did not address the reasoning of the district court. But relying on Minn. R. Civ. App. P. 103.04 and *State v. Vasko*, 889 N.W.2d 551 (Minn. 2017), the State argues that the decision to do so was in the interest of justice.

This issue presents a legal question regarding procedural rules, so our standard of review is de novo. *Crowley v. Meyer*, 897 N.W.2d 288, 292 (Minn. 2017). Minnesota Rule of Civil Appellate Procedure 103.04 states: "[A]ppellate courts may reverse, affirm or modify the judgment or order appealed from or take any other action as the interest of justice may require." We have also said that a "reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Thiele*, 425 N.W.2d at 582 (citation omitted) (internal quotation marks omitted).

We begin with the observation that, in the district court proceedings, Heilman offered little in the way of legal authority supporting his argument. But in addition to accurate, if implied, references in his complaint to the statute setting out that his conditional-release term began after he was "released from prison," Heilman made the common-sense argument that the Department released him early because it recognized that he was not being lawfully held. The State does not contend that it did not understand the argument that Heilman made at the district court. Heilman's argument that he was wrongly detained by the State is based on a plain reading of the statute and is not complicated. *See* Minn. Stat. § 169A.276, subd. 1(d) (stating that "*after the person has been released from prison* the commissioner shall place the person on conditional release for five years"

(emphasis added)). It is true that Heilman did not cite the statute that we hold today supports this theory, but the State did cite the statute in its answer. Although the statutory argument could have been better developed and supported, Heilman's claim was presented, considered, and disposed of by the district court and is properly before our court.[3]

II.

Now, we turn to the specific issue presented by this appeal: when did Heilman's conditional-release term begin? The court of appeals concluded that Heilman's conditional-release term began at the same time as his supervised-release term. *Heilman*, 906 N.W.2d at 525. Heilman argues that the conditional release imposed by Minn. Stat. § 169A.276, subd. 1(d), begins when a Challenge Incarceration Program participant enters

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[3] Even if we concluded otherwise, the statutory interpretation by the court of appeals also fits squarely within an exception to the general *Thiele* rule:

> [A]n appellate court may base its decision on a theory not presented to nor considered by the trial court where the question raised for the first time on appeal is plainly decisive of the entire controversy on its merits and where there is no possible advantage or disadvantage to either party in not having had a prior ruling on the question by the trial court.

Zip Sort, Inc. v. Comm'r of Revenue, 567 N.W.2d 34, 39 n.9 (Minn. 1997). We have also held that a decision on such an issue, on appeal, does not "disadvantage . . . a party when the facts are undisputed." *Id.* Because the only fact necessary to the court of appeals' decision—when Heilman began his supervised-release term—was stipulated to, there was "no possible advantage or disadvantage to either party in not having had a prior ruling on the question by the trial court." *Id.*

Although other issues were briefed at the court of appeals, both parties agreed that the legality of Heilman's confinement was a decisive issue. The State stated in its brief to the court of appeals that Heilman's complaint was "fundamentally premised" on the invalidity of the decision to revoke Heilman's conditional release. And Heilman stated in his briefing to that court that whether he was "incarcerated beyond what the law allowed" was "the point of the lawsuit."

phase II of the Program. Heilman's argument is based on the plain meaning of "release," which we defined in *State ex rel. Duncan v. Roy*, 887 N.W.2d 271 (Minn. 2016).

The State disagrees with the analyses of both Heilman and the court of appeals. The State asserts that we should find the relevant statutes ambiguous as applied to the Program. It asserts that the Department, in spring 2014, came to the conclusion that the language "released from prison" was ambiguous as applied to Program participants, and as part of a risk management assessment, it decided to "err on the side of under-incarceration." This unwritten policy change, the State explains, coincides with Heilman's reincarceration and early release.

To begin, we note that the court of appeals properly treated the State's motion for judgment on the pleadings as a summary judgment motion, based on the parties' decision to present matters to the court outside the pleadings. *See Heilman*, 906 N.W.2d at 524; Minn. R. Civ. P. 12.03. On appeal from summary judgment, we ask whether there are any genuine disputes of material fact and whether the lower courts erred in their application of the law. *See N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004). Statutory interpretation issues are reviewed de novo. *See Harms v. Oak Meadows*, 619 N.W.2d 201, 202 (Minn. 2000).

The goal of all statutory interpretation is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2018). "When legislative intent is clear from the statute's plain and unambiguous language, we interpret the statute according to its plain meaning without resorting to other principles of statutory interpretation." *City of Brainerd v. Brainerd Invs. P'ship*, 827 N.W.2d 752, 755 (Minn. 2013).

Several statutes are relevant here, and we consider those statutes by moving from the general to the specific. Under Minnesota's sentencing scheme, felons generally serve sentences in two parts: "(1) a specified minimum *term of imprisonment* that is equal to two-thirds of the executed sentence; and (2) a specified maximum *supervised release term* that is equal to one-third of the executed sentence." Minn. Stat. § 244.101, subd. 1 (emphases added). " 'Term of imprisonment' . . . is the period of time equal to two-thirds of the inmate's executed sentence." Minn. Stat. § 244.01, subd. 8 (2018). "Supervised release" begins when the felon completes his or her "term of imprisonment." *See* Minn. Stat. § 244.05, subd. 1b(a) (2018) (stating that offenders "shall serve a supervised release term upon completion of the inmate's term of imprisonment and any disciplinary confinement period imposed by the commissioner due to the inmate's violation of any disciplinary rule").

Thus, supervised release occurs with most felony sentences, but an additional period of release—"conditional release"—is specifically imposed for certain classes of offenders. For example, certain sex offenders receive a mandatory 10-year conditional-release term; for others, a mandatory lifetime conditional-release term is imposed. *See* Minn. Stat. § 609.3455, subds. 6–7 (2018). "Functionally, conditional release is identical to supervised release." *Duncan*, 887 N.W.2d at 272 n.1. It is a period of supervision beyond the minimum term of imprisonment. *Cf.* Minn. R. 2940.0100, subp. 31 (2017) (defining "supervised release" as the "portion of a determinate sentence served by an inmate in the community under supervision and subject to prescribed rules").

Relevant here is the conditional-release term for first-degree DWI offenders. "[W]hen the court commits a person to the custody of the commissioner of corrections" for this offense, "it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years." Minn. Stat. § 169A.276, subd. 1(d).

We recently defined the plain meaning of "release" as " 'to set free from confinement or bondage.' " *Duncan*, 887 N.W.2d at 277 (quoting *The American Heritage Dictionary of the English Language* 1483 (5th ed. 2011)). Thus, "[w]hen an inmate is on supervised release, he or she is 'set free from confinement or bondage.' " *Id.* In *Duncan*, we held that a person whose supervised release had been revoked, and who was returned to prison as a result, was not serving supervised "release" because confinement in prison is not a form of "release." *See id.* at 278 (concluding that the time imprisoned would not serve as credit against a conditional-release term under the former sex offender conditional-release statute, Minn. Stat. § 609.109, subd. 7(a) (2004)). The same word, "release," is used in Minn. Stat. § 169A.276, subd. 1(d). The word has the same plain meaning. Conditional release for a DWI offense begins "after the person has been released from prison," which means DWI conditional release begins when a person is "set free from confinement"—specifically, set free "from prison."

This plain meaning is consistent with the structure of the Challenge Incarceration Program. Confinement is specifically required for phase I Program participants. *See* Minn. Stat. § 244.172, subd. 1 ("The offender must be *confined* at the Minnesota Correctional Facility - Willow River/Moose Lake or the Minnesota Correctional Facility -

Togo . . . ." (emphasis added)). In contrast, confinement is not required for phase II participants. They live in the community, and although they are subject to "intense supervision and surveillance" and "house arrest" conditions, phase II participants are not held—are not confined—in a Minnesota Correctional Facility. To the contrary, they have just been released from a correctional facility—specifically, released "from prison." Minn. Stat. § 169A.276, subd. 1(d). Because they are "released from prison," they have certain freedoms, including social time, visitor privileges, and the ability to find work, receive an education, and worship *in the community*. These freedoms, even if burdened with Department preapproval requirements, are not available to phase II participants before they are released from prison confinement. We therefore hold that the conditional release imposed under Minn. Stat. § 169A.276, subd. 1(d), unambiguously begins when a Challenge Incarceration Program participant enters phase II and begins living in the community.[4]

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[4] The dissent of Justice Lillehaug makes the point that house arrest is confinement. We agree. But "released from prison" is the decisive statutory phrase, not merely "released" in the abstract. Minn. Stat. § 169A.276, subd. 1(d). Even if Heilman was not "released" from confinement in an absolute sense when he reached phase II, he was "released" in the sense that matters for Minn. Stat. § 169A.276, subd. 1(d)—"released from prison."

We also agree with the dissent of Justice Lillehaug that Minn. Stat. § 244.085 (2018), which requires the Commissioner of Corrections to prepare an annual report relating to DWI offenders, including the number of offenders placed in the Program, Minn. Stat. § 244.085(5)(v), does not specify precisely when an offender is "released from prison." But as relevant here, the report must also include the number of offenders "*placed on intensive supervision following release from incarceration*." Minn. Stat. § 244.085(5)(iv) (emphasis added).

This language suggests that an offender is "release[d] from incarceration" when "placed on intensive supervision." The Legislature expressly provided that phase II of the

The court of appeals reached a different conclusion for two reasons. We are not persuaded by either.

First, the court held that "supervised release and conditional release are necessarily concurrent . . . ." *Heilman*, 906 N.W.2d at 525. In support, the court relied on *Maiers v. Roy*, 847 N.W.2d 524, 530 (Minn. App. 2014), *rev. denied* (Minn. Aug. 19, 2014). *See Heilman*, 906 N.W.2d at 525.

In *Maiers*, a felon on supervised release violated the terms of release and argued that this violation occurred only during his supervised-release term, not also during his DWI conditional-release term. 847 N.W.2d at 526–27. Thus, he reasoned, he could legally be reincarcerated for only the shorter remaining supervised-release term, not the full 5-year conditional-release term as the Department had decided. *See id.* at 529. The court of appeals rejected this argument:

> [B]oth conditional and supervised release are mandated to begin at the same time, i.e., the offender's release from prison. *See* Minn. Stat. § 169A.276, subd. 1(d) (conditional release); Minn. Stat. § 244.05, subd. 1b(a) (supervised release). Thus, they are necessarily concurrent until one of them expires.

Id. at 530.

The reasoning in *Maiers* is not applicable here. The DWI conditional-release term in question and supervised release under the Program are not "mandated to begin at the

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Program is "intensive supervision." Minn. Stat. § 244.172, subd. 2 (stating that "[p]hase II of the program lasts at least six months" and that "[t]he offender shall serve this phase of the offender's sentence in an *intensive supervision and surveillance program* established by the commissioner" (emphasis added)); *cf.* Minn. Stat. §§ 244.12–.15 (2018) (creating "intensive community supervision," a program which, see section 244.15 in particular, is closely analogous to phase II of the Program).

same time." *Compare* Minn. Stat. § 169A.276, subd. 1(d) (providing that DWI conditional release begins "after the person has been released from prison"), *with* Minn. Stat. § 244.172, subd. 3 ("If an offender successfully completes phase III of the challenge incarceration program before the offender's sentence expires, the offender shall be placed on supervised release for the remainder of the sentence."). Because the two release periods are not mandated to begin at the same statutory moment, they are not "necessarily concurrent." Therefore, we cannot agree that "[b]ecause an offender in the [Program] is not placed on supervised release until the offender 'successfully completes phase III,' an offender in the [Program] is not 'released from prison' until after completion of phase III." *Heilman*, 906 N.W.2d at 525 (citing Minn. Stat. § 244.172, subd. 3) (footnote omitted).[5]

Second, the court of appeals held that "the physical location of the inmate is not determinative." *Id.* It took this rule from *State ex rel. Huseby v. Roy*, 903 N.W.2d 633 (Minn. App. 2017), *petition for rev. dismissed as moot* (Minn. Dec. 27, 2017). *Huseby*, however, involved the interplay between work release and the DWI conditional-release statute. There are significant differences between work release and release under the Challenge Incarceration Program, including language in the work-release statute specifically stating that "[r]elease under this subdivision is an extension of the limits of confinement." Minn. Stat. § 241.26, subd. 1 (2018); *see also Huseby*, 903 N.W.2d at 637–38. *Huseby*, of course, is not binding on our court, but more importantly, the work-

[5] Our general statement in *Duncan* that an "inmate convicted of DWI serves a conditional-release term concurrently with a supervised-release term, without regard to whether the time is served in the community or in prison," 887 N.W.2d at 277, should not be read to contravene instances, such as here, where a statute specifies otherwise.

release program is not before us. It is sufficient for our purposes here to note that the differences between release under the Program and work release are substantial, not the least of which is that only phase I Program participants "must be confined." Minn. Stat. § 244.172, subd. 1.

Finally, the State disagrees with the analyses of both Heilman and the court of appeals. It argues that Minn. Stat. § 169A.276 is ambiguous as applied to the Challenge Incarceration Program and that it would be absurd to conclude that a felon could be "released" from prison for conditional-release purposes while still in the first, mandatory, two-thirds "minimum term of imprisonment." The problem with this argument, and the similar argument that Justice Lillehaug makes, is that the Challenge Incarceration Program is a specific exception to the general statutory scheme. Most felons may spend two-thirds of their sentence as their minimum term of imprisonment before the Department frees them from confinement and sends them into the community on release. *Cf. State v. Wukawitz*, 662 N.W.2d 517, 523 (Minn. 2003) ("The period of supervised release is typically one-third of the original pronounced sentence."). By legislative mandate, however, Program participants are treated differently.[6]

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[6] The ambiguity analysis of Justice Lillehaug's dissent relies on the objectives of Minn. Stat. § 169A.276 to strengthen and make more uniform the penalties for serious DWI offenses. The dissent argues that our decision makes the statute less effective by giving some DWI offenders an early start on their conditional-release terms and less uniform by disconnecting those terms from supervised-release terms.

It is true that the result today is consistent with an early start for some offenders' conditional-release terms. But this early start is the result of the decision of the Legislature to create the Challenge Incarceration Program, which sends offenders back into the

We close with two additional observations relevant to our conclusion, beginning with the past position of the Department. When Heilman failed the Program in September 2009, a Department record specifically stated the following: "Disposition: *Revoke conditional release* as described below." (Emphasis added.) That the Department revoked Heilman's "conditional release" in 2009 implies that Heilman did not begin his conditional-release term in 2010, as the State and the dissent now argue. That which has not yet begun cannot be revoked.

Second, our plain language analysis fits with the voluntary nature of the Program. *See* Minn. Stat. § 244.17, subd. 1(a) (conditioning participation on an offender's agreement and signing of a written contract). The main advantage the Program offers inmates is early

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community after a boot camp program and effectively functions, as recognized by the court of appeals, as "an early-release program." *Heilman*, 906 N.W.2d at 524.

As for the lack of uniformity, it may be generally true that, as the dissent says, conditional-release terms and supervised-release terms are meant to be coordinated: "[C]onditional release is governed by provisions relating to supervised release." Minn. Stat. § 169A.276, subd. 1(d). But we also look to the immediately preceding statutory language that the dissent fails to consider: "*Except as otherwise provided in this section,* conditional release is governed by provisions relating to supervised release." *Id.* (emphasis added). The same section unambiguously provides when conditional release begins, and therefore our determination on this point is not governed by provisions relating to supervised release. The disconnect the dissent finds is a result of the plain language the Legislature chose to employ, not our decision.

Nor are we persuaded by the dissent's reliance on the title of the Program. Although a title of an act may be considered when construing an ambiguous statute, it is " 'not of decisive significance and may not be used to vary the plain import of a statute's explicit language within the scope of the title.' " *Wukawitz*, 662 N.W.2d at 527 n.8 (quoting *La Bere v. Palmer*, 44 N.W.2d 827, 829 (Minn. 1950)). We do not find the meaning of "released from prison" ambiguous and decline the opportunity for further construction. Minn. Stat. § 645.16 (2018) ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.").

freedom. As Heilman describes, a felon who completes "boot camp" ends up "waking, walking, sleeping, eating, working, worshipping, contracting, and socializing" in the community, even if limited and supervised by the Department. The release may be limited, but that does not make it any less of a release. After all, the Department also limits the freedom of those on supervised release, *see*, *e.g.*, Minn. R. 2940.2000–.2100 (2017) (describing standard and special conditions of supervised release), but supervised release is nevertheless "release," as we recognized in *Duncan*, 887 N.W.2d at 277 ("When an inmate is on supervised release, he or she is 'set free from confinement or bondage.' " (quoting *The American Heritage Dictionary*, *supra*, at 1483)). As Heilman persuasively points out, "that's the point of the [Program]—*an early release from prison* before the term of imprisonment has expired." Presumably, felons understand this advantage, which is why they voluntarily choose to participate in the Program and its "boot camp."

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the court of appeals for the court to address the remaining issues in this appeal.

Reversed and remanded.

C O N C U R R E N C E

HUDSON, Justice (concurring).

I agree with the court's plain-language analysis and the conclusion that the conditional-release term imposed by Minn. Stat. § 169A.276, subd. 1(d) (2018), begins when a participant in the Challenge Incarceration Program begins living in the community. Based on this conclusion, I also agree that this case must be remanded to the court of appeals to address the remaining issues in this appeal.

I write separately, however, to explain my concern with section I of the court's opinion, which concludes that the court of appeals did not err when it sua sponte interpreted the language of Minn. Stat. § 169A.276, subd. 1(d). In my view, the court of appeals' analysis violated the principle of party presentation. Under this important principle, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.

"A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (citation omitted) (internal quotation marks omitted). The court concludes that the statutory-interpretation issue was impliedly presented, and considered and disposed of by the district court simply because Heilman's complaint alleged that his conditional-release period expired in July 2013. But the complaint never even cites the statute; its entire focus is on Heilman's false-imprisonment and negligence claims. Nor did the State argue to the district court that Heilman was not "released from prison" when he entered Phase II. Like Heilman, the State focused solely

on Heilman's common-law claims regarding false imprisonment and negligence, arguing that those claims were inappropriate methods of challenging the duration of Heilman's confinement. Thus, the district court never considered or decided whether Heilman was "released from prison" when he entered Phase II. Instead, the district court granted the State's motion to dismiss based (unsurprisingly) upon the common-law claims actually raised and argued by the parties. Because neither party "presented" (and the district court did not "consider") the issue of whether Heilman was released from prison when he entered Phase II, *Thiele* dictates that the court of appeals should not have considered that issue.

The court suggests that, even if I am correct that *Thiele* generally precluded the court of appeals from addressing the meaning of "released from prison," this case nevertheless falls within the no-possible-advantage exception of our forfeiture jurisprudence. I recognize that an appellate court may base its decision on a theory that was not presented or considered by the district court "where the question *raised* for the first time on appeal is plainly decisive of the entire controversy on its merits and where there is no possible advantage or disadvantage to either party in not having had a prior ruling on the question by the [district] court." *Zip Sort, Inc. v. Comm'r of Revenue*, 567 N.W.2d 34, 39 n.9 (Minn. 1997) (emphasis added). But in this case, the meaning of "released from prison" was not raised for the first time on appeal. Instead, it was *never* raised at all; it was decided sua sponte by the court of appeals without any party asking it to do so. As a result, Heilman *was* "disadvantaged," because he had no opportunity to argue in favor of his interpretation of the statute to the court of appeals. The parties' briefs to the court of appeals only addressed Heilman's common-law false-imprisonment and negligence claims, not the

meaning of "released from prison." Neither party addressed whether Heilman's entry into Phase II was a "release from prison" under the statute, and consequently the court of appeals erred in reaching that issue. Reaffirming *Thiele,* we recently held in *State v. Morse*—a case closely mirroring the facts here—that a "reviewing court must generally consider only those issues that the record shows were presented and considered by the district court in deciding the issues before it." 878 N.W.2d 499, 502 (Minn. 2016) (citation omitted) (internal quotation marks omitted).

The court also suggests that Heilman's stipulation of when he began his supervised-release term alleviates any potential disadvantage. But that stipulation is immaterial to the advantage/disadvantage analysis. What disadvantaged Heilman was not that the court of appeals used a particular date as the start date of Heilman's supervised-release term, but rather that the court concluded, without any input from Heilman, that his supervised-release date and his conditional-release date were the same date. The stipulation that Heilman's supervised-release date was in December 2010 does not affect the prejudice to Heilman that resulted from this analysis.

Finally, the court of appeals justified its decision to sua sponte interpret the statute on the basis that it could " 'affirm the judgment if it can be sustained on any grounds.' " *Heilman*, 906 N.W.2d at 524 (quoting *Meyers ex rel. Meyers v. Price*, 463 N.W.2d 773, 775 (Minn. App. 1990), *rev. denied* (Minn. Feb. 4, 1991)). While that general rule is doubtless true, it is missing an important caveat: the "any grounds" in question must be grounds raised *by one of the parties*. *See State v. Vang*, 847 N.W.2d 248, 259 n.4 (Minn. 2014) ("Because appellant does not challenge the sufficiency of the evidence that appellant

was in or had just exited a motor vehicle, we do not address that issue."); *State v. Swaney*, 787 N.W.2d 541, 551 n.4 (Minn. 2010) (noting that issue was not before the court *because* it was not raised by the parties); *Johnson v. Dirkswager*, 315 N.W.2d 215, 219 (Minn. 1982) (declining to base the court's decision on an issue not raised by appellants nor briefed).

Of course, appellate courts have the power to "take any . . . action as the interest of justice may require." Minn. R. Civ. App. P. 103.04. And courts have the responsibility to "decide cases in accordance with law," which is "not to be diluted by counsel's failure to specify issues or to cite relevant authorities." *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017) (citation omitted) (internal quotation marks omitted). But addressing the statutory-interpretation issue here is neither in the interests of justice nor necessary to ensure that this case is decided in accordance with the law.

The interests of justice are not served when the appellate courts decide cases based on issues that were neither raised nor argued by the parties because in our adversary system, "we follow the principle of party presentation." *Greenlaw v. United States*, 554 U.S. 237, 243 (2008). Under this principle, "we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Id.* If neither party wishes to raise an issue, justice is not served by the court reaching out to decide the issue without the benefit of adversarial briefing and argument. *See State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (noting that it was the court's duty to decide cases in accordance with the law, but that, because neither party raised an issue, "[i]f the doctrine were either novel or questionable, it might be appropriate for the court to solicit additional

briefs"). Having identified the statutory-interpretation issue on its own, the court of appeals could have requested supplemental briefing if the issue was novel or questionable. What it could not do, without violating the doctrine of party presentation, is decide the issue without the benefit of adversarial briefing and argument.

As this case exemplifies, the principle of party presentation is more than a prudential rule of convenience. Heilman persuasively argued, to our court, that he was denied due process and a right to be heard when the court of appeals decided this case based on an issue that was not subject to adversarial briefing and argument. The court properly declines to address this claim because Heilman conceded in this argument that any due-process violations have been remedied by his opportunity to brief the issue here, and therefore the court's consideration of the statutory-interpretation issue does not violate the principle of party representation. But to be clear, Heilman was afforded that opportunity only because we granted his petition for further review—a discretionary decision that we exercise sparingly. In the 2017–2018 term, we received 531 petitions for review and granted review in 81 cases—approximately 15 percent. These statistics underscore the importance of an adversarial system where appellate courts confine themselves to ruling on legal questions presented and argued by the parties before them.

Because Heilman was afforded the opportunity to brief the statutory-interpretation issue in our court and because under the unambiguous language of the statute Heilman was released from prison when he entered Phase II of the Challenge Incarceration Program, I agree with the result in this case, though I only join section II of the court's opinion.

D I S S E N T

LILLEHAUG, Justice (dissenting).

Because there are two reasonable interpretations of Minn. Stat. § 169A.276, subd. 1(d) (2018), regarding when an offender is considered "released from prison," and because the court's interpretation is less reasonable than the court of appeals' interpretation, I respectfully dissent.

This case lies at the intersection of two statutes: one strengthening the law against driving while under the influence (DWI) by imposing mandatory penalties, Minn. Stat. § 169A.276, and the other governing the Challenge Incarceration Program, *see* Minn. Stat. §§ 244.17–.173 (2018). The result turns on the meaning of a single statutory phrase about mandatory sentences for first-degree DWI: "[W]hen the court commits a person to the custody of the commissioner of corrections under this subdivision, it shall provide that after the person has been *released from prison* the commissioner shall place the person on conditional release for five years." Minn. Stat. § 169A.276, subd. 1(d) (emphasis added).

The question is, what did the Legislature mean by the phrase "released from prison"? The court interprets the phrase to mean that a DWI offender who participates in the Challenge Incarceration Program is "released from prison" upon completing the Program's Phase I; that is, when the offender is no longer confined within a Minnesota Correctional Facility. In other words, one is "released from prison" when one is no longer housed within the four walls of what is commonly thought of as a "prison." I agree that this interpretation is reasonable.

But there is a second reasonable interpretation: the one adopted by the court of appeals. An offender is "released from prison" when the offender completes the term of *imprisonment*. "Term of imprisonment" has long been defined by the Legislature as two-thirds of the executed sentence. Minn. Stat. § 244.01, subd. 8 (2018). And the Legislature expressly incorporated that definition into the Challenge Incarceration Program statute. Minn. Stat. § 244.171, subd. 4 (" 'Term of imprisonment' means a time period equal to two-thirds of the sentence originally executed by the sentencing court, minus jail credit, if any."). It makes sense that, when an offender is no longer serving a "term of imprisonment," the offender is "released from prison." At that point, the offender is on "supervised *release*" and, for some offenses such as first-degree DWI, is also on "conditional *release*."

"If a statute is reasonably susceptible to more than one interpretation, it is ambiguous and we may resort to the canons of construction or legislative history to determine the intent of the Legislature." *State ex. rel. Duncan v. Roy*, 887 N.W.2d 271, 276 (Minn. 2016). The court of appeals' reasonable interpretation is likely what the Legislature intended, for three reasons.

First, the court of appeals' interpretation better fits with the plain meaning of the statutory word "release." We defined that word in *Duncan*, concluding that an offender is "released" when "set free from confinement or bondage." *Id*. at 277. In *Duncan*, we recognized that that moment was when the term of supervised *release* began. In the Challenge Incarceration Program, supervised release begins, not at the end of Phase I, but

only when all three Phases of the Program have been completed successfully. Minn. Stat. § 244.172, subd. 3.

Second, as its title announces, offenders in the Challenge Incarceration Program are incarcerated. One who is "incarcerated" is not free from confinement or bondage. *See The American Heritage Dictionary of the English Language* 887 (5th ed. 2011) (defining incarcerate as "[t]o shut in; confine" as well as "[t]o put in a prison or jail"). After the offender completes Phase I, the offender is still "committed to the commissioner's custody," Minn. Stat. § 244.17, subd. 2(a), even if no longer confined in a Minnesota Correctional Facility.

I doubt that offenders in Phase II of the Challenge Incarceration Program consider themselves "free from confinement or bondage." As the court acknowledges, such offenders are basically under "house arrest," subject to intensive supervision and surveillance, daily reporting, drug tests without notice, and any other requirements imposed by the commissioner. Minn. Stat. § 244.172, subd. 2. House arrest is confinement. The Legislature has told us so, in a statute governing work release, another corrections alternative. Work release is "an extension of the limits of confinement." Minn. Stat. § 241.26, subd. 1 (2018). Among those still confined are offenders under "house arrest . . . monitored by electronic surveillance in an approved residence." Minn. Stat. § 241.26, subd. 2 (2018).[1]

[1] I agree with the court that work release and the Challenge Incarceration Program differ in important respects. But in at least one important respect—the meaning of release, as opposed to confinement—the programs are sufficiently similar.

Third, the court of appeals' interpretation better promotes the objective of section 169A.276: to remedy a serious, repeated DWI problem by establishing mandatory penalties for felony violations. *See* Minn. Stat. § 645.16 (2018) (noting that "the intention of the legislature may be ascertained by considering," *inter alia*, "the occasion and necessity for the law," "the mischief to be remedied," and "the object to be attained"). Subdivision 1(a) of section 169A.276 requires imprisonment for not less than three years for a first-degree DWI offender. Subdivision 1(d) requires an additional conditional release term of five years. The obvious goal of the statute is to strengthen and make more uniform the penalties for serious DWI offenses. The statute also signals that conditional-release terms and supervised-release terms are coordinated: "conditional release is governed by provisions relating to supervised release." Minn. Stat. § 169A.276, subd. 1(d). As we noted in *Duncan*, the practical effect of subdivision 1(d) "is that an inmate convicted of DWI serves a conditional-release term concurrently with a supervised-release term . . . ." 887 N.W.2d at 277.

The court's interpretation makes the statute less effective and uniform. It gives some first-degree DWI offenders an early start on their conditional-release terms and disconnects those terms from the supervised-release terms. This discrepancy undermines the system of mandatory penalties the Legislature enacted to remedy a serious problem.[2]

[2] Minnesota Statutes § 244.085(5)(v) (2018), the statute which requires the commissioner of corrections to submit an annual report on DWI offenders, also supports the court of appeals' interpretation. One portion of that statute deals expressly with the Challenge Incarceration Program. It requires the commissioner to state the number of such offenders "placed in the challenge incarceration program, the number of offenders released

For all of these reasons, the court of appeals' reasonable interpretation of the statute is better aligned with the Legislature's intent. Therefore, I respectfully dissent from the court's conclusion that a first-degree DWI offender is "released from prison" upon completion of Phase I of the Challenge Incarceration Program. I would affirm the decision of the court of appeals.

McKEIG, Justice (dissenting).

I join in the dissent of Justice Lillehaug.

THISSEN, Justice (dissenting).

I join in the dissent of Justice Lillehaug.

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from prison under this program, and the number of these offenders who violate their release conditions and the consequences imposed . . . ." *Id.* The statute does not specify precisely when an offender is "released from prison." But its reference to violations of "release conditions" probably refers to violations of conditional-release and supervised-release conditions. The Challenge Incarceration Program statute refers to commissioner "requirements," not "release conditions." Minn. Stat. § 244.17, subd. 1.

D I S S E N T

THISSEN, Justice (dissenting).

I join in Justice Lillehaug's dissent because I agree with his analysis of the legislative intent behind Minn. Stat. § 169A.276 (2018).

I write briefly because I find troubling the Department of Corrections' goalpost moving. In 2009, the Department stated that appellant Donald Heilman's "conditional release" was revoked. As the majority points out, "[t]hat which has not begun cannot be revoked." Nonetheless, in 2014, the Department switched positions, claiming conditional release did not start until December 2010. And then, several weeks later, the Department again switched course, claiming a new policy of "underincarceration." The Department's conduct is unacceptable when an individual's freedom is at stake and contributes to a sense that the criminal justice system is arbitrary and unfair. If there is a justification for the Department's indecision, it is due in part to the proliferation of conditional-release provisions with different rules for different crimes and the Legislature's enactment of a variety of early-release provisions, e.g., private employment of inmates, Minn. Stat. § 241.26 (2018); intensive supervised release, Minn. Stat. §§ 244.12–.15 (2018); the Challenge Incarceration Program, Minn. Stat. §§ 244.17–.173 (2018), each with different qualifying conditions and rules.

DEPARTMENT OF CORRECTIONS

Policy:	**204.060**
Title:	**Challenge Incarceration Program – Phase I**
Effective Date:	**11/7/17**

PURPOSE: To provide eligibility requirements, admission procedures, and program requirements for the first phase of a highly structured and rigorous early release program that provides offenders an opportunity to successfully complete targeted, individualized programming that lowers their risk of recidivism.

APPLICABILITY: Minnesota Department of Corrections (DOC); offenders incarcerated in adult correctional facilities

PROCEDURES:

A. Eligibility for CIP

1. Offenders are not eligible for CIP if they:
   a) are serving or have served in the past ten years a sentence for murder, manslaughter, criminal sexual conduct, assault, kidnapping, robbery, arson, or any other offense involving death or intentional personal injury;
   b) have been convicted or adjudicated delinquent within the past five years of escape from custody in violation of Minn. Stat. § 609.485;
   c) are committed to the commissioner custody for an offense that requires registration under Minn. Stat. § 243.166;
   d) are subject to a current arrest warrant or detainer;
   e) have fewer than 180 days remaining on their term of imprisonment;
   f) have been issued a segregation penalty or had disciplinary confinement time added to their term of imprisonment within 90 days;
   g) are currently subject to a suspended formal disciplinary sanction;
   h) are confined pursuant to a current sentence from another state or the United States; or
   i) are serving a sentence that involved an upward dispositional or durational departure.
2. Eligible offenders:
   a) must have 13 months or more to their confinement release milestone when they are admitted to CIP;
   b) who are release violators, must complete their terms of reimprisonment before they can be released on Phase II; and
   c) who have previously participated in CIP, must be serving the same obligation they were serving during their previous admission to CIP, must have been incarcerated for at least 60 days before re-applying for CIP, and must be approved for re-admission by the Assistant Commissioner of the Facilities Division.

B. Admission to CIP

Because CIP is a voluntary program, offenders must apply, undergo eligibility and medical/mental health screening, and complete pre-admission programming requirements.

1. Application
   Offenders may apply either by asking their case manager to submit an application form or by sending a kite to "CIP Intake."

2. Eligibility screening
   a) CIP case managers and program directors/captain (CIP review team) review all applications to determine whether offenders meet all eligibility requirements and recommend provisional admission or denial to the CIP director/designee.

   b) The CIP director/designee reviews recommendation and either approves or denies provisional admission in writing to the offender and sends a copy to the offender's case manager, noting a tentative admission date if provisional admission is approved. A copy of the provisional admission decision is retained in COMS.

   c) Offenders who are denied admission, except those who have previously participated in CIP, may appeal the decision of the CIP director/designee. Copies of the appeal and decision are retained in COMS.

   d) Offenders who decide they do not want to participate in CIP must notify the case manager, who will complete the CIP Intake Removal form and send the completed form to "CIP Intake."

   e) Male offenders approved for provisional admission are transferred to the Minnesota Correctional Facility (MCF) – Moose Lake in sufficient time to complete the subsequent admission procedures; female offenders complete the subsequent admission procedures at MCF-Shakopee.

   f) Copies of all forms and notifications are retained in COMS and retained by the CIP program.

3. Medical and mental health screening
   a) Medical and mental health providers evaluate each offender to determine whether the offender will be able to comply with all CIP requirements. Disqualifying conditions include such as examples as:
      (1) an uncontrolled or unstable chronic illness;
      (2) a frequently-occurring acute illness that requires medical or mental health monitoring beyond the resources of CIP; or
      (3) a condition that has a high likelihood of requiring emergent or frequent medical or mental health intervention.

   b) If they determine the offender has a disqualifying condition, medical and mental health providers notify the CIP director/designee in writing that the offender does not currently meet pre-screening eligibility criteria. A copy of the notification is retained in COMS.

4. Final admission decision
   Once all the pre-CIP components are completed, the CIP review team reviews the offender's admission file.
   a) If an offender is fully approved for participation in CIP, the offender is notified of admission and the start date.

   b) If an offender is denied admission into the program for medical or mental health reasons or after review by the CIP review team, the denial of entrance may be appealed to the

Assistant Commissioner of the Facilities Division.

C. CIP Phase I

Before offenders receive a certificate of completion for Phase I, the CIP review team must verify that they have fully participated and successfully completed all required program components, and have actively served a minimum of 180 days in Phase I. Program components include such examples as:

1. Physical training: A rigorous physical training program designed to teach personal discipline and improve the offender's physical and mental well-being.

2. Education: Individualized educational programming designed to improve adult basic education skills.

3. Chemical dependency treatment.

4. Military bearing, drill and ceremony: Intensive instruction in military drill and ceremony, military bearing, customs, and courtesy.

5. Facility work crew or work detail: A facility work crew assignment or work detail component that includes manual work on campus.

6. Cognitive behavioral skills programming: Training in cognitive skills development and community transition to assist the offender in developing self-worth and a sense of personal accountability.

7. Restorative Justice Work Crews (RJWC): Opportunities to give back to the community while learning work ethics, job skills, and good work habits and attitudes by serving on RJWC.
   a) Non-profit community and government organizations may submit project requests, which will be reviewed and approved by the Safety Administrator and CIP Program Director/Captain annually.

   b) The RJWC sergeant ensures offender training is provided and proper personal protective equipment is used during all work projects.

8. Team Building: Offender squads participate in team building exercises that promote pro-social skills, effective problem solving and effective communication.

9. Squad meetings: Assigned correctional officers facilitate regularly scheduled squad meetings to discuss current squad issues, effective problem solving and to identify steps being taken to promote positive squad cohesion.

10. Levels of advancement (indicated by hat colors).

D. Informal Progressive Sanctions

During CIP Phase I, offenders are subject to informal discipline for minor behavioral issues and unacceptable program adjustment. Participants may receive formal discipline according to Offender Discipline Rules (ODZ). The informal sanctions are based on the CIP philosophy and general orders and designed to provide a broad range of responses to deal with violations of CIP's informal rules. Staff may implement informal sanctions at any time, including such examples as:

1. Refocus: Pushups are assigned to an offender to help the offender refocus after a minor infraction.

2. Interventions: A documented interaction between a staff member and an offender that occurred to remedy a below-standard action or behavior, or to acknowledge an above-standard action or behavior.

3. Thinking Reports: A written assignment which requires the offender to identify behavior(s) which led to an intervention. The offender identifies a solution to correct the behavior.

4. Learning Experiences (LE): A sanction given to an offender who commits an informal rule infraction.

5. Hat color hold: The non-advancement of an offender's status due to poor motivation, unsatisfactory program participation, unsatisfactory evaluations and/or accumulation and progression of discipline.

6. Hat color reduction: The reduction of advancement of an offender's status due to poor motivation, unsatisfactory program participation, unsatisfactory evaluations and/or accumulation and progression of discipline.

7. Recycle: An offender is reduced to the lowest hat color and reviewed weekly for hat advancement due to accumulation of LE's, Personal Accountability Status, and/or not progressing in the program as required.

8. Personal Accountability Status (PAS): A status assigned to an offender for conduct that is not consistent with following the CIP philosophy and commitment to the program.

9. Revocation: Removal from the program due to an accumulation of progressive informal sanctions, refusal to participate in programming, termination from chemical dependency treatment, or imposed formal discipline. Offenders who are revoked are returned to a higher custody facility.

E. Termination from Phase I

1. Once admitted to CIP, offenders may be terminated in any of the following ways:
   a) Rescission –if a change occurs in the offender's eligibility status (e.g. legal, medical, mental health or other administrative reasons). Offenders who are rescinded are administratively reviewed for reentry to the program if and when the eligibility issue is resolved.

   b) Revocation –when the offender is unable to complete the program because of a violation of the program agreement. Offenders who are revoked must be removed from CIP and transferred to the appropriate correctional facility.

   c) Voluntary termination– when the offender voluntarily chooses to discontinue participation in the program.

2. Terminations, except for voluntary termination, may be appealed to the Assistant Commissioner of the Facilities Division.

3. Records of any termination are retained in COMS and by the CIP program.

F. Program Completion and Release to Phase II

During CIP phase I, an offender must work with the offender's case manager and field services agent in the community of release to develop a release plan. Upon successful completion of CIP phase I, offenders are transitioned to the community phase of CIP, phase II; see Policy 204.061, "Challenge Incarceration Program – Phase II and III" for information.

INTERNAL CONTROLS:

A. A copy of all CIP documentation is retained electronically in COMS and/or the CIP file.

ACA STANDARDS: 1-ABC-2A-03; 1-ABC-3A-28; 1-ABC-3A-29; 1-ABC-3A-31; 1-ABC-3B-01; 1-ABC-3B-02; 1-ABC-3B-03; 1-ABC-3B-04; 1-ABC-3B-05; 1-ABC-3B-06; 1-ABC-3B-11; 1-1BC-3B-12; 1-ABC-4C-06; 1-ABC-4C-09; 1-ABC-4C-10; 1-ABC-4C-12; 1-ABC-4D-01; 1-ABC-4D-02; 1-ABC-4D-03; 1-ABC-49-04; 1-ABC-4E-01; 1-ABC-4E-02; 1-ABC-4E-06; 1-ABC-4E-07; 1-ABC-4E-09; 1-ABC-4E-10; 1-ABC-4E-15; 1-ABC-4E-19; 1-ABC-4E-20; 1-ABC-4E-21; 1-ABC-4E-28; 1-ABC-4E-29; 1-ABC-4E-42; 1-ABC-4E-49

REFERENCES: Minn. Stat. §§244.17 through 244.172; 609.485; and 243.166
Policy 204.061, "Challenge Incarceration Program – Phase II and III"

REPLACES: Division Directive 204.060, "Challenge Incarceration Program – Phase I," 10/17/17. All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: None

APPROVED BY:
Deputy Commissioner, Facility Services
Deputy Commissioner, Community Services
Assistant Commissioner, Facility Services
Assistant Commissioner, Operations Support

Minnesota Department of Corrections

Division Directive:	**204.061**	**Title: Challenge Incarceration Program – Phase II and III**
Issue Date:	**7/26/16**	
Effective Date:	**7/26/16**	

AUTHORITY: Minn. Stat. §§244.17 to 244.173

PURPOSE: To provide supervision guidelines and structure for offenders in phase II and phase III of the Challenge Incarceration Program (CIP).

APPLICABILITY: Minnesota Department of Corrections (DOC); Community Services Division and Community Corrections Act (CCA) staff

DIRECTIVE: Field services staff provides supervision to offenders released under Minn. Stat. §§244.17 to 244.173. Community supervision conditions include program requirements and the standard and special conditions as directed in Policy 106.112, "Release Reviews."

DEFINITIONS: None

PROCEDURES:

A. CIP, under this directive, is divided into two phases of community supervision as follows:
   1. Phase II must consist of six months per statute.
   2. Phase III is six months or the offender's supervised release date (SRD), whichever is less.
   3. Phase durations are presumptive and unless otherwise dictated by the appointing authority, supervision is transferred to a supervised release agent after one year.

B. CIP Phase criteria
   1. Phase II-level 1 a current MNSTARR assessment of high/very high.
   2. Phase II-level 2 a current MNSTARR assessment of medium.
   3. Phase II-level 3 a current MNSTARR assessment of low.
   4. Phase III-after a minimum of six months on phase II an offender may be placed on Phase III if current LSCMI (MHS cutoff) is assessed as moderate or low.
   5. If the offender exhibits poor adjustment or violation behavior, an agent may delay the offender's progression to the next phase/level, revert the offender to a previous phase, or extend time in phase with a restructure/immediate sanctions report.

C. Early Transfer criteria. DOC offenders on phase III may be considered for early transfer to supervised release in another DOC office in less than six months if:
   1. Offender has served a minimum of three months on Phase III;
   2. Is assessed as moderate or low risk on a current LSCMI (MHS cutoff);
   3. Is compliant with all program rules; and
   4. Meets the Early Transfer Criteria (attached).

D. Placement investigation for CIP: upon receipt of a request for agent assignment, the agent:

1. Investigates the offender's proposed residence, including an on-site visit. The placement plan must include:
   a) Housing conducive to living a sober and law-abiding lifestyle; and
   b) An offender is not released until a satisfactory residence is available and approved.
   c) Placement in transitional housing outside of the offender's county of commit will not be considered a satisfactory release plan.

2. Conducts a file review of case notes, documents, and pertinent information in the CSTS system and the correctional operations management system (COMS);

3. Reviews level of service-case management inventory (LS/CMI) and (MNSTARR) and conduct appropriate referral(s) to address risk/needs;

4. Ensures the required forms are completed and coordinates the installation of electronic home monitoring (EHM), when EHM is necessary;

5. During the placement investigation, maintains contact and communicates developments with the assigned caseworker;

6. Returns the request for agent assignment within 30 days or within one-third of the time remaining to the offender's release, whichever is less. The supervising agent contacts the case manager if circumstances prevent response within the designated time frame; and

7. The supervising agent must be electronically maintained in the COMS as well as CSTS.

E. Initial face-to-face contact: at the initial face-to-face contact, the agent:

1. Reviews the CIP program rules and conditions of release, including general and special conditions; and

2. If EHM is utilized, initiates the monitoring and explains the requirements and schedule to the offender.

F. Contract Standards:

1. All face-to-face contact frequencies are minimums and agents must make additional contacts if circumstances warrant.
   a) Phase II, level I – three face-to-face contacts per week, which include four case management contacts a month.
   b) Phase II, level II – two face-to-face contacts per week. Case planning as needed if the risk behavior is correlated with criminality.
   c) Phase II, level III – one face-to-face contact per week. Case planning as needed if the risk behavior is correlated with criminality.
   d) Phase III – two face-to-face contacts per month. Case planning as needed if the risk behavior is correlated with criminality.

2. Case plans must be completed on all phase II, Level 1 offenders within 90 days and ongoing case planning must:
   a) Consist of brief check in on conditions;
   b) Include new development of risk factors;
   c) Review homework from last case planning session;
   d) Conduct an intervention that includes case planning goals, motivational interviewing or skills work;

e) Have the offender agree on action steps to be completed for the next meeting with agent; and
f) Is completed by the agent of record, or their designee.

3. If an offender is in jail or a 24-hour per day (including weekends and holidays) staffed facility, the agent may reduce the number of contacts to once per week for offenders in phase II.

4. Assigned corrections agent must make all contacts.

G. Collateral contacts: the agent must utilize collateral contacts to monitor the offender's activities. The agent maintains contact with:
1. Appropriate law enforcement agencies;
2. Employers;
3. Staff of programs involved with the offender; and
4. The offender's significant family members.

H. Records check: the agent must check the offender's driving record and history before an offender transfer to Phase III and/or supervised release. Any information regarding law enforcement contact is investigated and sanctions imposed where appropriate. All allegations of offender violations must be thoroughly investigated.

I. Urinalysis and drug testing:
1. Phase II:
a) Level I/Very High/High - alcohol testing and drug testing is required a minimum of once per week.
b) Level II/Medium - alcohol testing and drug testing is required a minimum of twice per month.
c) Level III/Low - alcohol testing and drug testing is required a minimum of once per month.

2. Phase III – alcohol testing and drug testing is required a minimum of once per month. Alcohol testing and drug testing on offenders without a treatment directive is required at agent discretion.

3. Tests must be given randomly. If the offender fails the test
a) the offender is immediately placed in custody with a warrant authorized by HRU or the department of corrections' officer of the day, or by use of an apprehension and detention order.
b) Agents must adhere to Policy 201.018, "Offender Transport and Custody" when a warrant has been issued.
c) The agent must submit a formal violation, restructure, or immediate sanctions report.
d) If the offender does not admit to the positive field test result(s), the specimen may be sent in for confirmation purposes following supervisory approval. If the offender's confirmation test results are negative, the offender must be released to the community as directed by the agent and approved by HRU.
e) All drug and alcohol test results must be entered into the offender's chronological record.

J. Offender residence and house restriction:
1. The offender must reside in the residence approved by the agent and must obtain prior approval before moving to another residence.

2. The agent must have reasonable access to the offender's residence on an ongoing basis. Access may occur any time of the day or night. The agent informs the offender that access is exercised exclusively for supervision purposes and complies with Division Directive 201.017 "Offender Searches – Community Services" when conducting a search.

3. The offender's schedule must be approved by the agent.

4. House arrest:
   a) Phase II, 0-2 months, four hours of pre-approved social activity weekly, 8:30 P.M. curfew.
   b) Phase II, 2-4 months, eight hours of pre-approved social activity weekly, 10:30 P.M. curfew.
   c) Phase II, 4-6 months, 16 hours of pre-approved social activity weekly, 10:30 P.M. curfew.
   d) Phase III, 6 months, 10:30 P.M. curfew.

5. With prior agent approval, offenders may attend religious services once per week on the traditional day of worship for the faith.

6. The agent may restrict visitors to the offender's residence. The restriction may include visitors and number of visitors. Visitors must be pre-approved by agent.

7. All offenders must spend a minimum of 40 hours weekly in pre-approved constructive activity which includes employment, employment-seeking, education, treatment, Sentencing to Service, or community service work.

K. Electronic monitoring: electronic monitoring may be imposed at placement or during supervision to ensure the offender is complying with the rules of house restriction, or to enforce discipline.

L. Chronological records: the following must be logged in the chronological record (ISR database) as soon as possible but no later than noon on the day following occurrence:
1. Face-to-face contacts and relevant discussion that occurred. Contacts must focus on case plan goals, criminogenic needs, and conditions of release;
2. Collateral contacts;
3. Drug and alcohol test results;
4. Decisions regarding the specific application of house arrest; and
5. Relevant telephone contacts with the offender.

M. Agent of record: each offender is assigned an agent of record but supervision of the offender may be accomplished by a team of agents. The agent of record/agents must ensure all contacts, surveillance, assessments, and record-keeping are completed as specified. When there is team supervision, the team jointly reviews each case a minimum of weekly. When there is team supervision and a violation occurs, the agent attending the hearing must contact the other agents in the team prior to the hearing to become familiar with the facts of the violation and the offender's general adjustment.

N. Failure to comply with conditions of release: refer to Policy 106.140, "Evidentiary Hearings." An offender returned to a correctional facility must serve the remainder of his/her original term of imprisonment, less the initial time served in custody and time served in CIP phase I.

O. Transfer to supervised release
1. The assigned agent must complete a request for transfer via the CSTS transfer module and send it to the department district supervisor or the Community Corrections Act (CCA) liaison in the offender's county of residence
   a) 30 days prior to the offender's SRD, the end of phase III; or
   b) Anytime in phase III with supervisor approval (DOC only), if the offender has been violation-free in phases II and III, is program compliant, and making a positive adjustment.
   c) At no time may an offender remain in the CIP beyond his/her original SRD.

2. The agent must note the offender has successfully completed CIP program.

3. The agent must identify the offender's original confinement release date in the "miscellaneous" section of the report.

4. Upon notification that the case has been accepted for transfer, the agent must notify the offender.

5. Transfer investigations must be maintained in CSTS.

INTERNAL CONTROLS:

A. Agent assignments are created and maintained electronically in CSTS.

B. Agent chronological (chrono) records are stored electronically in the ISR chrono database.

C. Transfer investigations are maintained electronically in CSTS.

REVIEW: Annually

REFERENCES: Division Directive 204.060, "Challenge Incarceration Program - Phase I"
Policy 106.112, "Release Reviews"
Policy 106.114, "Restructure Reviews"
Division Directive 201.017 "Offender Searches – Community Services"
Policy 206.010, "Electronic Surveillance"
Policy 106.140, "Evidentiary Hearings"

SUPERSESSION: Division Directive 204.061, "Challenge Incarceration Program - Phase II and III" 8/19/14. All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: Early Transfer Criteria (204.061A)

/s/
Deputy Commissioner, Community Services