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Criminal Law: The Dangers of Incomplete Statutory Interpretation and the Unfortunate Equal Protection Implications that Follow– Heilman v. Courtney, 926 N.W.2d 387 (Minn. 2019)

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CRIMINAL LAW: THE DANGERS OF INCOMPLETE STATUTORY INTERPRETATION AND THE UNFORTUNATE EQUAL PROTECTION IMPLICATIONS THAT FOLLOW– *HEILMAN V. COURTNEY*, 926 N.W.2D 387 (MINN. 2019)

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I. INTRODUCTION

In *Heilman v. Courtney*, the Minnesota Supreme Court decided that a person convicted of a felony-level Driving While Intoxicated offense (felony DWI) is "released from prison" under Minnesota statute when he departs from prison to participate in Phase II of the Challenge Incarceration Program.[1] The court made this determination based on the language in the felony-DWI conditional release statute and the statutes governing the Challenge Incarceration Program.[2] Justice Lillehaug issued a strong dissent to the majority's decision, noting that the majority strayed from the legislative intent behind the aforementioned statutes and other relevant statutes.[3]

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[1] Heilman v. Courtney, 926 N.W.2d 387, 396–97 (Minn. 2019) (discussing section 169A.276, subdivision 1(d), and section 244.172, subdivision 2, of the 2018 Minnesota Statutes and their interplay in determining when a person's mandatory conditional release term will begin).

[2] *See id.* at 404–08 (opinion attachment) (providing *Policies, Directives and Instructions Manual*, MINN. DEP'T OF CORR. div. directive 204.060 (Nov. 7, 2017) (promulgating in-depth instructions for how the Challenge Incarceration Program should be implemented)).

[3] *Heilman*, 926 N.W.2d at 400–02 (Lillehaug, J., dissenting) ("The court's interpretation makes the statute less effective and uniform. It gives some people convicted of first-degree

This case note begins with the relevant statutory history and case law underlying the *Heilman* decision. Next, it describes the facts, relevant procedural history, and the court's ultimate ruling in *Heilman*. The analysis demonstrates the court's error in failing to engage in a complete statutory interpretation. The case note then engages in a complete statutory analysis to explain what should have occurred in *Heilman*. Additionally, the analysis argues that the court's determination in *Heilman* possibly leads to an equal protection violation.

II. CASE LAW AND STATUTORY HISTORY INFORMING THE *HEILMAN* DECISION

A. Statutory History

In Minnesota, a fixed executed sentence for a felony-level offense must "consist[] of 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."[4] If people violate prison rules or refuse to participate in treatment programs while incarcerated, they may spend more time imprisoned than the required two-thirds minimum as a punishment for those violations.[5]

Supervised release occurs after a person completes a term of imprisonment and is released from prison.[6] The supervised release term must be equal to the time remaining in a person's executed sentence after completion of the minimum term of imprisonment.[7] People cannot spend more than one-third of their executed sentence on supervised release or in the community because, at minimum, two-thirds of an executed sentence must be served in prison.[8] While on supervised release, people must follow certain rules, comply with standards adopted by the Commissioner of Corrections, and follow rules promulgated by the judicial official at the time of sentencing.[9] If supervised release terms are violated, people are subject to sanctions for those violations.[10] Sanctions for supervised release violations range from a restructuring of supervised release requirements to

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DWI 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.").

[4] MINN. STAT. § 244.101, subdiv. 1 (2019).

[5] *See id.*; MINN. STAT. § 244.05, subdiv. 1b(a) (2019); MINN. R. 2940.1600 (2019).

[6] MINN. STAT. § 244.05, subdiv. 1.

[7] *Id.* subdiv. 1b(a). For example, if a defendant is sentenced to a sixty-month executed sentence, the defendant would serve two-thirds of that time (forty months) in prison; upon release, the defendant would spend the remaining one-third of the executed sentence (twenty months) on supervised release. *See id.*

[8] *Id.*; *see also* MINN. STAT. § 244.101, subdiv. 1.

[9] MINN. STAT. § 244.05, subdiv. 2.

[10] *Id.* subdiv. 3.

reimprisonment for the remainder of the supervised release term, which is equivalent to the time remaining in the original executed sentence.[11]

In addition to supervised release, some felony-level offenses in Minnesota require a mandatory conditional release term.[12] At issue in *Heilman* was the statutorily mandated conditional release term for felony DWI offenses.[13] Under this statute, any person whose prison sentence is executed after a felony DWI conviction must serve a five-year conditional release term after being released from prison.[14] Like supervised release, felony DWI conditional release can be revoked for violations, which results in the person serving all or a portion of the remaining conditional release term in prison, even if the minimum term of imprisonment has already been completed.[15] People with felony DWI convictions are mandated by statute to serve both a five-year conditional release term and the statutorily mandated supervised release term upon their release from prison.[16]

Conditional release terms are governed by the same provisions as supervised release terms.[17] Both conditional release and supervised release are types of community supervision.[18] During this period of supervision, people are required to abide by the conditions imposed by the state in order to maintain their freedom from incarceration.[19] The Commissioner of Corrections adopts standards and procedures for revocation of supervised and conditional release.[20] However, the imposed conditions under either type of supervision vary on a case-by-case basis.[21] There are a number of standard conditions of supervised release, including: reporting to supervising agents after release from prison, maintaining continuous contact with the supervising agent, abstaining from using intoxicants or drugs, and

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[11] *Id.*; *see also* State *ex rel.* Pollard v. Roy, 878 N.W.2d 341, 343 (Minn. Ct. App. 2016). The type of sanctions probationers receive generally depends on the severity of their violation and whether they have had prior probation violations. There is no right to a formal hearing to ascertain whether a release violation has occurred prior to receiving a sanction. *See* Morrissey v. Brewer, 408 U.S. 471, 484 (1972).

[12] *See* MINN. STAT. § 169A.276, subdiv. 1(d) (2019) (mandating a five-year term of conditional release for persons convicted of felony-level DWI); MINN. STAT. § 609.3455, subdiv. 6 (2019) (mandating a conditional release term for eligible people convicted of sex offenses); State v. Bluhm, 676 N.W.2d 649, 652 (Minn. 2004) (indicating that the language in the felony DWI statute makes conditional release compulsory in cases where a prison sentence will be executed).

[13] Heilman v. Courtney, 926 N.W.2d 387, 390 (Minn. 2019).

[14] MINN. STAT. § 169A.276, subdiv. 1(d); *see also* Bushey v. State, No. A07-0787, 2008 WL 1868079, at *2 (Minn. Ct. App. Apr. 29, 2008).

[15] *See* MINN. STAT. § 169A.276, subdiv. 1(d).

[16] *See* MINN. STAT. § 244.05, subdiv. 1 (2019) (mandating convicted persons to serve a supervised release term not exceeding the length of time remaining on their sentence); MINN. STAT. § 169A.276, subdiv. 1(d) (requiring that people convicted of felony DWI serve a five-year term of conditional release).

[17] *See* MINN. STAT. §§ 169A.276, 244.05 (2019) (providing the requirements of supervised release).

[18] Cecelia Klingele, *Criminal Law: Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1021 (2013).

[19] *Id.*

[20] MINN. STAT. § 244.05, subdiv. 2.

[21] Klingele, *supra* note 18, at 1033–36.

remaining law-abiding.[22] However, individuals may be subject to more conditions directly reflecting their individualized needs because the sentencing judge and Commissioner of Corrections can mandate different conditions.[23]

B. Work Release and the Challenge Incarceration Program

Prior to release from prison, people may choose to participate in different programs during their term of incarceration.[24] Two such programs are the Challenge Incarceration Program (Bootcamp) and the Work Release Program (Work Release).[25] Bootcamp consists of three phases.[26] Phase I lasts a minimum of 180 days and requires participants to undergo a highly structured and rigorous bootcamp-like scenario in which targeted and individualized programming must be completed.[27] Additionally, Phase I must occur at one of the designated Minnesota Correctional Institutions.[28]

In Phase II, which lasts at least six months, participants depart from prison to intensely-supervised home confinement, where they must participate in forty hours of a "pre-approved constructive activity" such as work, school, or volunteering.[29] This intense supervision includes regular drug testing, daily reporting to a supervising agent, and any other conditions imposed by the Commissioner of Corrections.[30] During Phase II, participants can eventually gain privileges like pre-approved social activities and visitation.[31]

Phase III, Bootcamp's final phase, extends until the Commissioner of Corrections determines the participant has completed Bootcamp successfully or until the participant's sentence expires.[32] In Phase III, participants are able to act as though they are on supervised release, although the formal transfer has not yet

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[22] MINN. R. 2940.2000 (2019). Other conditions include informing the supervising agent of address changes and contact with law enforcement, not possessing firearms or dangerous weapons, and remaining in the state unless the supervised person has permission to leave. *Id.*

[23] *See* MINN. STAT. § 244.05, subdiv. 2.

[24] MINN. STAT. §§ 244.17–.173 (2019) (creating and governing the Challenge Incarceration Program, which eligible incarcerated persons may elect to participate in with permission from the Commissioner of Corrections); *see also* MINN. STAT. § 241.26 (2019) (allowing eligible incarcerated persons to participate in the Work Release program with permission from the Commissioner of Corrections).

[25] MINN. STAT. §§ 244.17–.173, 241.26.

[26] MINN. STAT. § 244.172 (describing the various phases in the Challenge Incarceration Program).

[27] MINN. STAT. § 244.172, subdiv. 1.

[28] *Id.* (requiring participants to "be confined at the Minnesota Correctional Facility—Willow River/Moose Lake or the Minnesota Correctional Facility—Togo" while completing Phase I).

[29] *Id.* subdiv. 2; Heilman v. Courtney, 926 N.W.2d 387, 412 (citing *Policies, Directives and Instructions Manual*, MINN. DEP'T OF CORR. div. directive 204.061 (July 26, 2016)).

[30] MINN. STAT. § 244.172, subdiv. 2.

[31] *Heilman*, 926 N.W.2d at 412.

[32] MINN. STAT. § 244.172, subdiv. 3.

occurred.[33] The participants are no longer under the intensive supervision that is characteristic of Phase II. Instead, they begin to act like normal parolees.[34]

If a participant completes Phase III successfully, the supervising agent may apply for an early release, and if the Commissioner of Corrections approves, the participant may be transferred to supervised release for the remainder of the term of incarceration.[35] At any time during Phase II or Phase III, participants can be removed from the program and returned to prison for failing to comply with program rules.[36]

Work Release allows the Commissioner of Corrections to conditionally release eligible people to work, seek employment, or participate in vocational or educational training in the community.[37] Work Release is comparable to Phase II of Bootcamp, as participants are released to a location pre-approved by the Commissioner of Corrections.[38] This location could be a halfway house, treatment facility, or the person's residence.[39]

Like Bootcamp participants, Work Release participants are required to abide by certain conditions and rules established by the Commissioner of Corrections.[40] For example, participants cannot use any mood-altering substances, must be under close supervision, and provide regular breath and urine samples to ensure sobriety.[41] Work Release participants must also complete transitional programs and treatment programs like Alcoholics Anonymous and Narcotics Anonymous.[42] Like Bootcamp participants, Work Release participants may eventually gain access to limited privileges like social passes.[43] However, prior to obtaining privileges, participants must have followed all program rules and maintained steady employment.[44] If participants regress or do not comply with Work Release rules, their privileges may be revoked, and they may be sent back to prison to complete the remainder of their term of imprisonment.[45]

Both programs are voluntary incarceration programs, meaning, people must volunteer to participate in the programs rather than being randomly selected

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[33] *Id.*

[34] *See id.*; *Heilman*, 926 N.W.2d at 412–13.

[35] MINN. STAT. § 244.172, subdiv. 3. Thus, people could be allowed to transfer to supervised release prior to completing their minimum term of imprisonment, resulting in an early release. *See* MINN. STAT. § 244.101, subdiv. 1 (2019); *Heilman*, 926 N.W.2d at 409, 412–13.

[36] *See* MINN. STAT. § 244.172, subdiv. 3; *Heilman*, 926 N.W.2d at 412.

[37] MINN. STAT. § 241.26, subdiv. 1 (2019).

[38] *Id.* subdiv. 2.

[39] *Id.* (providing more information about the housing options participants have while on Work Release).

[40] *Id.* subdiv. 3.

[41] MINN. DEP'T OF CORR., FACT SHEET: WORK RELEASE PROGRAM 1 (2019), https://mn.gov/doc/assets/Work%20Release_tcm1089-309002.pdf [https://perma.cc/P9J8-W2X8].

[42] *Id.*

[43] MINN. STAT. § 241.26, subdiv. 3 (2019); MINN. DEP'T OF CORR., *supra* note 41, at 2.

[44] MINN. DEP'T OF CORR., *supra* note 41, at 2.

[45] *Id.*

by the Commissioner of Corrections.[46] Bootcamp participants must have at least thirteen months remaining in their term of imprisonment.[47] Work Release participants must have at least twelve months remaining in their term of imprisonment.[48] Both programs require program staff to screen applications to determine if the applicant is a good candidate for structured transitional release.[49] Both programs prevent people with certain characteristics or offenses from participating in the program.[50] For example, people currently serving time for an out-of-state sentence and those required to register as predatory offenders are barred from participating in either program.[51]

C. Common Law History

There are several Minnesota precedents regarding the intersection of felony DWI conditional release, incarceration programs, and supervised release. First, in *State v. Calmes*, the Minnesota Supreme Court determined that conditional release is constitutional and does not constitute multiple punishments for the same offense; rather, conditional release is a part of the mandated punishment for certain crimes.[52] In general, conditional release is meant to provide continuous supervision in the community after a person is released from prison.[53] This is accomplished because individuals on community-based supervision remain in legal custody of the state as they are subject to reincarceration for any breach of a release condition, even after completion of their term of imprisonment.[54]

The Minnesota Court of Appeals has repeatedly indicated that supervised release and conditional release can be concurrent to each other if the statutory language supports a concurrent application of the two.[55] More specifically, in *Maiers*

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[46] Heilman v. Courtney, 926 N.W.2d 387, 404–05 (attaching *Policies, Directives and Instructions Manual*, MINN. DEP'T OF CORR. Div. Directive 204.060 (Nov. 7, 2017)); *Policies, Directives and Instructions Manual*, MINN. DEP'T OF CORR. div. directive 205.120(B)(2) (Dec. 18, 2018) http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=205.120.htm [https://perma.cc/G4H4-S5D5].

[47] *Heilman*, 926 N.W.2d at 404 (attaching *Policies, Directives and Instructions Manual*, MINN. DEP'T OF CORR. div. directive 204.060 (Nov. 7, 2017)).

[48] MINN. DEP'T OF CORR., *supra* note 46, div. directive 205.120(B)(1).

[49] *Heilman*, 926 N.W.2d at 405; *see also* MINN. DEP'T OF CORR. div. directive 205.120, *supra* note 46.

[50] *Heilman*, 926 N.W.2d at 404; *see also* MINN. DEP'T OF CORR., *supra* note 46, div. directive 205.120(B)(3).

[51] *Heilman*, 926 N.W.2d at 404; *see also* MINN. DEP'T OF CORR., *supra* note 46, div. directive 205.120(B)(3)(d),(h).

[52] State v. Calmes, 632 N.W.2d 641, 649 (Minn. 2001).

[53] *See* State *ex rel.* Pollard v. Roy, 878 N.W.2d 341, 347 (Minn. Ct. App. 2016).

[54] *See* State *ex rel.* Duncan v. Roy, 887 N.W.2d 271, 276–77 (Minn. 2016); State v. Schwartz, 628 N.W.2d 134, 139 (Minn. 2001).

[55] Tillotson v. Minn. Dep't of Corr., No. A12-1175, 2013 WL 1788505, at *5 (Minn. Ct. App. Apr. 29, 2013) (explaining that conditional release and supervised release will necessarily run concurrently based upon the language in Minnesota Statutes section 169A.276); State *ex rel.* Peterson v. Fabian, 784 N.W.2d 843, 847 (Minn. Ct. App. 2010) (explaining that conditional release and supervised release do not run concurrently when statutory language directs that conditional release begin after the completion of sentences

v. Roy, the court explained that people mandated to serve a five-year conditional release term under the felony DWI statute will serve their supervised release and conditional release terms concurrently because both supervision terms begin when a person is released from prison, as indicated by the statutory language.[56] Additionally, in *Pollard v. Roy*, the court indicated that a conditional release term cannot begin prior to release from prison.[57] Furthermore, the court has reinforced that conditional release terms are compulsory and for a fixed period.[58] In the case of a felony DWI conviction, the term must be five years.[59]

In *Duncan v. Roy*, the court extrapolated further, explaining that participants cannot receive credit towards their conditional release term for time spent incarcerated if there is a supervised release violation and revocation.[60] This time cannot be credited towards conditional release, as conditional release and supervised release are meant to be served in the community; whereas, when people are revoked from community-supervision, they are in custody.[61]

In *Huseby v. Roy*, the court determined that a person's transfer from prison to Work Release does not constitute a release from prison.[62] Thus, under the felony DWI statute, a person's conditional release term is not triggered when he or she departs from prison to participate in Work Release.[63] The court reached this decision after an analysis of relevant Minnesota statutes.[64] These statutes mandate that two-thirds of an executed sentence be served in prison.[65] As such, when people depart for Work Release, they are still serving their mandated

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that are followed by a period of supervised release); State v. Koperski, 611 N.W.2d 569, 572 (Minn. Ct App. 2000) (holding that legislative intent and relevant case law clearly indicate that supervised release and conditional release terms are to run concurrently), *abrogated on other grounds by* State *ex rel.* Pollard v. Roy, 878 N.W.2d 341, 349–50 (Minn. Ct. App. 2016); State v. Enger, 539 N.W.2d 259, 263 (Minn. Ct. App. 1995) (holding that time spent on supervised release must be subtracted from the conditional release term).

[56] Maiers v. Roy, 847 N.W.2d 524, 531 (Minn. Ct. App. 2014). Note that the court does not mandate this in every circumstance; rather, holding only that this is the necessary result when sections 244.05 and 169A.276 of the Minnesota Statutes are read together. *Id.*

[57] *Pollard*, 878 N.W.2d at 348 (citing State v. Wukawitz, 662 N.W.2d 517, 525 (Minn. 2003).

[58] *Id.*; *see also* MINN. STAT. § 169A.276, subdiv. 1(d) (2019) (describing the compulsory nature of the five-year fixed conditional release term for felony DWI).

[59] MINN. STAT. § 169A.276, subdiv. 1(d).

[60] State *ex rel.* Duncan v. Roy, 887 N.W.2d 271, 278–79 (Minn. 2016). In contrast to *Heilman*, the petitioner in *Duncan* was serving time and was mandated to serve on conditional release for a sex-offense based on the now-obsolete section 609.109, subdivision 7(a), of the Minnesota Statutes. *See Duncan*, 887 N.W.2d at 272.

[61] *See id.* at 276–77.

[62] State *ex rel.* Huseby v. Roy, 903 N.W.2d 633, 638 (Minn. Ct. App. 2017). The petitioner in this case was serving time and was assigned mandatory conditional release under section 169A.276, subdivision 1(d), of the Minnesota Statutes, making his circumstances identical to Heilman's. *Huseby*, 903 N.W.2d at 634.

[63] *Huseby*, 903 N.W.2d at 638; *see also* MINN. STAT. § 169A.276.

[64] *Huseby*, 903 N.W.2d at 636.

[65] *Id.*; *see also* MINN. STAT. § 244.101, subdiv. 1 (2019); MINN. STAT. § 244.05, subdiv. 1b(a) (2019).

minimum term of imprisonment.[66] The court determined that Work Release participants are still incarcerated even while residing outside of the prison walls.[67] Given this determination, Work Release participants cannot begin their conditional release or supervised release terms because they have not been "release[d] from prison" under the felony DWI statute.[68]

III. CASE SUMMARY

A. Facts and Procedural Posture

On September 13, 2004, Donald Heilman was sentenced to a stayed fifty-one-month prison sentence, followed by five years of conditional release.[69] As his sentence was stayed, Heilman was placed on probation. On May 22, 2007, the State revoked Heilman's probation and executed his stayed prison sentence, meaning he was required to serve time in prison.[70] In December 2007, Heilman opted to participate in Bootcamp and began Phase I.[71]

Heilman completed Phase I of Bootcamp in July 2008, at which point he departed from the prison to his home to complete Phase II under intensive house arrest supervision.[72] Heilman completed Phase II in January 2009 and continued on to Phase III of Bootcamp.[73] However, Heilman failed to remain sober and regressed back to Phase II in April 2009.[74] Heilman again failed to remain sober and after a few months was removed from the Bootcamp program altogether and sent back to prison to serve the remainder of his sentence.[75]

After serving two-thirds of his fifty-one-month sentence, Heilman was released from prison on December 27, 2010, and began his mandated conditional and supervised release terms.[76] Heilman was arrested on March 12, 2014, for failing to complete inpatient chemical dependency treatment, which was a condition of his supervised release.[77] At a probation hearing on March 25, 2014, Heilman's supervised release was revoked for 180 days as a sanction for his failure to complete

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[66] *See Huseby*, 903 N.W.2d at 636–37; *see also* MINN. STAT. § 244.101, subdiv. 1; MINN. STAT. § 244.05, subdiv. 1b(a).
[67] *Huseby*, 903 N.W.2d at 637; *see also* MINN. STAT. § 244.101, subdiv. 1; MINN. STAT. § 244.05, subdiv. 1b(a).
[68] MINN. STAT. § 169A.276, subdiv. 1(d); *Huseby*, 903 N.W.2d at 636–37 (citing MINN. STAT. §§ 244.05, subdiv. 1, 244.065).
[69] Heilman v. Courtney, 926 N.W.2d 387, 390 (Minn. 2019). Heilman was convicted for first-degree driving while impaired. Under the statute, Minnesota courts can refrain from imposing or executing a prison sentence. MINN. STAT. § 609.135, subdiv. 2 (2019).
[70] *Heilman*, 926 N.W.2d at 390.
[71] *Id.*; *see also* MINN. STAT. §§ 244.17–.173 (2019).
[72] *Heilman*, 926 N.W.2d at 390.
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.* at 390–91.
[77] *Id.* at 391.

inpatient treatment.[78] The Department of Corrections released Heilman on May 14, 2014, after he served only 63 days of the 180-day sanction.[79] Unfortunately, the Department of Corrections did not document the purpose for this release.[80]

Heilman filed a complaint in July 2016 against the Department of Corrections, asserting false imprisonment and negligence claims.[81] Heilman claimed his five-year conditional release term under the felony DWI statute began when he left prison to begin Phase II of Bootcamp on July 9, 2008.[82] Heilman believed his five-year conditional release term should have expired in July 2013.[83] Therefore, Heilman argued that the sixty-three days he served as a sanction from March 2014 to May 2014 constituted unlawful incarceration.[84]

The district court granted the State's motion for judgment on the pleadings and dismissed Heilman's claims with prejudice as he had failed to establish that the Department of Corrections intentionally caused his confinement beyond his release date or that it owed him a duty.[85] Furthermore, the court found the Department of Corrections was justified in incarcerating Heilman, which is a valid defense to false imprisonment, absolving the Department of Corrections from any guilt.[86]

Heilman appealed, and the Minnesota Court of Appeals affirmed the district court's decision as it determined that Heilman's conditional release was properly revoked.[87] The court also addressed the meaning of "released from prison," explaining that when a person is released from prison after completing Phase I of Bootcamp, he or she is not released from custody.[88] Furthermore, the court indicated that conditional release and supervised release are both mandated to begin at the time a person is released from prison.[89] Thus, because Heilman's supervised release began in December 2010 when he was released after serving two-thirds of his executed fifty-one-month sentence, he would remain on conditional release until December 2015.[90] Heilman petitioned the Minnesota Supreme Court for review, which was granted.[91]

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[78] *Id.* Inpatient treatment was one of the required conditions of Heilman's supervised release, violation of which allowed the revocation of such release. *See id.*

[79] *Id.*

[80] *Id.* Justice Thissen's dissent noted that the failure to record the purpose of release was alarming for a multitude of reasons. *Id.* at 402–03 (Thissen, J., dissenting).

[81] *Id.* at 391.

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] *Id.* ("The court first reclassified the district court's order as a grant of summary judgment because the parties relied on documents outside the pleadings." (citing Heilman v. Courtney, 906 N.W.2d 521, 524 (Minn. Ct. App. 2017))).

[88] *Heilman*, 906 N.W.2d at 525. This determination was based on the interplay of section 169A.276, subdivision 1(d) and section 244.172, subdivision 2 of the Minnesota Statutes.

[89] *Heilman*, 906 N.W.2d at 525–26; *see also Huseby*, 903 N.W.2d at 636–38.

[90] *Heilman*, 906 N.W.2d at 526.

[91] *Heilman*, 926 N.W.2d at 392. Heilman argued that the appellate court, in addition to its misinterpretation, had inappropriately reviewed the statute—an issue that had not been raised in district court. *Id.*

B. The Minnesota Supreme Court's Decision and Reasoning

Before the Minnesota Supreme Court, Heilman argued that his claims should not have been dismissed.[92] The court addressed two issues: (1) whether the court of appeals erred when it engaged in statutory interpretation; and (2) whether a person convicted of a DWI is released from prison under the felony DWI statute when he or she begins Phase II of Bootcamp.[93] This case note focuses on the supreme court's determination that conditional release begins when Phase II of Bootcamp begins.[94]

The court reviewed the appellate court's statutory interpretation analysis de novo.[95] It began by explaining that the purpose of statutory interpretation is to determine and fulfill the legislative intent behind the statute.[96] If legislative intent is based on plain meaning, then the statute should be interpreted according to plain meaning.[97]

The court looked at a series of statutes and determined that the language in the statutory scheme does not mandate for conditional release and supervised release to begin simultaneously, meaning the two types of release do not have to run concurrently.[98] To arrive at this conclusion, the court relied on *Duncan v. Roy*, which held that the plain meaning of the word "release" is "to [be] set free from confinement or bondage."[99] The court adopted this same definition of "release" in the felony DWI statute such that an individual who is "set free" from prison begins conditional release at that point.[100] Heilman's departure for Phase II of Bootcamp was considered a release from prison as he was "set free" from prison.[101] Thus, Heilman's conditional release term began when he was released from prison to begin Phase II of Bootcamp in July 2008, meaning his term of imprisonment should have expired in July 2013.[102]

The court believed this interpretation was supported by Bootcamp's structure because Phase I requires confinement, but Phase II must expressly take place in the community.[103] In Phase II, participants are not confined despite the

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[92] *Id.*

[93] *Id.* The court addressed this first issue regarding Heilman's argument that the appellate court had inappropriately engaged in statutory interpretation when that issue had not been raised in district court. *Id.* The court ultimately determined the court of appeals had not erred because even though Heilman did not cite to the statute, it was the primary source of his argument in district court and the State had cited to the statute in its response to Heilman's argument. *Id.* Thus, the issue was properly before both the court of appeals and the present court. *Id.*

[94] *Id.* at 397–98; MINN. STAT. § 645.16 (2019).

[95] *Heilman*, 926 N.W.2d at 393.

[96] *Id.* at 394.

[97] *Id.*; MINN. STAT. § 645.16.

[98] *Heilman*, 926 N.W.2d at 394–96 (citing MINN. STAT. § 169A.276, subdiv. 1(d) (2019); MINN. STAT. §§ 244.171–.173 (2019)).

[99] *Id.* at 394 (citing State *ex rel.* Duncan v. Roy, 887 N.W.2d 271, 277 (Minn. 2016)).

[100] *Id.*

[101] *Id.* at 395.

[102] *Id.* at 390, 395.

[103] *Id.* at 395.

intense supervised release.[104] Thus, while in Phase II, participants are released from prison because they have been "set free from confinement or bondage."[105]

The court offered three pieces of evidence to bolster its decision.[106] First, the court referred to the Department of Corrections' paperwork reflecting Heilman's conditional release revocation in September 2009, which clearly showed that his conditional release began prior to the completion of his term of imprisonment in December 2010.[107] Second, the court explained that Bootcamp is an exception from the general statutory scheme and legislative mandate, allowing for release to occur before the completion of a person's sentence.[108] Third, the court indicated that Bootcamp is voluntary and requires people to sign contracts to opt into the program.[109] Thus, the incentive and benefit people receive for participation in Bootcamp is the potential of an early release from prison.[110] The court believed this provided support for the premise that conditional release would begin when a participant is released for Phase II because this would constitute an early release.[111]

Justice Lillehaug issued a persuasive dissent. He argued that the majority's plain-meaning interpretation of the phrase "release from prison" was inappropriate because the phrase is ambiguous.[112] Thus, according to Justice Lillehaug, the majority should have engaged in a complete statutory interpretation analysis.[113] He reasoned that, after a full statutory interpretation analysis, the court likely would have concluded that the court of appeals' interpretation of the phrase was the most persuasive because it most fully embodied the legislative intent.[114]

IV. ANALYSIS

The *Heilman* court came to the incorrect conclusion because it failed to engage in a complete statutory analysis given the ambiguity in the statute. Had the court engaged in this analysis, the surrounding statutes, case law, and policies would have led the court to conclude that supervised release should not begin when a Bootcamp participant leaves for Phase II of Bootcamp. Moreover, the court's

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[104] *Id.*

[105] *Id.* at 394–95 (citing State *ex rel.* Duncan v. Roy, 887 N.W.2d 271, 277 (Minn. 2016)).

[106] *Id.* at 397–98.

[107] *Id.* at 397 ("That the Department revoked Heilman's 'conditional release' in 2009 implies that Heilman did not begin his conditional-release term in 2010 . . . . That which has not yet begun cannot be revoked.").

[108] *Id.* at 397–98. ("As Heilman persuasively points out, 'that's the point of the [Bootcamp]—*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.").

[109] *Id.* at 397.

[110] *Id.* at 397–98.

[111] *Id.*; *see also* MINN. STAT. § 244.172, subdiv. 1(a) (2019).

[112] *Heilman*, 926 N.W.2d at 400 (Lillehaug, J., dissenting).

[113] *Id.* at 401 ("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." (quoting State *ex. rel.* Duncan v. Roy, 887 N.W.2d 271, 276 (Minn. 2016))).

[114] *Id.* at 401–02.

decision in *Heilman* creates a plausible equal protection violation because it creates a circumstance where similarly situated persons are treated in an unequal manner.

A. Statutory Interpretation Analysis

The central point of contention in *Heilman v. Courtney* was how the phrase "released from prison" within the felony DWI statute should be interpreted as applied to Heilman's circumstances.[115] Statutory interpretation is a task courts are well-equipped to perform and one they engage in regularly.[116] Proper statutory interpretation is imperative because courts have the duty to effectuate legislative intent when determining what behavior to criminalize and which punishments to apply.[117]

Heilman and the State provided different opinions on how the phrase "release from prison" should be interpreted.[118] Heilman believed a person's departure from prison as a part of Bootcamp fell within the statutory meaning of "released from prison."[119] The State argued that the statute was ambiguous and needed to be interpreted to determine how it should apply to Bootcamp participants.[120] Nonetheless, the court engaged in surface-level statutory interpretation to determine how the phrase "release from prison" should be defined and applied to Heilman's circumstances.[121]

1. Process Courts Utilize to Perform Statutory Interpretation and the Purpose of Statutory Interpretation

Minnesota has a network of statutes and case law that provide guidance on how courts should approach statutory interpretation issues. Statutory interpretation questions are resolved using the de novo standard

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[115] *Id.* at 389. This interpretation was necessary to determine when Heilman's conditional release term started because the felony DWI statute mandates conditional release to begin upon a person's "release from prison." *Id.* (citing MINN. STAT. § 169A.276 (2018)).

[116] Courts regularly engage in statutory interpretation as the American system mandates separation of powers, meaning legislatures make and pass laws and courts authoritatively interpret those laws. SHAMBIE SINGER & NORMAN J. SINGER, *The Function of Interpretation*, *in* SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 45:3 (7th ed. 2019); *see also* State v. Meyer, 37 N.W.2d 3, 9 (Minn. 1949) (indicating the legislature has always had the power to fix and determine the punishments that should be imposed for violations of the law); State v. Miller, No. 02-CR-15-3913, 2017 WL 2729608, at *3 (Minn. Ct. App. June 26, 2017) ("The legislature is vested with power to define criminal conduct and to determine the punishment for such conduct." (citing State v. Olson, 325 N.W.2d 13, 17–18 (Minn. 1982))).

[117] *See Olson*, 325 N.W.2d at 17–18; SINGER & SINGER, *supra* note 116.

[118] *Heilman*, 926 N.W.2d at 393.

[119] *Id.* During Phase II of the Bootcamp, participants reside in the community under house arrest and intense supervision. MINN. STAT. §§ 244.171–.173 (2019).

[120] *Heilman*, 926 N.W.2d at 393.

[121] *Id.* at 394.

of review.[122] The central purpose of all statutory interpretation is to "ascertain and effectuate the intention of the legislature."[123]

With the central purpose of effectuating the intent of the legislature, "[t]he first step in statutory interpretation is to determine whether the statute is ambiguous on its face."[124] "A statute is ambiguous only when the statutory language is subject to more than one reasonable interpretation."[125] Courts can "assume that the legislature enacts statutes 'with full knowledge of prior legislation on the same subject.'"[126] Multiple parts of a statute can be read in conjunction to determine ambiguity.[127] This is a necessary first step because, if legislative intent is discernible based on a statute's unambiguous language, courts must apply the statute's plain meaning and no further interpretation is necessary.[128] Alternatively, if a court concludes statutory language is ambiguous, it should conduct a complete statutory interpretation analysis.[129]

When interpreting a statute, courts must consider "other laws on the same subject, the purpose of the law, the consequences of a particular interpretation, and administrative and legislative interpretations of the statute."[130] The presumption is that the legislature does not intend an absurd result in the enforcement of a statute.[131] Statutes must be construed in their entirety to give effect to all of their provisions.[132] They must be considered in totality because reading a statute in isolation can lead to absurd results unintended by the legislature.[133] "Moreover, courts should give a reasonable and sensible construction to criminal statutes."[134] Words and phrases should be interpreted according to their plain and ordinary meanings.[135] Additionally, "no word, phrase, or sentence should be deemed superfluous,

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[122] *See* State v. Noggle, 881 N.W.2d 545, 547 (Minn. 2016) (indicating that statutory interpretation is a question of law that the court reviews de novo).
[123] MINN. STAT. § 645.16 (2019).
[124] State v. Jones, 848 N.W.2d 528, 535 (Minn. 2014).
[125] *Id.*
[126] State v. Leathers, 799 N.W.2d 606, 609 (Minn. 2011) (quoting Meister v. W. Nat. Mut. Ins. Co., 479 N.W.2d 372, 378 (Minn. 1992)).
[127] Christianson v. Henke, 831 N.W.2d 532, 537 (Minn. 2013); Martin v. Dicklich, 823 N.W.2d 336, 344 (Minn. 2012).
[128] *See Jones*, 848 N.W.2d at 535 ("When the Legislature's intent is discernible from plain and unambiguous language, statutory construction is neither necessary nor permitted; and courts apply the statute's plain meaning.").
[129] *Henke*, 831 N.W.2d at 537; State v. Peck, 773 N.W.2d 768, 772 (Minn. 2009).
[130] State *ex rel.* Pollard v. Roy, 878 N.W.2d 341, 344 (Minn. Ct. App. 2016) (citing MINN. STAT. § 645.16 (2016)).
[131] MINN. STAT. § 645.17(1) (2019).
[132] *Jones*, 848 N.W.2d at 535.
[133] State *ex rel.* Huseby v. Roy, 903 N.W.2d 633, 636 (Minn. Ct. App. 2017) (citing MINN. STAT. §§ 645.08, 645.16, 645.17 (2016)).
[134] State v. Murphy, 545 N.W.2d 909, 916 (Minn. 1996) (citing State v. Suess, 52 N.W.2d 409, 415 (Minn. 1952)).
[135] *Jones*, 848 N.W.2d at 535.

void or insignificant" in the final interpretation of a statute.[136] If the terms within a statute are not defined by the statute itself, the court can consider other statutes relating to the same subject matter.[137]

Statutes from various chapters may need to be interpreted together based on the doctrine of *in pari materia*, which "is a tool of statutory interpretation that allows two statutes with common purposes and subject matter to be construed together to determine the meaning of ambiguous statutory language."[138] If a court has previously interpreted a statute, the past interpretation can guide courts in future interpretation of the same statute or language.[139] Additionally, "an agency's interpretation of the statutes it administers is entitled to deference and should be upheld, absent a finding that it conflicts with the express purpose of the Act and the intention of the legislature."[140]

2. The Court's Statutory Interpretation in Heilman Was Incomplete and Produced a Result Incongruent with the Legislative Intent

In *Heilman*, the court determined the felony DWI statute and the phrase "release from prison" contained therein were not ambiguous.[141] The court resorted to the statute's plain meaning and determined that a person's "release from prison" under the felony DWI statute is triggered if the person departs from prison for Phase II of Bootcamp.[142]

a. The Statutory Phrase "Release from Prison" is Ambiguous as It Is Reasonably Subject to More Than One Interpretation

The court's interpretation of "release from prison" is problematic because it ignores both the legislative intent and the phrase's reasonable susceptibility to more than one interpretation. The court's duty during all phases of statutory interpretation must be to "ascertain and effectuate the

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[136] Christianson v. Henke, 831 N.W.2d 537, 538 (Minn. 2013) (quoting Amaral v. Saint Cloud Hosp., 598 N.W.2d 379, 384 (Minn. 1999)).
[137] Carlson v. Dep't of Emp't and Econ. Dev., 747 N.W.2d 367, 372 (Minn. Ct. App. 2008) (quoting Hahn v. City of Ortonville, 57 N.W.2d 254, 261 (Minn. 1953)).
[138] State v. Leathers, 799 N.W.2d 606, 611 (Minn. 2011) (quoting State v. Lucas, 589 N.W.2d 91, 94 (Minn. 1999)).
[139] *Henke*, 831 N.W.2d at 538.
[140] Frieler v. Carlson Mktg. Grp., 751 N.W.2d 558, 567 (Minn. 2008) (quoting Geo. A. Hormel & Co. v. Asper, 428 N.W.2d 47, 50 (Minn. 1988)); *see also* Green v. Whirlpool Corp., 389 N.W.2d 504, 506 (Minn. 1986) (stating that "administrative agencies may adopt regulations to implement or make specific the language of a statute" as long as they do not "adopt a conflicting rule"); *Carlson*, 747 N.W.2d at 372 (stating that courts may "accord substantial consideration" to the interpretations by the agencies).
[141] Heilman v. Courtney, 926 N.W.2d 387, 397–98 (Minn. 2019).
[142] *Id.* at 394–98.

intention of the legislature."[143] This must be the chief purpose even during the first step of statutory interpretation, which requires determining if a statute's language is ambiguous.[144]

As outlined in Justice Lillehaug's dissent, there are two reasonable interpretations of the phrase "release from prison" as found in the felony DWI statute.[145] The first defines "release from prison" as the point at which a person is no longer housed within the walls of a Minnesota correctional institution.[146] The second reasonable interpretation of "released from prison" is the point at which people complete their mandated "term of imprisonment."[147]

In Minnesota, the phrase "term of imprisonment" is defined by statute and refers to two-thirds of a person's executed prison sentence.[148] People are mandated to spend this time in custody if they are sentenced on a felony-level offense.[149] This interpretation is reasonable, as courts can assume that the legislature enacts statutes with knowledge of prior legislation.[150] Thus, when the legislature passed the felony DWI statute, it did so with the knowledge that all people convicted of felony DWIs are mandated to serve two-thirds of their executed sentence in prison.[151] This knowledge should inform the interpretation of "release from prison" as it was known to the legislature. Additionally, sections 169A.276 and 244.101, subdivision 1, of the Minnesota Statutes can be reviewed in tandem to determine if an ambiguity exists.[152]

Based on these premises, the phrase "release from prison" could reasonably refer to either (1) when a person is no longer confined to a Minnesota correctional institution, or (2) the point at which a person has completed the mandated term of imprisonment. Because these two conflicting but reasonable interpretations exist, the phrase "release from prison" in the felony DWI statute is inescapably subject to two meanings, rendering the statute ambiguous.[153]

Furthermore, the overall result of *Heilman*'s statutory

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[143] MINN. STAT. § 645.16 (2019).
[144] *See id.*; SINGER & SINGER, *supra* note 116.
[145] *Heilman*, 926 N.W.2d at 401.
[146] *Id.*
[147] *Id.*; *see also* MINN. STAT. § 244.101, subdiv. 1 (2019).
[148] MINN. STAT. § 244.101, subdiv. 1.
[149] *Id.*
[150] *See* State v. Leathers, 799 N.W.2d 606, 609 (Minn. 2011) (quoting Meister v. W. Nat'l Mut. Ins. Co., 479 N.W.2d 372, 378 (Minn. 1992)).
[151] *See* MINN. STAT. § 244.101, subdiv. 1.
[152] *See* Christianson v. Henke, 831 N.W.2d 532, 532 (Minn. 2013); Martin v. Dicklich, 823 N.W.2d 336 (Minn. 2012).
[153] *See* State v. Jones, 848 N.W.2d 528, 535 (Minn. 2014) (citing State v. Fleck, 810 N.W.2d 303, 307 (Minn. 2012)).

interpretation is absurd. The *Heilman* interpretation, as applied to Heilman's circumstances, means that while Heilman was serving the remainder of his prison term after failing out of Bootcamp, he was earning time credited towards his conditional release term.[154] The court determined, in *Duncan v. Roy*, that time spent incarcerated for a supervised release violation cannot count towards a person's conditional release term because conditional release is meant to be served in the community.[155] Thus, the *Heilman* decision creates an irrational result where a person is receiving credit towards a conditional release term while incarcerated and not in the community, as is required for conditional release.[156]

Due to the statute's inescapable ambiguity, the court should have conducted a comprehensive statutory interpretation analysis, considering factors such as other laws on the same subject, the purpose of the law, the consequences of a particular interpretation, and administrative and legislative interpretations of the statute.[157] The court also should have reviewed previous interpretations of the relevant statutes and any relevant administrative interpretations provided by the Department of Corrections, the party responsible for calculating the start date of conditional release.[158] Outlined next is the statutory analysis the court should have completed in *Heilman*.

b. Determining and Effectuating the Legislative Intent Behind the Phrase "Release from Prison" Through an Examination of Other Relevant Statutes and Legislation

To effectuate the intent of the legislature through statutory interpretation, the court should have considered other laws on the same subject, the purpose of the law, the consequences of a particular

[154] Heilman v. Courtney, 926 N.W.2d 387, 394–97 (Minn. 2019).

[155] State *ex. rel.* Duncan v. Roy, 887 N.W.2d 271, 278–79 n.8 (Minn. 2016).

[156] *See id.* While the court declined to directly address whether a person may receive credit for time spent incarcerated during a supervised-release term, its holding, coupled with the newly adopted definition of "released from prison," essentially requires people to serve their conditional release period in the community. *Id.*; *see also* MINN. STAT. § 645.17(1) (2019) (instructing courts to presume that the legislature does not intend for absurd results when passing legislation).

[157] *See* MINN. STAT. § 645.16 (2019).

[158] *See* Frieler v. Carlson Mktg. Grp., 751 N.W.2d 558, 567 (Minn. 2008) (applying the Department of Human Rights' interpretation of a statutory amendment as support for the interpretation of the statute under Minnesota law); Green v. Whirlpool Corp., 389 N.W.2d 504, 506 (Minn. 1986) (stating that "administrative agencies may adopt regulations to implement or make specific the language of a statute" as long as they do not "adopt a conflicting rule"); Carlson v. Dep't of Emp't and Econ. Dev., 747 N.W.2d 367, 372 (Minn. Ct. App. 2008) (indicating courts can give "substantial consideration to administrative interpretations by the responsible agency" when attempting to ascertain the meaning behind statutory language).

interpretation, and administrative and legislative interpretations of the statute.[159] The relevant statutes to consider here include: the felony DWI statute mandating a five-year conditional release term for all people convicted of a felony DWI;[160] the statute providing guidelines for any felony-level sentence;[161] the series of statutes governing Bootcamp;[162] the statute governing Work Release;[163] and the Minnesota Sentencing Guidelines.[164]

Like the statutes interpreted in *State v. Leathers*, Chapters 169 and 244 of the Minnesota Statutes are related and should be interpreted together.[165] Chapter 244 governs sentencing for all felony-level offenses, including the offenses enumerated in Chapter 169 of the Minnesota Statutes.[166] The phrase "release from prison" in the felony DWI statute should be construed in conjunction with section 244.01 because they are *in pari materia*.

Chapter 244.101 explains that a felony sentence must "consist[] of 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."[167] Thus, it is logical for the phrase "release from prison" to refer to a person's release from confinement after completion of the mandated minimum term of imprisonment.[168] This interpretation is supported by *Huseby v. Roy*, where the Minnesota Court of Appeals held that departing prison for Work Release is not a "release from prison" because construing the departure as a release would allow people to be "release[d] from prison" before completing the required minimum term of imprisonment.[169]

As previously stated, in Minnesota, a fixed executed sentence for a felony-level offense requires "a specified maximum supervised release term

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[159] *See* MINN. STAT. § 645.16.
[160] MINN. STAT. § 169A.276, subdiv. 1(d) (2019).
[161] *See* MINN. STAT. § 244.101, subdiv. 1 (2019).
[162] MINN. STAT. §§ 244.17–.173 (2019).
[163] MINN. STAT. § 241.26 (2019).
[164] MINN. STAT. § 244.09, subdiv. 5(2) (2019) (providing the purpose behind the sentencing guidelines).
[165] *See* State v. Leathers, 799 N.W.2d 606, 609 (Minn. 2011) (explaining that chapters 244 and 609 of the Minnesota statutes are interrelated and should be interpreted in light of each other).
[166] *See id.* Chapter 169 provides more detailed direction on sentencing people convicted of felony DWIs. MINN. STAT. § 169A.276 (2019).
[167] MINN. STAT. § 244.101, subdiv. 1 (2019).
[168] *Id.*; MINN. STAT. § 169A.276 (applying the phrase "release[d] from prison" to people convicted of felony DWI).
[169] State *ex rel.* Huseby v. Roy, 903 N.W.2d 633, 637, 639 (Minn. Ct. App. 2017) (citing MINN. STAT. § 244.101, subdiv. 1 (2017)) (requiring a minimum of two-thirds of a person's executed sentence to be served in prison).

that is equal to one-third of the executed sentence."[170] The statutory language makes it clear that a person cannot serve more than one-third of an executed sentence in the community on supervised release.[171]

The court's decision in *Heilman* allows conditional release terms for some people to begin early because conditional release can start before the completion of the minimum term of imprisonment.[172] This decision defies legislative intent because it leads to an absurd result by allowing a portion of the Minnesota Statute to become ineffective and uncertain.[173] It renders section 244.101, subdivision 1(d), of the Minnesota Statutes ineffective and its application uncertain because Bootcamp participants convicted of felony DWI need not serve the mandated minimum term of imprisonment—they can be "release[d] from prison" before serving two-thirds of their executed sentence. This creates an absurd circumstance in which section 244.101 of the Minnesota Statutes no longer applies to a group of people convicted of felonies, specifically those convicted of felony DWI and participating in Bootcamp.

Additionally, the *Heilman* decision disregards the legislative intent in providing sentencing guidelines and mandating conditional release for certain offenses.[174] The purpose of the Minnesota Sentencing Guidelines "is to establish rational and consistent sentencing standards that promote public safety, reduce sentencing disparities, and ensure that the sanctions imposed for felony convictions are proportional to the severity of the convicted offense and the offender's criminal history."[175] Thus, the legislature intends criminal sentences to be promulgated in a consistent and fair manner.[176]

Furthermore, to encourage successful reentry into society, conditional release statutes are meant to provide people with close supervision by the Commissioner of Corrections after being released from

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[170] MINN. STAT. § 244.101, subdiv. 1.

[171] *Id.*

[172] Heilman v. Courtney, 926 N.W.2d 387, 396–97 (Minn. 2019); *see also* MINN. STAT. § 169A.276, subdiv. 1(d) (indicating that conditional release begins after a person convicted of felony DWI is released from prison); MINN. STAT. § 244.05, subdiv. 1b (2019) (requiring two-thirds of an executed felony sentence to be served in prison); State *ex rel.* Pollard v. Roy, 878 N.W.2d 341, 345 (Minn. Ct. App. 2016) (explaining that allowing an a person to receive credit towards a supervised release term while in custody would be absurd).

[173] *See* MINN. STAT. § 645.17(1)–(2) (2019) (stating the legislature does not intend for an absurd result in passing legislation and that the legislature intends all parts of a statute to be effective and certain).

[174] *See* MINN. STAT. § 244.09, subdiv. 5 (2019); State *ex rel.* Ward v. Roy, No. A15–1475, 2016 WL 3375989, at *3 (Minn. Ct. App. June 20, 2016) (providing information on the general intent behind conditional release statutes); Miller v. State, 714 N.W.2d 745, 748 (Minn. Ct. App. 2006) (explaining the general intent behind conditional release statutes).

[175] *About MSGC*, MINN. SENTENCING GUIDELINES COMM'N, https://mn.gov/sentencing-guidelines/about/ [https://perma.cc/WMJ6-G3B3].

[176] *Id.*

prison.[177] Conditional release statutes accomplish this by mandating supervision in the community for a fixed period that is not subject to fluctuation on a person-to-person basis.[178] The felony DWI statute specifically provides for a five-year conditional release term to be applied to *all* people convicted of felony DWI.[179] This sanction should be applied to all people convicted of felony DWIs in a fair and consistent manner pursuant to the Minnesota Sentencing Guidelines.[180]

Contrary to these legislative purposes, the court's decision in *Heilman* allows some people convicted of felony DWI to begin their conditional release terms early by allowing conditional release to begin when a person departs for Phase II of Bootcamp.[181] Instead of preventing disparities in sentencing, the court in *Heilman* created disparities by allowing Bootcamp participants convicted of felony DWIs to be treated differently than all other people convicted of that same offense.[182]

This judicially created disparity is evident when sentencing circumstances and Bootcamp requirements are considered for people convicted of felony DWI. Bootcamp participants must have a minimum of thirteen months remaining in their term of imprisonment to be eligible for Bootcamp.[183] Participants spend six months in Phase I of Bootcamp before they are eligible to depart for Phase II, which triggers the start of their conditional release according to the *Heilman* court.[184] This means that Bootcamp participants convicted of felony DWI can begin their conditional release term seven months before their counterparts who are not involved in Bootcamp.[185]

However, the maximum sentence for a first-degree DWI is a total of seven years, making the minimum term of imprisonment fifty-six months.[186] Thus, it is plausible that someone sentenced to the statutory

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[177] *Miller*, 714 N.W.2d at 748 (specifically referencing the conditional release statute in section 609.109, subdivision 7(b), of the 1998 Minnesota Statutes to provide that concepts regarding the statute's intent apply to conditional release generally).

[178] *See* MINN. STAT. § 169A.276, subdiv. 1(d) (2019); State v. Ward, 847 N.W.2d 29, 34 (Minn. Ct. App. 2014) (holding that the legislature intended conditional release to allow for supervision of a person recently released from confinement for a fixed period of time after he or she returns to the community).

[179] MINN. STAT. § 169A.276, subdiv. 1(d) (emphasis added).

[180] MINN. SENTENCING GUIDELINES § 1(A) (MINN. SENTENCING COMM'N 2019) (indicating the Sentencing Guidelines are meant to establish rational and consistent sentencing standard that reduce disparity).

[181] Heilman v. Courtney, 926 N.W.2d 387, 394 (Minn. 2019).

[182] *See id.*; MINN. STAT. § 244.09, subdiv. 5 (2019).

[183] *Heilman*, 926 N.W.2d at 404 (attaching *Policies, Directives and Instructions Manual*, MINN. DEP'T OF CORR. div. directive 204.060 (Nov. 7, 2017))

[184] *Id.* at 394, 404.

[185] *Id.*

[186] MINN. STAT. §§ 169A.24, subdiv. 2, 244.05, subdiv. 1b (2019).

maximum for first-degree felony DWI could begin Bootcamp immediately after arriving in prison and could be eligible for Phase II with fifty months—over four years—remaining in his or her sentence.[187] This effectively begins the mandated conditional release term fifty months earlier than people convicted of felony DWI who do not participate in Bootcamp.[188]

This result frustrates the legislative purpose of encouraging successful reentry into society through close supervision of people convicted of felony DWIs.[189] By the time felony DWI Bootcamp participants complete their minimum term of imprisonment, they will have already completed fifty months of their mandated conditional release term, which is only sixty months long.[190]

The disparity the court created is even more apparent given that people convicted of felony DWI who participate in Work Release are not "release[d] from prison" under the felony DWI statute, despite the similarities between Work Release and Bootcamp.[191] Clearly, this is not the legislature's intent as it creates significant disparities in the application of criminal sentences, which directly contradicts the stated purpose of the Minnesota Sentencing Guidelines.[192]

Furthermore, the *Heilman* decision does not fulfill the purpose of conditional release statutes because it creates a circumstance where a person no longer has an extended term of community supervision after completing an executed sentence.[193] Given the relevant laws, purposes of those laws, and

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[187] *See* MINN. STAT. § 169A.276, subdiv. 1(d) (2019).

[188] *See id.*

[189] *See* Miller v. State, 714 N.W.2d 745, 748 (Minn. Ct. App. 2006) (explaining that conditional release functions as an additional term of supervision allowing former prisoners to be under close supervision to promote successful reentry).

[190] *See* MINN. STAT. § 169A.276, subdiv. 1(d) (2019).

[191] *See* State *ex rel.* Huseby v. Roy, 903 N.W.2d 633, 637 (Minn. Ct. App. 2017) ("The DOC's interpretation of work release as not constituting a 'release from prison,' so as to trigger the start of the five-year conditional release term under section 169A.276, subdivision 1(d), maintains consistency and continuity between these related release statutes."); State *ex rel.* Weyaus v. Roy, No. A17-1082, 2017 WL 4478229, at *1 (Minn. Ct. App. Oct. 9, 2017) (reiterating that persons convicted of felony DWI are not "released from prison" so as to trigger the commencement of their mandated conditional release when they depart from prison to participate in Work Release). The *Heilman* court also noted that its decision did not apply to Work Release participants. Heilman v. Courtney, 926 N.W.2d 387, 396 (Minn. 2019).

[192] *See* MINN. SENTENCING GUIDELINES § 1(A) (MINN. SENTENCING COMM'N 2019) (indicating the Sentencing Guidelines are meant to establish rational and consistent sentencing standard that reduce disparity).

[193] *See Heilman*, 926 N.W.2d at 394 (Minn. 2019) (allowing conditional release to commence when a person departs for Phase II of the Challenge Incarceration Program). *But see* State v. Ward, 847 N.W.2d 29, 34 (Minn. Ct. App. 2014) (suggesting people should not receive credit towards their conditional release time for time spent in custody because it would render the statutes absurd).

the consequences of the *Heilman* decision, it is apparent the court did not act according to legislative intent.[194]

[194] *See Heilman*, 926 N.W.2d at 394 (allowing people to begin conditional release when they begin Phase II of the Challenge Incarceration Program despite not having completed the mandatory two-thirds incarceration term).

c. Determining and Effectuating the Legislative Intent Behind the Phrase "Release from Prison" in the Felony DWI Statute Through an Examination of Prior Interpretations of Relevant Statutes and Ambiguous Terms

If a court has previously interpreted a statute, that interpretation can guide courts in future interpretations of the same statute or language.[195] While the Minnesota Supreme Court has not interpreted "release from prison," as used in section 169A.276 of the Minnesota Statutes, the Minnesota Court of Appeals has interpreted this phrase and other relevant statutes.[196] These court of appeals' cases provide insight on how to carry out the statutory interpretation at issue in *Heilman*.

In *Huseby v. Roy*, the defendant, Huseby, was incarcerated after a felony DWI conviction under section 169A.276 of the Minnesota Statutes.[197] Huseby opted to participate in Work Release while incarcerated.[198] He argued that when he left the prison to participate in Work Release, he was "release[d] from prison," which triggered the start of his mandated five-year conditional release term.[199] Conversely, the Department of Corrections argued that "Work Release is an extension of confinement, not a release from confinement."[200]

The *Huseby* court indicated that people "must serve a minimum term of imprisonment equal to two-thirds of their sentence before they are eligible for supervised release."[201] Furthermore, the court determined that because the Department of Corrections is authorized to allow incarcerated people to participate in Work Release after completing only half of their term of imprisonment, incarcerated people "may be eligible to participate in Work Release while still serving some portion of the term of imprisonment."[202] Thus, conditional release could not be triggered by departure for Work Release.[203]

The *Huseby* court considered the language in the Work Release

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[195] Christianson v. Henke, 831 N.W.2d 532, 538 (Minn. 2013).
[196] *See* State *ex rel.* Huseby v. Roy, 903 N.W.2d 633, 638 (Minn. Ct. App. 2017) (explaining that a person convicted of felony DWI is not "released from prison" for the purposes of triggering the commencement of conditional release when they depart from prison to participate in Work Release); Carlson v. Dep't of Emp't and Econ. Dev., 747 N.W.2d 367, 372 (Minn. Ct. App. 2008) (explaining that an individual on electric home monitoring is still considered incarcerated and not released under Minnesota Statute section 169A.276, meaning they are unable to collect unemployment while on electric home monitoring).
[197] *Huseby*, 903 N.W.2d at 634.
[198] *Id.*
[199] *Id.* at 636.
[200] *Id.*
[201] *Id.*
[202] *Id.* at 637.
[203] *See id.*

statute to support its interpretation of Work Release to be an extension of incarceration.[204] For example, the statutory language indicates that the Commissioner of Corrections must approve a person's proposed residence while on Work Release.[205] Additionally, the Work Release statutes refer to participants as inmates.[206] Participants are treated like inmates insofar as a failure to return from planned employment while on Work Release could result in a charge for an escape from confinement.[207] Thus, if Work Release participants were "released from prison," the language indicating that Work Release is an extension of confinement, that participants are still considered inmates, and that participants can be charged with escape, would all have no meaning or effect—thereby rendering it "superfluous, void or insignificant."[208]

Moreover, if departing for Work Release constitutes a "release from prison," incarcerated people would not be able to serve the mandatory minimum term of imprisonment because they would be released from prison prior to completing two-thirds of their original, executed sentence.[209] For those reasons, the *Huseby* court adopted the Department of Corrections' interpretation that Work Release does not constitute a "release from prison" triggering the start of a person's mandated conditional release.[210]

The court additionally stated:

> [T]he DOC's interpretation recognizes that while some work release programs have no bars or restraints, an inmate is still confined and does not enjoy the same level of freedom as that experienced on supervised release. Appellant was confined to Bethel when not performing approved work, seeking work, or participating in educational/vocational activities; he was allowed to leave the confinement only if granted a furlough; and his options for work release and confinement are designated by the commissioner. He was further subject to disciplinary regulations that govern the conduct of incarcerated inmates and he was prohibited from engaging in escape behavior.[211]

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[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.*
[208] *Id.* (citing Rushton v. State, 889 N.W.2d 561, 564 (2017)).
[209] *Id.* (citing MINN. STAT. § 244.101, subdiv. 1(2017)).
[210] *Id.* (explaining that the court's decision and interpretation maintains consistency and continuity between the related statutes); *see also* State *ex rel.* Weyaus v. Roy, No. A17-1082, 2017 WL 4478229, at *1 (Minn. Ct. App. Oct. 9, 2017) (reiterating that people convicted of felony DWI are not "released from prison" when they depart from prison to participate in Work Release).
[211] *Huseby*, 903 N.W.2d at 637–38 (internal citations omitted).

The criteria the court used in *Huseby* to determine a person is not "release[d] from prison" when departing for Work Release is also applicable to Bootcamp.[212] Like Work Release, people who reside at home while in Phase II of Bootcamp do not enjoy the same level of freedom that non-incarcerated people on supervised release enjoy.[213] Bootcamp participants, like Work Release participants, are subject to intense supervision during Phase II, including regular drug testing, daily reporting to the supervising agent, forced access to their home by a supervising agent, and any other conditions imposed by the Commissioner of Corrections.[214] Both Bootcamp and Work Release participants must obtain permission from a supervising agent for all activities outside the home[215] and cannot receive visitors without the permission of a supervising agent.[216] Additionally, if Bootcamp participants fail to uphold their assigned obligations while residing at home during Phase II, they can be sent back to prison or terminated from Bootcamp as a sanction, in the same manner Work Release participants can be violated.[217]

The operational similarities between Bootcamp and Work Release necessitate an identical interpretation of the phrase "release from prison."[218] The need for continuity and consistency within statutes applies just as fully to Bootcamp and the felony DWI statute as it does to Work Release and the felony DWI statute because the same concerns about people being released before completion of the mandated minimum term of imprisonment apply.[219]

Additionally, in *Carlson v. Department of Employment and Economic Development*, the Minnesota Court of Appeals defined

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[212] *See id.*; *see also* MINN. STAT. §§ 244.17–.173 (2019); Heilman v. Courtney, 926 N.W.2d 387, 404–13 (defining and instructing the actual promulgation of the Challenge Incarceration Program by providing directive for Department of Corrections Employees and providing more specific guidelines for Phases II and III of the Challenge Incarceration Program).

[213] MINN. STAT. § 244.172, subdiv. 2 (indicating Phase II of the Challenge Incarceration Program is intensive supervised release imposing significant requirements on participants).

[214] *Id.*; *see also Heilman,* 926 N.W.2d at 412–13 (attaching *Policies, Directives and Instructions Manual*, MINN. DEP'T CORR. div. directive 204.061 (July 26, 2016)).

[215] *Heilman*, 926 N.W.2d at 412.

[216] *Id.*

[217] *Id.*

[218] *See* State *ex rel.* Huseby v. Roy, 903 N.W.2d 633, 637 (Minn. Ct. App. 2017) (concluding Work Release does not constitute a release from prison that triggers conditional release); *see also* MINN. STAT. § 244.101 (2019) (mandating people convicted of a crime to serve a minimum of two-thirds of an executed prison sentence in custody); MINN. STAT. § 169A.276 (2019) (imposing a mandatory five-year conditional release term on all felony DWI convictions).

[219] *See Huseby*, 903 N.W.2d at 638 (explaining people on Work Release are not released under the felony DWI statute because of all the restrictions that apply while on Work Release).

"incarceration" as "[t]he act or process of confining someone" and "confinement" is "the state of being imprisoned or restrained."[220] Incarceration is dependent on restraint and confinement rather than the nature of the location where the restraint and confinement occur.[221] "House arrest" is defined as "confinement of a person . . . to his or her home."[222] Thus, the court concluded that individuals on house arrest are still considered incarcerated despite residing outside of a correctional institution.[223]

As Bootcamp participants in Phase II can be on house arrest through electronic monitoring, they are considered confined and restrained and, therefore, incarcerated.[224] If a person is incarcerated, he or she has not yet been "released from prison."[225] The court, in *Heilman v. Courtney*, neglected to consider pertinent decisions already made by different courts, even though doing so is encouraged in statutory interpretation.[226]

d. Determining and Effectuating the Legislative Intent Behind the Phrase "Release from Prison" in the Felony DWI Statute Through an Examination of Department of Corrections Policies and Directives

"[A]n agency's interpretation of the statutes it administers is entitled to deference and should be upheld, absent a finding that it is in conflict with the express purpose of the Act and the intention of the legislature."[227] The Department of Corrections' policies on Bootcamp make clear that Bootcamp participants are incarcerated.[228] First, participants must have a

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[220] Carlson v. Dep't of Emp't and Econ. Dev., 747 N.W.2d 367, 372 (Minn. Ct. App. 2008) (quoting *Incarceration, Confinement*, BLACK'S LAW DICTIONARY (8th ed. 2004)).

[221] *Carlson*, 747 N.W.2d at 372.

[222] *Id.* (quoting *House Arrest*, BLACK'S LAW DICTIONARY (8th ed. 2004)).

[223] *Id.* at 374.

[224] *See id.*; Heilman v. Courtney, 926 N.W.2d 387, 412–13 (attaching *Policies, Directives and Instructions Manual*, MINN. DEP'T CORR. div. directive 204.061 (July 26, 2016)).

[225] *See* MINN. STAT. § 169A.276 (2019) (containing the phrase "release[ed] from prison"); *Incarceration*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[226] *See Heilman*, 926 N.W.2d at 394 (Minn. 2019) (providing that conditional release commences when a person departs prison for Phase II of the Challenge Incarceration Program). *But see* Christianson v. Henke, 831 N.W.2d 532, 538 (Minn. 2013) (indicating prior interpretations of a statute should guide the court in future interpretations); State *ex rel.* Huseby v. Roy, 903 N.W.2d 633, 637 (Minn. Ct. App. 2017) (concluding that a departure for Work Release does not constitute a release from prison because doing so would eliminate consistency and continuity between various release statutes); *Carlson*, 747 N.W.2d at 372 (determining a person is incarcerated while subject to electric home monitoring).

[227] Frieler v. Carlson Mktg. Grp., 751 N.W.2d 558, 567 (Minn. 2008) (quoting Geo. A. Hormel & Co. v. Asper, 428 N.W.2d 47, 50 (Minn. 1988)).

[228] *Heilman*, 926 N.W.2d at 404 (attaching *Policies, Directives and Instructions Manual*, MINN. DEP'T CORR. div. directive 204.060 (Nov. 7, 2017)).

minimum of thirteen months left in their term of imprisonment to be eligible for Bootcamp, indicating that participants are still incarcerated.[229] Next, the Department's policies have a provision explaining that a participant can apply for early release to supervised release after completion of Phase III of Bootcamp, implying that a participant is not released before completing Phase III.[230] Moreover, the criteria for early release is strict—it requires that the applicant has not had any violations in Phase II or Phase III of Bootcamp.[231] These policies indicate that the Department of Corrections does not consider participants to be "released from prison" while completing Phases II and III of Bootcamp. As such, the court's decision in *Heilman* is contrary to Department policy, which was created to effectuate legislative intent.[232]

The Department of Corrections promulgated a new policy in July 2019.[233] This new policy mandates Bootcamp participants to complete their minimum terms of imprisonment to be eligible to move to Phase II, which allows them to serve the remainder of their sentence in the community.[234] This change effectively counteracts the court's decision in *Heilman* because it prevents the trigger of conditional release before a person has completed, at a minimum, two-thirds of his or her mandated term of imprisonment.[235] Such a contradiction indicates the Department's belief is that Bootcamp should not be considered a "release from prison."

Despite the apparent ambiguity of the phrase "release from prison" in the felony DWI statute, the *Heilman* court interpreted the phrase according to the proclaimed plain meaning attached by the court.[236] The culmination of statutes, cases, and documents above indicate that if the court had engaged in the necessary statutory interpretation, it would have arrived at a different conclusion. Namely, the court would have found that when a person departs for Phase II of Bootcamp, it is not a "release from prison" within the meaning of the felony DWI Statute.

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[229] *Id.*

[230] *Id.* at 412 (attaching *Policies, Directives and Instructions Manual*, MINN. DEP'T OF CORR. div. directive 204.061 (July 26, 2016)).

[231] *Id.*

[232] *See id.* (indicating people are "released from prison" under the felony DWI statute when they depart for Phase II of the Challenge Incarceration Program); *see also* MINN. STAT. § 645.16 (2019) (directing courts to conduct statutory interpretation with the purpose of effectuating legislative intent).

[233] *Policies, Directives and Instructions Manual*, MINN. DEP'T OF CORR. div. directive 204.060 (July 1, 2019), http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=204.060.htm [https://perma.cc/FE39-S2VF].

[234] *Id.*

[235] *Id.*

[236] *Heilman*, 926 N.W.2d at 394.

B. An Equal Protection Danger Posed by the Court's Incomplete Statutory Interpretation Analysis in Heilman

The Equal Protection Clause of the Fourteenth Amendment provides that no state can "deny to any person within its jurisdiction the equal protection of the laws."[237] The Minnesota Constitution's equal protection clause similarly provides, "No member of this State shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers."[238] Both clauses are generally analyzed under the same principles, beginning with the mandate that all similarly situated people must be treated alike.[239] Only "invidious discrimination" is deemed constitutionally offensive.[240] "The ground for a constitutional claim, if any, must be found in statutes or other rules defining the obligations of the authority charged."[241] Furthermore, under both constitutions, equal protection claims not involving a suspect class or a fundamental right are reviewed under a rational basis standard.[242]

The federal rational basis standard only requires that the challenged legislation "bears a rational relation to a legitimate state purpose."[243] The Minnesota Supreme Court, however, has established "'a more stringent standard of review' than its federal counterpart."[244] Unlike federal courts, Minnesota courts are unwilling to hypothesize a possible rational basis to justify a classification.[245] Instead, Minnesota requires a reasonable connection between the actual effect of the challenged classification and the statutory goals.[246]

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[237] U.S. CONST. amend. XIV, § 1.

[238] MINN. CONST., art. I, § 2.

[239] *See* State v. Cox, 798 N.W.2d 517, 521 (Minn. 2011); State v. Behl, 564 N.W.2d 560, 568 (Minn. 1997).

[240] *In re* Estate of Turner, 391 N.W.2d 767, 769 (Minn. 1986) (quoting Ferguson v. Skrupa, 372 U.S. 726, 732 (1963)).

[241] Conn. Bd. of Pardons v. Dumschat, 452 U.S. 458, 465 (1981).

[242] *See* Scott v. Minneapolis Police Relief Ass'n, Inc., 615 N.W.2d 66, 74 (Minn. 2000) (citing *Turner*, 391 N.W.2d at 769).

[243] W. & S. Life Ins. Co. v. State Bd. of Equalization, 451 U.S. 648, 668 (1981).

[244] *In re* Durand, 859 N.W.2d 780, 784 (Minn. 2015) (quoting State v. Russell, 477 N.W.2d 886, 889 (Minn. 1991)).

[245] *Russell*, 477 N.W.2d at 889.

[246] *Id.* This independent and stricter rational basis review is warranted and necessary for Minnesota to guarantee equal protection under the Minnesota Constitution, despite the continually changing federal case law surrounding federal equal protection rights. *Id.* The court explained:

> To harness interpretation of our state constitutional guarantees of equal protection to federal standards and shift the meaning of Minnesota's constitution every time federal case law changes would undermine the integrity and independence of our state constitution and degrade the

1. Minnesota's Equal Protection Standard and Rational Basis Test

To prevail on an equal protection challenge, as a threshold requirement, the individual challenging the classification has the burden to show the two classes created by the state action are similarly situated in relevant respects.[247] This is because "the Equal Protection Clause does not require that the State treat persons who are differently situated as though they were the same."[248]

If neither a suspect class nor a fundamental right is implicated by the state action, Minnesota courts will apply the Minnesota rational basis test.[249] Minnesota's rational basis test requires that:

> (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs;
> (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and
> (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.[250]

Above all, the ultimate purpose of the Minnesota rational basis test is to ensure a reasonable connection exists between the actual effect of the challenged classification and the actual statutory goals involved.[251] Minnesota case law illuminates the application of this rule. The first prong of the test—a genuine and substantial distinction between those inside and outside the class—requires the state to show more than anecdotal support for the

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> special role of this court, as the highest court of a sovereign state, to respond to the needs of Minnesota citizens.

Id.

[247] State v. Johnson, 813 N.W.2d 1, 12 (Minn. 2012).

[248] *Id.* (citing Nordlinger v. Hahn, 505 U.S. 1, 10 (1992)).

[249] *See* Scott v. Minneapolis Police Relief Ass'n, Inc., 615 N.W.2d 66, 74 (Minn. 2000) (citing *In re* Estate of Turner, 391 N.W.2d 767, 769 (Minn. 1986)). A fundamental right is one that is "objectively, deeply rooted in this Nation's history and tradition." Washington v. Glucksberg, 521 U.S. 702, 720–21 (1997). Fundamental rights are "'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Id.* at 721 (quoting Palko v. Connecticut, 302 U.S. 319, 325–26 (1937)). Suspect classifications are defined as "classification[s] based on race, national origin, [or] alienage." *Suspect Classification*, BLACK'S LAW DICTIONARY (11th ed. 2019); *see also* Graham v. Richardson, 403 U.S. 365, 371–72 (1971) (classifications based on citizenship and alien status are inherently suspect); McLaughlin v. Florida, 379 U.S. 184, 192 (1964) (racial classifications are constitutionally suspect).

[250] *Russell*, 477 N.W.2d at 888.

[251] *Id.* at 889.

classification.[252] Rather, some sort of evidence or scientific study should be provided to justify the classification.[253] The rationale for a classification cannot be based purely on assumption.[254]

The second prong requires a showing that the created classification is relevant to its asserted purpose.[255] To ascertain if the classification is relevant, the court can review the statutory objective of the statute and surrounding statutes.[256] Under the third rational basis prong, "[a]n interest is generally considered legitimate if it advances one of the state's traditional police powers."[257]

Lastly, there is an additional consideration for criminal statutes. A criminal statute is unconstitutional under the Minnesota Equal Protection Clause if it prescribes different punishments or different degrees of punishment for the same conduct committed under similar circumstances by people who are similarly situated.[258] Thus, in order to establish that equal protection has been denied, an individual must show that similarly situated people have been punished differently.[259]

2. Applying Minnesota's Rational Basis Test to the Classifications Created by the Heilman Decision

To demonstrate the potential equal protection violation created by the court's decision in *Heilman v. Courtney*, this section analyzes the classifications under the Minnesota rational basis standard. The threshold requirement for equal protection claims is a showing that the two classes created by the court's decision are similarly situated in relevant respects.[260] When criminal punishments are at issue, classes are similarly situated if the criminalized conduct perpetrated by people in both classes is the same.[261] The critical inquiry is whether the elements of the conduct punished in each

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[252] *See* Weir v. ACCRA Care, Inc., 828 N.W.2d 470, 474 (Minn. 2013).

[253] *See ACCRA Care*, 828 N.W.2d at 474 ("[A] classification failed the first step of the Minnesota rational-basis test because the classification was not based on studies or evidence."); *Russell*, 477 N.W.2d at 889–90 (requiring more than anecdotal evidence for a genuine and substantial distinction between classifications).

[254] *ACCRA Care*, 828 N.W.2d at 474 (citing Healthstar Home Health, Inc. v. Jesson, 827 N.W.2d 444, 451 (Minn. Ct. App. 2012)).

[255] *See* Mitchell v. Steffen, 487 N.W.2d 896, 904 (Minn. Ct. App. 1992).

[256] *See id.* at 904–05.

[257] Kelly A. Spencer, *Sex Offenders and the City: Ban Orders, Freedom of Movement, and Doe v. City of Lafayette*, 36 U.C. DAVIS L. REV. 297, 306 (2002).

[258] State v. Barnes, 713 N.W.2d 325, 331–32 (Minn. 2006).

[259] *See* Paquin v. Mack, 788 N.W.2d 899, 906 (Minn. 2010).

[260] State v. Johnson, 813 N.W.2d 1, 12 (Minn. 2012).

[261] *See* State v. Cox, 798 N.W.2d 517, 522 (Minn. 2011) (indicating equal protection is not denied by a statute assigning different punishment to a convicted person unless it gives different punishments for the same crime committed under the same circumstances by people in similar situations).

classification are the same or essentially similar.[262]

Here, the Minnesota rational basis test will apply, as *Heilman* concerned neither a suspect classification nor a fundamental right.[263] Nonetheless, in *Heilman*, the court created two classifications: Bootcamp participants convicted of felony-level DWIs and all other persons convicted of felony-level DWIs.[264] The criminal conduct punished in each class is not just similar, it is identical.[265] People in both classifications are charged under the felony DWI statute.[266] The statute requires all people convicted of felony DWI to serve five years of conditional release after leaving prison.[267] Even though people can have varying prison sentences and can elect to participate in incarceration programs, the conditional release term is fixed and applies evenly to all persons convicted of felony-level DWI.[268] Therefore, the classes created by the *Heilman* decision are similarly situated, and the threshold requirement for an equal protection claim is met.

a. The First Prong of the Rational Basis Test: The Classifications Must Be Genuine and Substantial, Not Arbitrary

The first prong of the rational basis test requires that "[t]he distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial."[269] This means the state must show more than anecdotal support for the classification because the state's rationale for a distinction cannot be based purely on assumptions.[270] The *Heilman* decision does not satisfy this prong because the court did not consider the potential classifications created through its decision. As such, the court provided no evidentiary support for its decision outside of its interpretation of the statutory language which ignored legislative intent.[271] The result is an

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[262] *Cox*, 798 N.W.2d at 522 (citing State v. Frazier, 649 N.W.2d 828, 837 (Minn. 2002)).
[263] *See supra* note 249 and accompanying text.
[264] *See* Heilman v. Courtney, 926 N.W.2d 387, 394 (Minn. 2019). The *Heilman* court creates this distinction because Bootcamp participants begin their conditional release when they depart for Phase II of Bootcamp, while people who do not participate in Bootcamp will not begin their conditional release term until the completion of their minimum term of imprisonment. *Id.* at 394.
[265] *See* MINN. STAT. § 169A.276, subdiv. 1(a), (d) (2019) (mandating a minimum five-year conditional release term for people sentenced with a felony DWI).
[266] *See id.*; *Heilman*, 926 N.W.2d at 394 (determining that people who leave prison as part of the Challenge Incarceration Program are released from prison under the felony DWI statute).
[267] MINN. STAT. § 169A.276.
[268] *Id.*
[269] State v. Russell, 477 N.W.2d 886, 888 (Minn. 1991).
[270] *See id.*
[271] *See Heilman*, 926 N.W.2d at 394; *see also Russell*, 477 N.W.2d at 889.

arbitrary classification between two groups of people convicted of felony-level DWI, which does not meet the first prong of the rational basis test.[272]

Even if Bootcamp participants could be considered distinct from all other people convicted of felony-level DWI because they elect to participate in an incarceration program, they are not sufficiently distinguishable from Work Release participants. Nevertheless, Work Release participants are not afforded the same privilege of beginning conditional release early when they depart from the prison to participate in Work Release.[273] This is problematic because, as explained earlier, Bootcamp and Work Release are both optional, community-based incarceration programs with similar requirements and operational program guidelines.[274] This makes the court's decision irrational and unsupported by any substantial differences between Bootcamp and Work Release, indicating that the first prong of the rational basis test is not met.

The critical inquiry in validating class distinctions is whether the elements of the conduct punished in each classification are the same or essentially similar.[275] Mandated conditional release applies to all persons sentenced for felony-level DWI after completion of the term of imprisonment despite varying lengths in prison sentences.[276] Thus, the decision a person makes once incarcerated, such as participating in an incarceration program, should not have any effect on felony DWI conditional release because it should apply identically to all people convicted of felony-level DWI.[277] Therefore, the court's decision in

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[272] *See* Weir v. ACCRA Care, Inc., 828 N.W.2d 470, 474 (Minn. 2013) (indicating that a classification based on anecdotal observations of one expert witness, rather than studies or evidence, does not pass the first prong of Minnesota's rational basis test); *Russell*, 477 N.W.2d at 888–90 (holding that a statute failed the first prong of Minnesota's rational basis test because there was a lack of a substantial distinction between those inside and outside of the class and the only support provided for the classification was purely anecdotal testimony).

[273] *See, e.g.*, State *ex rel.* Huseby v. Roy, 903 N.W.2d 633, 637 (Minn. Ct. App. 2017) (indicating people convicted of felony DWI are not "released from prison" under section 169A.276 of the Minnesota Statutes when they depart prison for Work Release); State *ex rel.* Weyaus v. Roy, No. A17-1082, 2017 WL 4478229, at *1 (Minn. Ct. App. Oct. 9, 2017) (reaffirming that when a participant leaves prison to participate in Work Release, they are not "released from prison" under Minnesota Statutes section 169A.276).

[274] *See* discussion *supra* Section II.B.

[275] *See* State v. Barnes, 713 N.W.2d 325, 331 (Minn. 2006) (finding that classifications did not violate equal protection because the two statutes in question "punish very different conduct"); State v. Frazier, 649 N.W.2d 828, 837 (Minn. 2002) ("A statute violates the equal protection clause when it prescribes different punishments or different degrees of punishment for the same conduct committed under the same circumstances by persons similarly situated. Thus, the critical inquiry is whether the elements [the] statute[s] are the same or essentially similar." (internal citations omitted)).

[276] *See* MINN. STAT. § 169A.276 (2019).

[277] *See id.* (providing a sentencing structure for all persons convicted of felony-level DWI, specifically that all persons must serve a five-year conditional release term if their prison

Heilman does not satisfy the first prong of the rational basis test as the distinctions created are manifestly arbitrary and unsupported by evidence.

sentence is executed); State v. Cox, 798 N.W.2d 517, 522 (Minn. 2011) (explaining that statutes can violate equal protection when they punish people differently despite the fact that they punish identical conduct). *But see Frazier*, 649 N.W.2d at 837 (concluding a statute did not violate equal protection because the people being punished in each class were not similarly situated).

b. The Second Prong of the Rational Basis Test: An Evident Connection Between the Classification and the Law

The second prong of the rational basis test requires classifications to be "genuine or relevant to the purpose of the law."[278] To ascertain if the classification is relevant, the objective of the statute and surrounding statutes should be examined.[279] The Minnesota Sentencing Guidelines indicate that the purpose of the guidelines "is to establish rational and consistent sentencing standards that promote public safety, reduce sentencing disparity, and ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the offender's criminal history."[280] Additionally, conditional release statutes are created to provide people convicted of certain offenses with close supervision for a fixed term by the Commissioner of Corrections after release from prison.[281]

The court's decision in *Heilman* effectively ignores the legislative purpose for both the Sentencing Guidelines and the felony DWI conditional release statute because it creates both disparity and unpredictability in sentencing. Disparity and unpredictability are an inescapable result when one class of people can begin conditional release earlier than similarly situated others. Bootcamp participants can begin their conditional release between seven[282] and fifty[283] months earlier than all other people convicted of felony DWI. Thus, the second prong of the rational basis test is not met as the classifications created in *Heilman* do not have a genuine or relevant connection to the purposes behind criminal sentencing guidelines or conditional release statutes.[284]

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[278] *Russell*, 477 N.W.2d at 888.

[279] *See* Mitchell v. Steffen, 487 N.W.2d 896, 904–05 (Minn. Ct. App. 1992).

[280] MINN. SENTENCING GUIDELINES COMM'N, *supra* note 175.

[281] *See* Miller v. State, 714 N.W.2d 745, 748 (Minn. Ct. App. 2006) (specifically referencing the conditional release statute contained in section 609.109, subdivision 7(b), of the 1998 Minnesota Statutes; however, the concepts apply to conditional release generally).

[282] The minimum of seven months comes from the requirement that participants have a minimum of thirteen months left on their sentence to participate in Bootcamp. This, combined with the required six months in Phase I, allows participants to leave for Phase II seven months before their release date. *See* Heilman v. Courtney, 926 N.W.2d 387, 404 (attaching *Policies, Directives and Instructions Manual*, MINN. DEP'T OF CORR. div. directive 204.060 (Nov. 7, 2017)).

[283] The maximum of fifty months is derived from the statutory maximum sentence of seven years for first-degree DWI, meaning a person would serve a minimum term of imprisonment of fifty-six months. MINN. STAT. §§ 169A.24, subdiv. 2, 244.05, subdiv. 1b (2019). Thus, incarcerated people who become involved in Bootcamp immediately could complete Phase I and release to Phase II with fifty months remaining in their sentence. *See Heilman*, 926 N.W.2d at 404 (attaching Policies, Directives and Instructions Manual, MINN. DEP'T OF CORR. div. directive 204.060 (Nov. 7, 2017)).

[284] *See* State v. Russell, 477 N.W.2d 886, 888 (Minn. 1991).

c. The Third Prong of the Rational Basis Test: A Legitimate State Interest

The third prong of the Minnesota rational basis test requires the purpose behind the classification to be related to a legitimate state interest.[285] "An interest is generally considered legitimate if it advances one of the state's traditional police powers."[286] Determining what conduct to criminalize and what punishments to attach clearly falls within a state's traditional police powers because it is within the powers of "a sovereign to make all laws necessary and proper to preserve the public security, order, health, morality, and justice."[287] In this case, the third prong of the rational basis test is likely satisfied because the statute involved is a statute punishing criminal conduct, through which the state legitimately exercises its traditional police power to determine what conduct to criminalize.[288]

d. The Overall Purpose of the Rational Basis Test: A Reasonable Connection Between the Actual Effect of a Classification and the Purpose of the Classification

The ultimate purpose of the Minnesota rational basis test is to ensure a reasonable connection exists between the actual effect of the challenged classification and the statutory goals involved.[289] The purpose behind the felony DWI statute is to ensure people remain supervised in the community for a fixed period after completing their term of imprisonment so as to smooth their transition back into society after incarceration.[290] The legislature also intended criminal sentences to be promulgated in a fair, consistent, and equitable manner to reduce disparity.[291]

The decision in *Heilman* creates a circumstance where similarly situated people receive disparate sentences because Bootcamp participants can begin their conditional release significantly earlier than people who do not participate in Bootcamp.[292] Bootcamp participants may serve less of their

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[285] *See* Weir v. ACCRA Care, Inc., 828 N.W.2d 470, 476 (Minn. Ct. App. 2013).
[286] Spencer, *supra* note 257.
[287] *Police Power*, BLACK'S LAW DICTIONARY (11th ed. 2019).
[288] *See ACCRA Care*, 828 N.W.2d at 476 ("The third step of Minnesota's rational-basis test is to analyze whether the purpose of the amendment is "one that the state can legitimately attempt to achieve."); Spencer, *supra* note 257 (indicating a state's purpose is usually legitimate if it relates to the state's police powers or interests).
[289] *Russell*, 477 N.W.2d at 889.
[290] *See* Miller v. State, 714 N.W.2d 745, 748 (Minn. Ct. App. 2006) (explaining the purposes behind conditional release); *see also supra* notes 177–180 and accompanying text.
[291] *See* MINN. SENTENCING GUIDELINES § 1(A) (MINN. SENTENCING COMM'N 2019) (indicating the Sentencing Guidelines are meant to establish rational and consistent sentencing standard that reduce disparity).
[292] *See id.* (indicating the intent that there be rational and consistent sentencing standards which promote public safety while reducing sentencing disparities); Heilman v. Courtney,

conditional release term in the community than other people convicted of felony DWI because some of their conditional release time is expended during their time participating in Phases II and III of Bootcamp.[293] As such, the court's decision in *Heilman* undercuts the legitimate state and legislative purposes for conditional release and criminal sentencing guidelines, creating a circumstance where the state's purposes are not achieved. The classifications created by the court's decision in *Heilman* are not reasonably related to the purpose of the statutes and, therefore, fail to satisfy the rational basis test.[294]

In short, the classifications created by the *Heilman* decision would not satisfy the requirements of the Minnesota rational basis test because the classifications drawn in *Heilman* were arbitrary and did not genuinely or appropriately relate to the legitimate legislative purpose behind the felony DWI conditional release statute or the Sentencing Guidelines.[295] Overall, the Minnesota rational basis test is not satisfied because the classifications do not reasonably relate to the actual legislative intent behind the felony DWI statute and the Sentencing Guidelines.[296]

V. CONCLUSION

The *Heilman* court interpreted "released from prison" in a manner inconsistent with legislative intent, case history, and administrative guidelines. Had the court undertaken a comprehensive statutory interpretation, it would have determined that the phrase "release from prison" is ambiguous and refers to a person's release from a term of imprisonment. Thus, participants' departure for Phase II of Bootcamp cannot constitute a "release from prison" unless they have completed their mandated minimum term of imprisonment. Furthermore, the *Heilman* decision violates equal protection by allowing people who are similarly situated to be treated differently without a rational basis for such disparate treatment.

926 N.W.2d 387, 394 (Minn. 2019) (holding that persons convicted of felony DWI who depart from prison for Phase II of the Challenge Incarceration Program are "released from prison" for the purpose of triggering their conditional release, and noting that this decision does not apply to Work Release participants).

[293] *Heilman*, 926 N.W.2d at 394.

[294] *See* Wegan v. Village of Lexington, 309 N.W.2d 273, 281 (Minn. 1981) (holding a statute and resulting classifications unconstitutional because classifications rested on grounds that were purely arbitrary).

[295] *See* State v. Russell, 477 N.W.2d 886, 888 (Minn. 1991) (providing that a classification must be genuine or relevant to a given law's purpose to pass Minnesota's rational basis test).

[296] *See id.* at 889 (concluding that the overall purpose of Minnesota's rational basis test is to ensure a reasonable connection exists between the actual effect of the challenged classification and the statutory goals involved).