

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 24-0297

MONONA COUNTY MHMH001061

**IN THE MATTER OF N.F.,
Petitioner/Appellee.**

**APPEAL FROM THE IOWA DISTRICT COURT
FOR MONONA COUNTY**

HONORABLE JEFFREY NEARY

APPELLANT'S BRIEF

BRENNNA BIRD
Attorney General of Iowa

SARAH JENNINGS
Assistant Attorney General
Hoover State Office Building
1305 E. Walnut St., 2nd Floor
Des Moines, Iowa 50319

ATTORNEYS FOR APPELLANT-RESPONDENT

CERTIFICATE OF SERVICE

On the 8 day of May 2024, the State served the Appellant's Brief on all other parties to this appeal via EDMS.

/s/ Sarah Anne Jennings
SARAH ANNE JENNINGS
Assistant Attorney General

TABLE OF CONTENTS

CERTIFICATE OF SERVICE.....	2
TABLE OF CONTENTS	3
TABLE OF AUTHORITIES.....	4
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	6
ROUTING STATEMENT.....	7
NATURE OF THE CASE.....	7
STATEMENT OF THE FACTS	8
ARGUMENT	
I. HHS AND THE STATE OF IOWA HAVE THE RIGHT OF APPEAL IN SECTION 724.31 ACTIONS.....	21
II. THE DISTRICT COURT IMPROPERLY DISCOUNTED N.F.'S SUBSTANCE ABUSE COMMITTAL IN ITS ANALYSIS.....	25
III. THE DISTRICT COURT ERRED IN GRANTING N.F.'S PETITION FOR FIREARMS DISABILITY RELIEF. Standard of Review	34
Preservation of Error.....	34
Discussion	35
Burden of Proof.....	35
Iowa Code Section 724.31(3) Categories of Evidence	37
Circumstances of the Original Issuance of the Order.....	37
N.F.'s Record: Mental Health Records and Criminal History Records.....	40
N.F.'s Reputation: Character Witness Statements, Testimony, and Other Character Evidence	43
Changes in N.F.'s Condition or Circumstances.....	45
Applying <i>Matter of A.M.</i>	50
CONCLUSION	54
REQUEST FOR NON-ORAL SUBMISSION	55
CERTIFICATE OF COMPLIANCE.....	56

TABLE OF AUTHORITIES

<u>Cases</u>	<i>Page(s)</i>
<i>Alvarez-Victoriano v. City of Waterloo</i> , 984 N.W.2d 178, 183 (Iowa 2023)	22
<i>Crowell v. State Pub. Defender</i> , 845 N.W.2d 676, 682 (Iowa 2014)	24
<i>Matter of A.M.</i> , 908 N.W.2d 280, 283-87 n.4 (Iowa Ct. App. 2018).....	22, 36, 37, 41, 42, 44, 49, 51, 52, 54
<i>State v. Howard</i> , 509 N.W. 2d 764, 767 (Iowa 1993).....	34
<i>United States v. Hansel</i> , 474 F.2d at 1124 (8th Cir. 1973).....	27

Statutes and Rules

18 U.S.C. § 922(d)(4)	25, 27
18 U.S.C. § 922(g)(4).....	25, 27, 28, 32
27 C.F.R. § 478.11	31, 32
Iowa Code § 125.2(16)	30
Iowa Code § 724.15(2)(d)	32
Iowa Code § 724.31.....	21
Iowa Code § 724.31(1)	27
Iowa Code § 724.31(2)	23, 24, 35, 53
Iowa Code § 724.31(3)	33, 35, 37
Iowa Code § 724.31(3)(a)	33
Iowa Code § 724.31(3)(b)	34, 41
Iowa Code § 724.31(3)(c).....	43
Iowa Code § 724.31(3)(d)	45
Iowa Code § 724.31(4)	22, 23, 24, 36
Iowa Code § 724.31A(1).....	32
Iowa Code § 125.86(1)	13
Iowa Code § 229.15(1)	13
Iowa R. App. P. 6.101(1)(b).....	34
Iowa R. App. P. 6.103(1).....	21, 34
Iowa R. App. P. 6.107(1)(a).....	25
Iowa R. App. P. 6.151(1).....	24

Iowa Const. art. V, § 4.....24

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. HHS AND THE STATE OF IOWA HAVE THE RIGHT OF APPEAL IN SECTION 724.31 ACTIONS.**
- II. THE DISTRICT COURT IMPROPERLY DISCOUNTED N.F.'S SUBSTANCE ABUSE COMMITMENT IN ITS ANALYSIS.**
- III. THE DISTRICT COURT ERRED IN GRANTING N.F.'S PETITION FOR FIREARMS DISABILITY RELIEF.**

ROUTING STATEMENT

This case should be transferred to the Iowa Court of Appeals under Iowa Rule of Appellate Procedure 6.1101(3). The questions of (1) whether a petitioner has met his burden under Iowa Code section 724.31(4); (2) whether the district court may and should consider Iowa Code section 125 committals in section 724.31 actions; and (3) whether the State has a right of appeal in section 724.31 actions apply existing legal principles and do not otherwise meet any standards for retention by the Iowa Supreme Court.

NATURE OF THE CASE

Three issues come before the Court: (1) do the Department of Health and Human Services (HHS) and the State of Iowa have a right of appeal in Iowa Code section 724.31 cases; (2) can Iowa Code section 125 committals be considered in section 724.31 actions; and (3) did N.F. prove by a preponderance of the evidence that he will not be likely to act in a manner dangerous to the public safety and that the granting of the relief would not be contrary to the public interest. Iowa Code § 724.31.

First, HHS and the State of Iowa have the right of appeal in firearms disability relief cases. Even if the Court finds that Iowa Code

section 724.31 disallows the State's appeal, the Court may consider the appeal as though it filed as a certiorari action. Second, the district court erred in disregarding N.F.'s substance abuse committal in its analysis because it believed it could not properly do so. Finally, N.F. failed to meet his burden of proof at hearing, and so the district court erred in granting his petition for relief from firearms disability. The record shows that N.F. continues to drink alcohol, does not take accountability for his past struggles, and failed to meet mandatory statutory requirements by failing to offer criminal history records and current mental health records into evidence. This Court should reverse.

STATEMENT OF THE FACTS

Summary of Involuntary Committal Cases

N.F.'s firearms disability arises from two cases for involuntary commitment in March 2016—the first due to a serious mental impairment and the second due to a substance-related disorder. Monona cases MJMH000811 (serious mental impairment) and MJMH000812 (substance-related disorder). N.F.'s mother and father completed applications and affidavits alleging N.F. had a serious mental illness and substance-related disorder requiring involuntary commitment. (D0001

(MJMH000811), Affidavit (3/24/2016); D0002 (MJMH000811), Application (3/24/2016); D0001 (MJMH000812), Application (3/24/2016); D0002 (MJMH000812), Affidavit (3/24/2016).) N.F. was 14 years old at the time of his parents' applications, and he remained 14 until the time of the committals' discharge at the end of April. (D0012 (MJMH000811), Order Dismissing (4/28/2016); D0013 (MJMH000812), Other Order (4/28/2016); D0001 (MHMH001061), Petition (8/18/2023)).

In the simultaneously filed committal cases, N.F.'s mother and father filed two applications to involuntarily commit N.F. (D0002 (MJMH000811); D0001 (MJMH000812)). Case MJMH000811 alleged that N.F. was seriously mentally impaired and needed treatment under Iowa Code section 229.6. (D0002 (MJMH000811)). A companion case, MJMH000812, alleged that N.F. was a chronic substance abuser needing treatment under Iowa Code section 125.75. (D0001 (MJMH000812)).

The mental health case's application describes N.F. as violent and suicidal. (D0002 (MJMH000811)). In the application, his father detailed how N.F. runs away from home, drinks alcohol, engages in sexual activity with adult women, misses school, and destroys property. (*Id.* at 1). The

application also showed that N.F. “has been committed”¹ for “fighting with parents and police, requests he be beaten during altercations and talks of suicide when with friends.” (*Id.*) N.F.’s father writes that N.F. “terrorizes [his] small brother [age 11] and sister [age 7] when at home.” (*Id.*) The Application also contains a letter from N.F.’s therapist, Erin Bonstead, who describes N.F.’s “history of aggression toward his parents.” (*Id.* at 2.) She details an “altercation with the police” after N.F. was returned home after sneaking out of the house wherein N.F. had to be “restrained and handcuffed.” (*Id.*)

In her supportive affidavit, N.F.’s mother offers a similar account. She describes N.F.’s property destruction, fights at school, and his threats of suicide. (D0001 (MJMH000811)). She mentions N.F.’s “drinking problems” and says that outpatient treatment is not working. (*Id.*) His mother describes how N.F. “lies from person to person to get what he wants.” (*Id.*)

¹ While N.F. was not formally committed before, he was hospitalized on an emergency basis in Monona County case MJMH000810. The emergency hospitalization order for that case states that N.F. “has been a runaway for two days” and has a “history of depression and escalating defiant behavior” with “threats of suicide.” (D0001 (MJMH000810), Hearing for Emergency Hospital (3/15/2016)).

In the substance abuse case, the Application describes N.F.'s underage alcohol abuse and criminal charges in connection with his alcohol abuse. (D0001 (MJMH000812) at 1). His father explains that N.F. refuses to get up for school in the mornings after he has been out "drink[ing] with friends." (*Id.*) His father mentions N.F.'s earlier hospitalization (MJMH000810) and how, hours after N.F.'s alcohol evaluation, N.F. was out drinking again upon release. (*Id.*) The corroborating witness to the application, N.F.'s mother, states that N.F. needs help for his alcohol abuse "before it's too late." (D0002 (MJMH000812) at 1.) She emphasizes that "outpatient therapy isn't working." (*Id.*)

In late March 2016, the district court issued orders finding N.F. seriously mentally impaired and a person with a substance-related disorder. (D0009 (MJMH000811), Hosp. Order at 1 (3/30/2016); D0011 (MJMH000812), Hosp. Order at 1 (3/30/2016)). The district court noted N.F.'s diagnoses of oppositional defiant disorder, post-traumatic stress disorder, and major depressive disorder as well as his "history of drinking large quantities of alcohol on numerous occasions." (*Id.*); D0009 (MJMH000811) at 2; D0011 (MJMH000812) at 2). The district court

committed N.F. on an inpatient basis for further evaluation and treatment at Jackson Recovery Child and Adolescent Recovery Hospital.

(Id.)

Certified Alcohol and Drug Counselor Audrey Baird, BSW, filed identical progress reports in both cases on April 27. (D0011 (MJMH000811), Prog. Rpt. (4/27/2016); D0014 (MJMH000812), Prog. Rpt. (4/27/2016).) Baird discussed how N.F. “struggled to address substance abuse issues specifically related to his alcohol use.” *(Id. at 1.)* She pointed out that N.F.’s reports of substance abuse history conflict with medical reports as well as those of his parents. Baird declared N.F.’s “relapse potential” as “high” due to his lack of sober peer supports, lack of insight into the consequences of his behaviors, and lack of insight into relapse prevention. *(Id.)* She called N.F.’s participation in treatment activities “sporadic.” *(Id. at 2.)*

Baird noted that N.F. has identified his treatment goal as “to stop using alcohol.” *(Id. at 1.)* She recommended that N.F. continue to participate in treatment at a Psychiatric Medical Institution for Children level of care for 90–120 days. *(Id.)* At the time of her report, N.F. was taking 10 mg of citalopram. *(Id.)*

While Baird's report was timely, her credentials did not meet the criteria required by Iowa Code sections 125.86(1) or 229.15(1). Iowa Code requires that Baird be the chief medical officer or "administrator" of N.F.'s facility. Iowa Code §§ 125.86(1), 229.15(1). As a result, the district court held a hearing in the chapter 229 case on April 28. N.F.'s attorney moved to dismiss based on the technical shortcomings of Ms. Baird's progress report, and the district court dismissed the chapter 229 action. (D0012 (MJMH000811).)

In the substance abuse case, N.F.'s attorney similarly moved to dismiss the proceeding based on Baird's Progress Report's noncompliance with the code and previous orders of the district court. (D0013 (MJMH000812) at 1.) The district court "orally advised" the parties after the hearing that it would dismiss the substance abuse committal at the end of the day on April 28 unless Jackson Recovery filed another, compliant report. (*Id.*)

Dr. Richard Brown of Jackson Recovery did get a Psychiatric Progress Report on file on April 28 at 2:30 PM. (D0012 (MJMH000812), Prog. Rpt. (4/28/2016).) In that report, Dr. Brown writes that "[N.F.] indicates that things are going good, but I really do not see him genuinely

embracing the therapeutic work.” (*Id.* at 2.) Dr. Brown points out that N.F. is “skimming through issues” and “not investing himself,” which “leads to his prognosis certainly being poor.” (*Id.*) Dr. Brown diagnosed N.F. with posttraumatic stress disorder, major depressive disorder, alcohol use disorder, and oppositional defiant disorder. (*Id.*) The doctor noted that N.F. was taking Lexapro and that N.F. felt that it was helping. (*Id.*)

Although Dr. Brown issued his report by the deadline set by the district court, he failed to include how long N.F. would be required to remain at the facility and failed to explicitly recommend that N.F. remain in inpatient treatment. (*Id.*) So the district court also dismissed N.F.’s substance abuse case on April 28, less than one month after committing N.F. (D0013 (MJMH000812).) N.F.’s release was then 89–119 days premature by Ms. Baird’s April 27 recommendation of an additional 90–120 days of treatment. (D0014 (MJMH000812) at 1.)

Less than two months later, in June 2016, N.F. was again hospitalized on an emergency basis. The physician’s documentation from that hospitalization reveals that N.F.’s sister had kicked him out of her home due to his “behavioral issues.” (D0001 (MJMH000821), Hearing for

Emergency Hosp. at 2 (6/27/2016).) After discharge from Jackson Recovery, N.F. sent his counselor an email saying that he was “going to go out with a bang.” (*Id.*) N.F. had relapsed and was drinking alcohol “regularly.” (*Id.*) N.F. had also told someone that he was “going to kill a guy that was sleeping with [his]” girlfriend. (*Id.*) N.F. admitted to drinking alcohol and to getting off his prescribed medications. (*Id.*)

The doctor’s report shows that N.F. was not willing to be admitted to “psych.” (*Id.*) The hospital contacted Jackson Recovery, who was willing to accept N.F. in a transfer. The case has no additional filings, and no committal resulted. (*See* Monona County case MJMH000821.)

Firearms Disability Relief Petition Case

In his testimony at the January 10, 2024, hearing, N.F. contended that his involuntary commitments were due to his mother’s personal issues and overreaction—not his substance abuse, mental illness, violence, or suicidal threats. (Tr. 8; 17:2–9). N.F. makes it 66 words into his testimony before bringing up his mother. (Tr. 5:21–22). When asked on cross-examination about his violence towards his parents and siblings and at school, N.F. responds: “I read over those court reports a couple months ago, and that’s nothing that I have recollection over. At the

time . . . I had no say . . . [t]hey didn't give me a chance to speak . . . [s]o that's just . . . my mom's words." (Tr. 14:7–12). But N.F. did have a say, was represented by counsel Marchelle Denker, and contested both the mental health and substance abuse applications. (D0009 (MJMH000811) at 1; D0011 (MHMH000812) at 1.)

N.F. insists in his testimony that, at the time of the committals, he would only “go out to parties . . . and drink with [his] older friends.” (Tr. 13:17–20). He admitted to running away from home and having altercations with his family and police. (Tr. 13:21–25; 16:10–18). Yet when asked if alcohol played a role in that, N.F. responds, “[N]ot very much honestly. I think it just was a situation . . . to get my mind off things. Because there was alcohol at parties, there was my friends that I felt like I could vent to. I would say maybe 10 percent.” (Tr. 17:2–7). The other 90 percent of the situation N.F. attributes to “family confrontations” (tr. 17:7–9)—an unlikely estimation given N.F.'s diagnoses of Alcohol Use with Psychosis and Alcohol Use Disorder. (D0002 (MJMH000810), Protected Info. Form at 7 (3/16/2016); D0012 (MJMH000812) at 2.)

When pressed on his substance abuse problems on cross-examination, N.F. minimizes his use and then again blames his mother. The doctors at the time of the committal wrote that N.F. struggled to address his substance abuse issues, and N.F. disputes that on the stand but offers no facts in support of his position. (Tr. 17:10–14). He argues that he was only drinking a few beers on occasion at the time of the committal and when questioned about his diagnosis of Alcohol Use with Psychosis, he responds, “Yeah . . . that was really never the case . . . [M]y mom would catch me sneaking back in from a party, but I was never aggressive when I was . . . drinking alcohol.” (Tr. 18:15–21). Again, N.F. blames his mother and makes assertions contradicted by the evidence.

N.F. likewise minimizes or denies his mental health problems on cross-examination. N.F. devotes much of his testimony to detailing his emotional struggle with his parents’ divorce. (Tr. 8:1–4; 13:5–20; 41:10–12). Yet when questioned about whether the divorce caused trauma or contributed to his diagnosis of post-traumatic stress disorder, he shows an alarming lack of insight. For one, he disagrees with his diagnosis of post-traumatic stress disorder from the committal. (Tr. 19:17–22). Then when asked if the stress of his parents’ divorce could cause trauma, he

responds with “Yeah. I believe it could . . . [f]or some other people, but for me, I don’t believe it caused me any trauma, no.” (Tr. 20:2–12).

N.F. similarly denies his other diagnoses from the committals. He denies the diagnoses of Major Depressive Disorder, Single Episode, and Alcohol Use Disorder. (Tr. 20:13–23). At the time the committals ended, N.F. was on Lexapro for depression. He testified that he “didn’t see any benefits from that medication at all.” (Tr. 23:2–3). That directly conflicts with N.F.’s statements at the time, which include the following excerpt from Dr. Brown’s report: “He is on Lexapro. He does feel that this [is] helping, therefore we want to continue him on that.” (D0012 (MJMH000812) at 2.)

N.F.’s statements about his mental health belie the applications and affidavits for hospitalization that describe him as violent and suicidal. (D0001 (MJMH000811); D0002 (MJMH000811); D0001 (MJMH000812); D0002 (MJMH000812).) He insists on the stand that his mother—the author of the application—got it wrong, even though her statements were supported by those of his father. (Tr. 18:22–25; 21:13–17; 27:24–25; 28:2–4; D0002 (MJMH000811); D0001 (MJMH000812).) N.F. concedes he was “really close with” his father, whom he considered

“one of [his] best friends” at the time. (Tr. 16:5–7.) Neither N.F.’s mother nor his father testified at the hearing.

N.F. admits ongoing alcohol use in his testimony and in the questionnaire from the Attorney General’s Office. (Tr. 30:12–22; D0029 (MHMH001061), Ex. 102 at 2 (1/10/2024).) He also discusses drinking with his guardian and the author of one of his character letters, J.P. (Tr. 35:8–22.) N.F. admits that he and J.P. went out for beers recently. (Tr. 35:8–9.) N.F.’s Instagram account shows him with alcohol and visiting bars. (D0024 (MHMH001061), Ex. 3 (1/10/2024).) N.F.’s guardian’s son S.P.’s Instagram account shows N.F. holding a Busch Light while making an obscene gesture. (D0027 (MHMH001061), Ex. 6 (1/10/2024).) All the men surrounding N.F. in that photo are also holding beers, with one man holding a beer in each hand. (*Id.*)

N.F. only offered his own testimony at his hearing. The individuals who allegedly authored the typed, unsigned letters of recommendation did not appear in court to testify or subject themselves to cross-examination. (D0030 (MHMH001061), Ex. 103 (1/10/2024); D0031 (MHMH001061), Ex. 104 (1/10/2024).) N.F. also offered an official criminal history and a questionnaire from the Attorney General’s Office

that he had completed. He offered no other documents or evidence in support of his petition at hearing. (D0028 (MHMH001061) Ex. 101 (1/10/2024); D0029 (MHMH001061).)

Course of Proceedings

N.F. filed a Petition for Relief from Firearms Disability on August 18, 2023. (D0001 (MHMH001061).) A hearing on the merits took place on January 10, 2024. (D0011 (MHMH001061), Comp. Gen. Notice (10/13/2023).) On January 30, the district court issued an order granting N.F.'s petition. (D0037 (MHMH001061), Order Granting Relief (1/30/2024).)

HHS moved to Amend, Enlarge, and Reconsider on February 8. (D0036 (MHMH001061), Motion to Reconsider (2/8/2024).) The district court issued an order on February 20, denying the Motion to Amend, Enlarge, and Reconsider. (D0038 (MHMH001061), Other Order (2/20/2024).) The State of Iowa filed a timely Notice of Appeal per Iowa Rule of Appellate Procedure 6.101(1)(b) on February 22. (D0039 (MHMH001061), Nt. of Appeal (2/22/2024).)

ARGUMENT

I. HHS AND THE STATE OF IOWA HAVE THE RIGHT OF APPEAL IN SECTION 724.31 ACTIONS.

HHS and the State of Iowa have a right to appeal adverse decisions made under Iowa Code section 724.31. In his Motion to Dismiss, N.F. incorrectly asserts that the Department and the State of Iowa have no right of appeal due to Iowa Code section 724.31's silence on the matter. (Appellee's Motion to Dismiss filed February 28, 2024, at 2–3). That Iowa Code section 724.31(4) grants an express right of appeal to the petitioner does not deprive the State of the same. Doing so would contravene the rules of civil procedure as well as the broader context of the statute.

Iowa Rule of Appellate Procedure 6.103(1) states: “All final orders and judgments of the district court involving the merits or materially affecting the final decision may be appealed to the supreme court, except as provided in this rule, rule 6.105, and Iowa Code sections 814.5 and 814.6.” Iowa R. App. P. 6.103(1). None of those enumerated exceptions applies to decisions following hearings under Iowa Code section 724.31. Iowa Code section 724.31 contains no language depriving the State of its right of appeal. Iowa Code § 724.31.

Judge Neary’s January 30, 2024, order was a final order involving the merits, making it appealable to the Iowa Supreme Court—by either party. (D0037 (MHMH001061); *see generally Matter of A.M.*, 908 N.W.2d 280 (Iowa Ct. App. 2018) (A.M. appealed from order denying firearms disability relief).) Indeed, Iowa Code section 724.31 proceedings are civil in nature and stem from involuntary civil commitment proceedings. That eliminates any limitations on the State’s right to appeal stemming from the Double Jeopardy Clause of the Fifth Amendment. U.S. Const. amend. V.

Unless a statute directly conflicts with the rules of civil procedure, this Court will read them together to give meaning to both. *Alvarez-Victoriano v. City of Waterloo*, 984 N.W.2d 178, 183 (Iowa 2023). Here, “there is no direct textual conflict between” chapter 724 and Rule 6.103. (*Id.*). So allowing HHS to appeal on behalf of the people of Iowa to ensure that firearms statutes are properly interpreted and applied “carries out the purposes of both the statute and the rule.” (*Id.*).

HHS owes a duty to the people of Iowa to make sure that petitioners who have their rights restored are not a risk to the public safety and the restoration is not contrary to the public interest. Iowa Code § 724.31(4).

When a petitioner is relieved of his disability but has failed to meet that burden, HHS has a right and an obligation to appeal on behalf of the people of Iowa—the people whose health and welfare are its charge.

Iowa Code section 724.31(4)'s language is not superfluous because it ensures that plaintiffs' right to appeal a decision is not impeded by other statutory text. Later in subsection (4), the statute explains that a person "may file a petition for relief under subsection (2) not more than once every two years." Iowa Code § 724.31(4). Without clarifying that a petitioner may appeal, one reasonable construction of that subsection would leave a petitioner without the right of appeal at all. So, the text is not superfluous; it clarifies the rights of a petitioner seeking to appeal the denial of a firearms disability relief petition.

Iowa Code section 724.31 makes the Department a party to the action, requiring the petitioner to serve a copy of the petition on the director of HHS. Iowa Code § 724.31(2). That is intentional—HHS is the agency tasked with health and welfare and that has a stake in the outcome of these proceedings. The same goes for the county attorney, charged with maintaining the public safety of her jurisdiction and represented as well here by the State of Iowa.

It makes no sense for the Legislature to have given these parties the right to “appear, support, object to, and present evidence relevant to the relief sought by the petitioner,” but then deprive them of any remedy if the outcome runs contrary to the weight of the evidence or the law. Iowa Code § 724.31(2). The State’s vested interest in maintaining order and protecting the public does not cease with a district court order when the lower court failed to follow the mandates of the statute. In sum, the statute and this Court's rules authorize HHS to appeal final orders.

N.F. also overlooks Iowa’s form-of-review procedures. When a statute does not allow an entity—usually a nonparty—to appeal, that is not “the end of the inquiry.” *Crowell v. State Pub. Defender*, 845 N.W.2d 676, 682 (Iowa 2014). Rather, this Court's constitutional mandate includes issuing “all writs and process necessary to secure justice to parties.” (*Id.*) (quoting Iowa Const. art. V, § 4). So even if Iowa Code section 724.31 is read to disallow the State’s appeal here, the Rules of Appellate Procedure authorize this Court “to consider the appeal as though it was properly filed as a certiorari action.” (*Id.*; Iowa R. App. P. 6.151(1).)

A certiorari action is appropriate when a party claims that a district judge exceeded the judge's jurisdiction or otherwise acted illegally. Iowa R. App. P. 6.107(1)(a). The State asks the Court to consider its appeal as such if the Court determines that the State has no statutory right of appeal under section 724.31.

II. THE DISTRICT COURT IMPROPERLY DISCOUNTED N.F.'S SUBSTANCE ABUSE COMMITTAL IN ITS ANALYSIS.

The district court's January 30 Order, misinterprets and misstates the applicable law. *See* 18 U.S.C. §§ 922(d)(4), (g)(4). The district court states several times in its January 30 order that the Iowa Code chapter 125 committal "did not impose the disabilities" from which N.F. seeks relief, so "it is not to be discussed further." (D0037 (MHMH001061) at 3.) That is incorrect—Monona County file MJMH000812 is an Iowa Code chapter 125 committal that does impose federal firearms disabilities, just as N.F.'s Iowa Code chapter 229 committal does (Monona County file MJMH000811.) The district court misapplied the law and inappropriately discounted N.F.' chapter 125 committal (MJMH000812) in its analysis.

The district court's full misstatement on 18 U.S.C. section 922 as it relates to Iowa Code chapter 125 involuntary committals is as follows:

The orders and findings in [MJMH000812] did not impose the disabilities from which [N.F.] seeks relief so it is not to be discussed further except to say that it does appear that the hospitalization here and in MJMH000811 were likely far more related to substance use and abuse than mental illness. In the Court's experience, it is fairly common for applicants and affiants in a mental health crisis or substance abuse crisis to file each petition because they are unsure just what it is that is the problem and what matter perhaps caused certain behavior. It is a bit like a chicken-and-egg question. Which one came first and how does one impact the other? The Court need not further discuss MJMH000812 as it is not what caused [N.F.'s] firearms disability.

(D0037 (MHMH001061) at 3–4.) The district court improperly discounted and disregarded N.F.'s chapter 125 committal, ostensibly because the Court did not believe such committals fall within federal prohibition.

While the district court did take judicial notice of chapter 125 file, the court, right after, set the case apart and diminished its relevance: “And I think even it might have included and reference . . . to substance abuse as well. But this is not really what this is about, but nevertheless, they get intertwined.” (Tr. 4:3–6). The district court later makes a similar statement that declared substance abuse relevant only to the extent that

it “include[s] mental health.” (Tr. 11:5–9). These statements incorrectly interpret Iowa Code section 724.31 and federal law.

Iowa Code section 724.31 references two federal code sections for the firearm disabilities they impose following an order or judgment under the laws of the state of Iowa. Iowa Code §§ 724.31(1), (2). Those code sections are 18 U.S.C. section 922(d)(4) and (g)(4). (*Id.*). The first subsection of 18 U.S.C. section 922 states: “It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person, including as a juvenile . . . has been adjudicated as a mental defective or has been committed to any mental institution at 16 years or older.” 18 U.S.C. § 922(d)(4).

As for adjudication as a mental defective, that portion of the code does not apply here. The courts have distinguished “mental defective” from a finding of mental illness: “[a] mental defective” is “a person who has never possessed a normal degree of intellectual capacity.” *United States v. Hansel*, 474 F.2d at 1124 (8th Cir. 1973). A “mental defective” differs from an “insane person.” (*Id.*).

Section 922(d)(4)'s second prong applies to commitments to a mental institution at 16 years or older. N.F.'s date of birth is September 6, 2001. (D0001 (MHMH001061)). The two applicable committals happened simultaneously on March 30, 2016. (D0009 (MJMH000811); D0011 (MJMH000812).) N.F. was 14 years old at the time of committal, and he remained 14 years old until the time of the discharge on April 28. (D0012 (MJMH000811); D0013 (MJMH000812).) Because N.F. was not 16 during the time he was committed to a mental institution, that portion of 18 U.S.C. section 922(d)(4) also does not apply.

So we move on to the next applicable federal code section—18 U.S.C. section 922(g)(4)—which states: “It shall be unlawful for any person . . . who has been adjudicated as a mental defective *or who has been committed to a mental institution* . . . to ship or transport . . . or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition.” 18 U.S.C. § 922(g)(4) (emphasis added). The committal order in MJMH000811, N.F.'s Iowa Code Chapter 229 proceeding, finds the following: “that the Respondent . . . is afflicted with a mental illness AND lacks sufficient judgment to make responsible decisions with respect to his treatment or hospitalization and is likely, if

allowed to remain at liberty to inflict physical injury on himself and/or others.” (D0009 (MJMH000811) at 1.)

The 229-committal order includes N.F.’s diagnoses of “oppositional defiant disorder; post-traumatic stress disorder; and major depressive disorder.” (*Id.* at 2.) That court also noted N.F.’s “very irrational and unsafe behavior that places himself and other [sic] in danger or physical harm.” (*Id.*). The court deemed N.F. seriously mentally impaired and placed him at the Jackson Recovery Child and Adolescent Recovery Hospital “for further evaluation and treatment.” (*Id.*).

With MJMH000811, the district court seems to take no issue with the fact that N.F. was “committed to a mental institution,” within the definition of 18 U.S.C. section 922(g)(4). Indeed, MJMH000811 is the only committal the district court fully addresses in its January 30 Order Following Hearing. Where the district court misapprehends the law, then, is in determining whether 18 U.S.C. section 922(g)(4) applies to N.F.’s Iowa Code chapter 125 committal. (Monona County case MJMH000812.) The district court appears not to apply the phrase “committed to a mental institution” from 18 U.S.C. section 922(g)(4) to Iowa Code Chapter 125 committals. But it applies. The Bureau of

Alcohol, Tobacco, and Firearms regulations include the following definition:

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. *It also includes commitments for other reasons, such as for drug use.* The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

27 C.F.R. § 478.11 (emphasis added).

Under Iowa Code chapter 125, a person has a substance use disorder if they have a “diagnosable substance use disorder of sufficient duration to meet diagnostic criteria specified within the most current diagnostic and statistical manual of mental disorders published by the American psychiatric association that results in a functional impairment.” Iowa Code § 125.2(16). The district court found N.F. a “person with a diagnosable substance abuse disorder of sufficient duration to meet the diagnostic criteria specified within the most current Diagnostic and Statistical manual of Mental Disorders published by the American Psychiatric Association that results in a functional impairment.” (D0011 (MJMH000812) at 1.) The district court further found that N.F. required “full-time inpatient residential treatment” and

ordered him to Jackson Recovery Child and Adolescent Recovery Hospital under Iowa Code section 125.83. (*Id.* at 2.)

No doubt remains whether N.F. was committed for substance use, and “committed to a mental institution” in the context of 18 U.S.C. section 922(g)(4) includes committals for drug use as well as mental illness. 27 C.F.R. § 478.11. The district court then improperly made statements such as “[the substance use committal] is not to be discussed further except to say that it does appear that the hospitalization here and in MJMH000811 were likely far more related to substance abuse than mental health.” (D0037 (MHMH001061) at 3.) The substance abuse committal warranted the district court’s full consideration and discussion. That either of the committals had more to do with substance abuse, in the district court’s mind, is not a legal reason to diminish their weight or gravity in the analysis of the circumstances of the committal, as required by Iowa Code section 724.31(3)(a).

Iowa Code section 724.31A also requires that Iowa Code chapter 125 involuntary committals be reported to the Department of Public Safety, who then report that information to the FBI, who then includes the information in the National Instant Background Check System

(NICS) database as a firearms prohibitor. Iowa Code section 724.31A(1) states: “When a court issues an order or judgment by which a person is prohibited from acquiring a pistol or revolver under section 724.15, subsection 2, paragraph ‘d,’ the clerk of the district court shall forward . . . information . . . to identify the person to the department of public safety.” Iowa Code § 724.31A(1).

The listed prohibitors include that “a person shall not acquire a pistol or revolver if the person is . . . prohibited by section 724.26 *or federal law* from possessing, shipping, transporting, or receiving a firearm.” Iowa Code § 724.15(2)(d) (emphasis added). N.F. is prohibited by federal law from owning firearms. 18 U.S.C. § 922(g)(4) (“committed to a mental institution”). As stated above, involuntary committals for drug use fall within the definition of “committed to a mental institution.” *Id.*; 27 C.F.R. § 478.11. Thus, the clerk of the district court must share chapter 125 committal information with the department of public safety so the FBI can enter it into NICS. Firearms disability results.

In support of its position that substance abuse committals do not result in a federal firearms prohibitor, the district court cites the “Clerk’s manual.” (D0038 (MHMH001061) at 3.) While the Manual for Clerks of

Court guides the day-to-day practice of Iowa's clerks, it is not authoritative law. The Department recognizes that it has not been Iowa's practice to share substance abuse committal information with DPS for entry into NICS. (*Id.*). That practice does not change that such committals are federal firearms prohibitors; it only prevents federal authorities from knowing about the committal to enforce the prohibition.

Indeed, the passage of Iowa Code section 724.31A in 2021 removes any doubt as to whether clerks of court must share this information with Public Safety. The district court does not include a citation for the clerk's manual it references, so HHS cannot determine whether the manual pre- or postdates the passage of Iowa Code section 724.31A. (D0038 (MHMH001061) at 3.)

Moreover, even if the Iowa Code chapter 125 case (MJMH000812) was not the source of N.F.'s firearms disability, the district court still cannot refuse to discuss the chapter 125 committal or fail to give it proper evidentiary consideration. Iowa Code section 724.31(3) states that the "court shall receive and consider evidence . . . concerning . . . [t]he petitioner's record, which shall include, at a minimum, the petitioner's mental health records." Iowa Code §§ 724.31(3)(a), (b). The Department

maintains that the hospitalization order in MJMH000812 is a federal firearms prohibitor, but, if nothing else, that file comprises mental health records under Iowa Code section 724.31(3)(b). Mental health records the district court is required to receive and to consider. Iowa Code § 724.31(3)(b).

III. THE DISTRICT COURT ERRED IN GRANTING N.F.'S PETITION FOR FIREARMS DISABILITY RELIEF.

Standard of Review

When a petitioner appeals a denial of the relief requested in a petition to restore firearm privileges, “the review on appeal shall be de novo.” Iowa Code § 724.31(4). Under de novo review, the Court makes an “independent evaluation of the totality of the circumstances as shown by the entire record.” *State v. Howard*, 509 N.W. 2d 764, 767 (Iowa 1993).

Preservation of Error

Error is preserved. The State timely appealed. Iowa Code § 724.31(4); Iowa R. App. P. 6.101(1)(b), 6.103(1). While unnecessary for error preservation, the State moved to Reconsider, Enlarge, or Amend the district court’s order granting N.F.’s petition prior to appealing. That Motion was denied. (D0038 (MHMH001061)). The State also argued

before the district court that N.F. failed to introduce enough evidence at the hearing to meet his burden. (Tr. 33:10–19; 46–50).

Discussion

N.F. has failed to meet the burden for restoration of his firearm rights. Iowans with a firearm rights disability may petition for restoration of their rights under the statutory scheme enacted by the Iowa Legislature. Iowa Code § 724.31(2).

The district court then must consider evidence presented in all four categories outlined in Iowa Code section 724.31(3). Those categories include: (1) the circumstances of the petitioner’s original commitment; (2) the petitioner’s record, which shall include, “at a minimum” mental health records and criminal history records; (3) the petitioner’s reputation developed “at a minimum” through character witness statements, testimony, and other character evidence; and (4) any changes in the petitioner’s condition or circumstances since the original committal order. Iowa Code § 724.31(3).

Burden of Proof

The petitioner bears the burden of proof in firearms disability relief proceedings. To meet that burden, the petitioner must prove “by a

preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to the public safety and that the granting of the relief would not be contrary to the public interest.” Iowa Code § 724.31(4). The public interest prong of the test is a “separate inquiry” from the public safety, danger-to-oneself-or-others prong. The Court of Appeals reads “the public-interest prong to reach concerns other than public safety. Otherwise, the not contrary to the public interest provision would be surplusage.” *A.M.*, 908 N.W.2d at 284 n.4 (cleaned up). The petitioner bears the burden of production and the burden of proof for evidence sufficient to support his petition.

HHS and the State of Iowa have no burden to offer evidence that N.F. is a danger or that granting the relief would be contrary to the public interest. Rather, it is N.F.’s burden alone to prove that he is *not* a danger and that the granting of the relief would *not* be contrary to the public interest. Iowa Code § 724.31(4). The absence of State-provided evidence in any form is not enough to find that N.F. has met his burden. The burden lies on N.F. to corroborate his claims with evidence such as mental health records and proof of a change in condition or circumstance, not on HHS or the State of Iowa to contradict them. Iowa Code

§ 724.31(3), (4). N.F.'s own testimony is the sole source the district court relies on for much of its Order. Corroborating evidence remains scant or absent.

Iowa Code Section 724.31(3): Four Categories of Evidence

The district court decides whether a petitioner has met his burden based on evidence presented in the categories laid out in Iowa Code section 724.31(3). N.F.'s petition fails on all four categories. But the district court did not hold N.F. to the requirements of the statute or the leading interpretive Iowa case law on section 724.31. *A.M.*, 908 N.W. 2d at 284–87 (affirming district court's denial of firearms disabilities relief petition despite the petitioner being generally law-abiding because he did not provide mental health records from intervening years to show a track record and because the evidence he did provide to show standing in the community came from possibly biased sources). N.F.'s failure to meet the categories of evidence required by Iowa Code section 724.31(3) is outlined below.

Circumstances of the Original Issuance of the Order

N.F. did not offer enough evidence on the circumstances of the original order that imposed firearm disabilities to justify rights

restoration. The district court took judicial notice of the four underlying mental health and substance abuse files at the hearing: Monona County cases MJMH000810 (chapter 229 emergency hospitalization order); MJMH000811 (serious mental impairment involuntary commitment); MJMH000812 (substance-related disorder involuntary commitment); and MJMH000821 (chapter 229 emergency hospitalization order). (Tr. 3:20–25). The circumstances of N.F.’s two committals are covered in detail above.

Despite what N.F. implies in his testimony and questionnaire, innocent teenage antics and familial discord are not why he lost his firearm rights. (Tr. 13:17–20; 17:2–9; 18:15–25; D0029 (MHMH001061) at 3.) N.F.’s parents wrote that N.F. had been struggling since he was 12 years old. (D0001 (MJMH000811)). At age 14, N.F. developed significant substance use and mental health issues to the point that he became violent and suicidal. (D0002 (MJMH000811)). That was the impetus for his committals—and those committals for the loss of his firearm rights.

Among the evidence the judge considered in N.F.’s committal cases were two applications and affidavits completed by N.F.’s mother and father attesting that N.F. had threatened suicide, continued to abuse

alcohol, run away multiple times, failed to attend school consistently, and engaged in sexual relationships with adult women six years his senior. (D0001 (MJMH000811); D0002 (MJMH000811); D0001 (MJMH000812); D0002 (MJMH000812).) The judge in the commitment cases also considered two physicians' reports. The report filed in the chapter 229 case diagnosed N.F. with Oppositional Defiant Disorder, Post-Traumatic Stress Disorder, Major Depressive Disorder, and Alcohol Use Disorder, Moderate. (D0008 (MJMH000811), Phys. Rpt. at 1 (3/28/2016).) The report filed in chapter 125 case diagnosed N.F. with Alcohol Use Disorder and notes that N.F. was drinking "upwards of a case of beer at a time." (D0010 (MJMH000812), Phys. Rpt. at 1 (3/28/2016).) The report states that N.F. attempted outpatient treatment where he had to attend four days a week, but he was noncompliant and ran away from home to avoid treatment. (*Id.*) Finally, the district court noted that N.F. has engaged in "very irrational and unsafe behavior" that has put N.F. and others "in danger of physical harm." (D0009 (MJMH000811).)

Those facts establish that N.F. had serious mental illness and substance abuse issues independent of any alleged overreaction by his parents to what he characterizes as normal teenage boundary-pushing.

N.F. did not rebut that with evidence before, at, or after the hearing.

And the committal records show that N.F. was far from ready for discharge at the time of the dismissal. While the committals were dismissed less than one month after the district court committed N.F. to the Jackson Recovery Center, they were not dismissed because N.F. no longer met criteria for commitment. (D0012 (MJMH000811); D0013 (MJMH000812).) Instead, the district court was forced to dismiss the committals on a technicality. (*Id.*). At the time the district court dismissed the committals, the providers made clear that N.F. lacked insight, was not investing in treatment, and had a “certainly . . . poor” prognosis. (D0012 (MJMH000812) at 2). Rather than getting the treatment recommended by Jackson Recovery, N.F. was released months prematurely. (D0014 (MJMH000812) at 1.)

The circumstances of N.F.’s committal weigh against the relief of his firearms disability due to the seriousness of his diagnoses at the time and his failure to comply with treatment recommendations before discharge.

N.F.’s Record: Mental Health Records and Criminal History Records

N.F. did not submit mental health records, which are required for

the district court to restore firearms rights. Iowa Code section 724.31(3)(b) requires the district court to receive and consider evidence of the petitioner's record, which "shall include, at a minimum, the petitioner's mental health records and criminal history records." Iowa Code § 724.31(3)(b). The district court committed N.F. in March 2016; his firearms disability relief hearing took place in January 2024. (D0009 (MJMH000811); D0011 (MHMH001061).) For the intervening eight years, N.F. offered no mental health records. That alone means that N.F. failed, as a matter of law, to meet one of the four evidentiary burdens required by law to restore his firearms rights.

The introduction of Petitioner's mental health records into evidence is an explicit and mandatory requirement of the code. Iowa Code § 724.31(3)(b); *A.M.*, 908 N.W.2d at 285-86. Missing from evidence are therapy records, psychiatric records, counseling records, and any other documents that would have given the district court an objective source of information from which to evaluate N.F.'s mental status over the eight years since committal. Or even independent documentation that N.F. had been stable for the time since his committal. Mental health records could have offered an opinion about N.F.'s mental health or fitness to have his

firearm rights restored—an opinion N.F. himself is unqualified to give. But aside from his own testimony, N.F.’s only evidence at hearing were two unsigned, unnotarized letters; a self-completed questionnaire; and an official criminal history. (D0028 (MHMH001061); D0029 (MHMH001061); D0030 (MHMH001061); D0031(MHMH001061).)

In *Matter of A.M.*, the district court faced a similar issue when A.M. failed to submit mental health records for the intervening six years between the committal and the time of the restoration hearing. The district court in *A.M.* rightly concluded that “without more of a track record, the court questions whether a string of bad luck or an unfortunate combination of stressors and difficulties still might lead [A.M.] to ‘snap’ and engage in conduct that caused him and his family problems back in March 2010.” *A.M.*, 908 N.W.2d at 285. The Court of Appeals affirmed the district court’s denial of the petition even though A.M. had been “a law-abiding citizen for the past six-plus years” and had introduced character letters from his mother and a local deputy. (*Id.*).

That “track record” is also missing in N.F.’s case. *Cf. id.* On January 10, 2024, the district court had no reports, drug tests, medical records, therapy notes, provider letters, recent evaluations, or other mental

health records to consider since the April 2016 discharge of the committals. Everything the district court considered—aside from a criminal history and two unsworn, unnotarized statements from a roommate and a guardian—turned on N.F.’s self-serving testimony.

N.F.’s Reputation: Character Witness Statements, Testimony, and Other Character Evidence

The district court should have given little weight to N.F.’s character witness statements as they were deficient in both substance and form and do not justify the removal of his firearms disability. Iowa Code section 724.31(3)(c) requires the district court to receive and consider evidence of N.F.’s reputation, “developed, at a minimum, through character witness statements, testimony, and other character evidence.” Iowa Code § 724.31(3)(c).

But for N.F.’s own testimony, no one else testified on his behalf at the hearing. As for the “character witness statements” required by the code, N.F. offered, and had admitted into evidence, two character letters. These letters were written by D.C., N.F.’s roommate and high-school friend; and J.P., N.F.’s guardian whom he calls “Dad.” (D0030 (MHMH001061); D0031 (MHMH001061); Tr. 9:10–16.)

None of the character letters N.F. offered are in affidavit form. They

are not witnessed or notarized, and neither is signed. (*Id.*). Both letters are typewritten, so the district court could not rely on handwriting idiosyncrasies as indicia of authenticity. (*Id.*). In each letter, the alleged author typed out his signature. (*Id.*). None of the letters' authors attended the hearing to testify on N.F.'s behalf, none attended the hearing to authenticate the letters, and none subjected himself to cross-examination. (Tr. 33:13–19.)

Given those shortcomings, the district court should have given the letters little weight in evaluating N.F.'s character. The letters are from a close friend and current roommate, in D.C.'s case, and, in J.P.'s case, someone so close to N.F. that he considers J.P. his father. (Tr. 5:1–3). N.F. testified that he lived with J.P. for many years and now goes out drinking with him. (Tr. 6:13–18; 10–11; 35:3–13). These authors are likely biased sources whose opinions the district court should not have given significant weight. *See A.M.*, 908 N.W.2d at 286 (“Because the only witnesses called by A.M. to testify were close to him and may not have been objective, the court’s ability to ‘conduct a systematic inquiry’ into the wisdom of restoring A.M.’s firearm privileges was significantly hampered.”). Now, “relying on the same record on appeal,” this Court’s

“ability to assess . . . reputation and character is likewise limited.” (*Id.*). Instead of following this case law in assessing the letters’ weight, the district court simply accepted them at face value. (D0037 (MHMH001061) at 6.)

Changes in N.F.’s Condition or Circumstances

N.F. demonstrates poor insight and accountability for his past behavior, denies the reasons he was committed, and has failed to show a change in his conditions or circumstances to allow restoration of his gun rights. Iowa Code section 724.31(3)(d) requires the district court to receive and consider evidence of “any changes in the petitioner’s condition or circumstances since the issuance of the original order or judgment that are relevant to the relief sought.” Iowa Code § 724.31(3)(d).

More than eight years after involuntary committal, N.F. does not accept that he has or had a mental illness, that he has or had a substance use disorder, or that he played a role in his involuntary committal beyond upsetting his mother and drinking in moderation. (Tr. 16–17; 17:10–24; 27:24–25; 28:1–6; 29:9–18). To this day, he has failed to achieve the goal he set for himself in treatment “to stop using alcohol.” (D0011 (MJMH000811) at 1.) During the committals, health professionals noted

that N.F. “struggle[d] with accountability regarding his behaviors,” something the district court saw persist through the January 10, 2024, hearing, when N.F. blamed his substance use and other issues on his mother. (*Id.*; Tr. 27:24–25.)

At the time the committal was dismissed, N.F. was prescribed 10 mg of citalopram, an antidepressant, and still had multiple mental health-related diagnoses, including: post-traumatic stress disorder, major depressive disorder, alcohol use disorder, and oppositional defiant disorder. (D0014 (MJMH000812) at 2; D0012 (MJMH000812) at 2.) N.F. testified that he did not follow up with medication or therapy and that he returned to drinking shortly after the committals’ discharge. (Tr. 25:5–22; 26–27). He did not receive further mental health or substance abuse treatment until he again landed himself in the hospital in June 2016 for alcohol abuse and suicidal and homicidal threats. (*Id.*; D0001 (MJMH000821) at 2.)

Indeed, N.F. testified that he went back to drinking alcohol shortly after the discharge of the committal in April 2016, admitting that he had been drinking “regularly” leading up to his June 2016 hospitalization.

(Tr. 26:13–24). He also testified that he now drinks alcohol “on a regular basis.” (Tr. 30:12–22).

All N.F.’s statements, contradictions, and denials underscore his disconcerting lack of judgment and insight into his committal. There is no question that stress, whether caused by his family circumstances or not, derailed N.F.’s life. He threatened suicide, lashed out violently, abused alcohol, ran away from home, and put himself and others in harm’s way. (D0010 (MJMH000812) at 2.)

To ensure such problems do not recur, N.F. should acknowledge what happened and be able to explain why they will not happen again. But N.F. repeatedly showed the district court that he is devoid of such insight. N.F.’s judgment is also lacking—he is not in therapy and has never spoken with a professional about this tumultuous time in his life—except “when [his] mom made [him].” (Tr. 27:19–23.) He is not on medication for his diagnoses and does not see a psychiatrist. (Tr. 29–30.) That is so even though the last time a mental health provider saw N.F., he was prescribed at least one antidepressant, possibly two (Lexapro and citalopram). (D0011 (MJMH000811) at 1; D0012 (MHMH000812) at 2.)

N.F. continues to use alcohol, the same substance that led to diagnoses of Alcohol Use Disorder and Alcohol Use with Psychosis. (D0012 (MJMH000812) at 2; D0002 (MJMH000810) at 7.) And he continues to drink alcohol when alcohol contributed to or caused his involuntary committals. N.F. has no sober supports in his life, and, indeed, is pictured drinking or in bars on his social media accounts and those of his friends. (Tr. 32–33; D0024 (MHMH001061); D0025 (MHMH001061), Ex. 4 (1/10/2024); D0027 (MHMH001061).) N.F. drinks with, among others, the same person who had to take guardianship over him during his alcohol-addled teen years—someone the district court calls a “guardian angel.” (D0037 (MHMH001061) at 7.)

About his alcohol issues, N.F. states the following: “In 2014-2016, I had 3 misdemeanors for minor in possession of alcohol. With my alcohol consumption I was court-ordered to Jackson Recovery for roughly 60 days. Looking back . . . I don’t believe I had an alcohol abuse problem.” (D0029 (MHMH001061) at 1.) That statement, at best, is a non-sequitur, and, at worst, shows a shocking level of denial from someone who has struggled with substance abuse. Without the acknowledgment that there

was a problem or any insight into his substance use, it is hard to endorse N.F.'s declarations that he is safe to drink with impunity today.

N.F., like the petitioner in *Matter of A.M.*, offered no record to show that if similar stressors resurfaced in his life today, the outcome would be different. Indeed, the “only long-term change” that N.F. has shown in his life is that now he has a job. 908 N.W.2d at 283; (Tr. 45:12–16). As he did at the time of the committal, he still drinks alcohol regularly. (Tr. 30:12–14.) Only now, N.F. does so with aspirations of entering a profession where he would carry a loaded firearm daily and have access to some of the most vulnerable populations. (Tr. 43:14–25.) If anything, his behavior has stayed the same while the stakes have risen.

Indeed, the district court had no information to corroborate N.F.'s substance use habits other than his own inconsistent self-reports. (Tr. 30:12–17; 31:3–9.) Using alcohol “on a regular basis” when N.F. has a history of Alcohol Use Disorder and “alcohol use with psychosis” does not give the court enough evidence that he will not be likely to act in a manner dangerous to the public safety, or that the granting of the relief would not be contrary to the public interest. (D0012 (MJMH000812) at 2; Tr. 30:12–17; D0002 (MJMH000810) at 7.) Without affirmatively

demonstrating that he has overcome his substance abuse issues, N.F. should not have his firearms disability restored.

Applying *Matter of A.M.*

In its January 10 ruling, the district court makes spurious distinctions between N.F.'s case and *Matter of A.M.* First, the district court distinguishes *A.M.* because *A.M.* had “volatile behavior” exacerbated by his “mental-health struggles and alcohol dependence.” (D0037 (MHMH001061) at 8.)

Next, the district court attempts to distinguish *A.M.* by pointing out that the petitioner in *A.M.* grabbed a gun when he spoke of suicide, whereas N.F. merely made threats. (D0037 (MHMH001061) at 8.) Nowhere does the law say that a petitioner who threatened repeatedly to put a “bullet in his head” and to “shoot himself in the head” is somehow less dangerous than one who made the same threats in proximity to a weapon. (D0002 (MJMH000810) at 6–7.) A petitioner’s immediate ability to consummate his suicidal threats is not an appropriate test of dangerousness—the danger inheres in the threats themselves. N.F. also told “another individual” that he was “going to kill” the man sleeping with his girlfriend. (D0001 (MJMH000821) at 2.) The instrumentality of all

these threats—a firearm—is the very thing N.F. seeks to possess again. If anything, N.F.’s case is in many ways worse than that of A.M., as A.M. never threatened to kill anyone else.

Likewise, the district court wrote that A.M. was different from N.F. because A.M. “became enraged and assaulted his mother and sister.” (D0037 (MHMH001061) at 8.) No difference exists between the two here. N.F. was often assaultive—at school, toward his parents, toward police, and toward his young siblings. (D0002 (MJMH000811) at 1–2; D0001 (MJMH000811).)

A.M. interpreted the two-prong burden imposed by Iowa Code section 724.31(4) to conform with “Iowa’s danger-to-self-or-others standard for serious mental impairment.” 908 N.W.2d at 284. In other words, in evaluating a petitioner’s danger to the public safety, it matters not whether he was homicidal or suicidal, assaultive to others or self-injurious. The test is whether a petitioner is a danger to anyone, himself included.

N.F.’s mother and stepfather committed him due to chronic substance abuse issues involving alcohol as well as violence and suicidal threats. (D0002 (MJMH000811).) N.F.’s behavior was not typical teenage

rebellion as he would have the district court believe—rather, it was so dangerous that he had to be court-ordered to residential treatment for a recommended 120-150 days. (D0011 (MHMH000812); D0014 (MHMH000812) at 1) (N.F. was in Jackson Recovery for approximately one month when a provider recommended an additional 90-120 days). And to the extent the district court disagrees, it is incumbent on N.F. to provide the court with evidence to support that belief.

N.F.’s suicide, violence, and substance abuse risks are just as serious as the risks mentioned in *Matter of A.M.* 908 N.W.2d at 284. And, for those reasons, the district court has an equally pressing need for mental health records for the intervening years from 2016 to 2024. The absence of mental health records for eight years does not equate with the absence of mental health problems for eight years. The lower court shows the flaw in its logic with statements like, “[N.F.] has no other hospitalizations after that and no issues with behavior or mental health,” and “[N.F.] has had more than six years without the need for mental health intervention.” (D0037 (MHMH001061) at 5, 7.)

The district court cannot conclude an affirmative—that N.F. has had “no issues” with his mental health in eight years—from a negative—

the absence of hospitalizations. (*Id.*). The only thing the district court can rightly conclude from that information is that we do not know if N.F. has had issues with his mental health or behavior, short of involuntary hospitalization. N.F., not a professional, has self-determined that he has not needed mental health intervention for eight years. That should raise questions, not provide assurances. Likely for these very reasons, Iowa Code explains that mental health records are key in a firearm disability rights hearing.

N.F.'s case does differ slightly from *Matter of A.M.*, but it does so in ways that make N.F.'s case weaker. First, A.M. presented character witnesses at hearing; N.F. did not. And in *A.M.*, the county attorney supported A.M.'s petition; while here, there is no evidence the county attorney was even served with a copy of the petition as required by code. Iowa Code § 724.31(2). As a result, the county attorney did not file an appearance nor file a statement of position.

To the extent *A.M.* is distinguishable from this case, those distinguishing factors recommend denying N.F.'s petition. Like A.M., N.F. failed to establish a mental health track record. Even less persuasively than A.M., N.F. failed to show a meaningful change in

condition or circumstance. N.F. testified that despite his history of Alcohol Use Disorder and problematic behavior while under the influence of alcohol, he still drinks—allegedly just no longer to excess. (Tr. 30:12–22; 31:1–15).

In *A.M.*, despite the petitioner’s progress and good standing in the community, the district court was “circumspect” about A.M.’s progress, identifying the only “long-term change” as “no longer drinking alcohol to excess.” 908 N.W.2d at 287. To the extent this Court seeks to apply *A.M.*, it should reverse the district court’s grant of N.F.’s petition.

On a final note, a denial is not permanent. N.F. may apply again to have his gun rights restored two years from the date of his last petition. In that time, he should collect his medical history and character witnesses, as well as other admissible evidence, to show by a preponderance that his firearm rights should be restored. If he does gather enough evidence, then the district court may, at that time, grant his petition.

CONCLUSION

The State of Iowa asks the Court to reverse the district court’s decision and deny N.F.’s petition.

REQUEST FOR NON-ORAL SUBMISSION

The State does not request oral argument in the first instance, but if argument is granted, requests an equal amount of time to present as granted to Appellee.

Respectfully submitted,

BRENNA BIRD

Attorney General of Iowa

/s/ Sarah A. Jennings

SARAH ANNE JENNINGS, AT0012549

Assistant Attorney General

1305 E. Walnut Street

Des Moines, IA 50319

Telephone: (515) 587-5243

Facsimile: (515) 281-7219

Email: sarah.jennings@ag.iowa.gov

ATTORNEYS FOR THE APPELLANT

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitations of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 9,435 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: May 8, 2024

/s/ Sarah A. Jennings
SARAH ANNE JENNINGS, AT0012549
Assistant Attorney General
1305 E. Walnut Street
Des Moines, IA 50319
Telephone: (515) 587-5243
Email: sarah.jennings@ag.iowa.gov