

STATE OF MINNESOTA

IN SUPREME COURT

A23-1948

Court of Appeals

Jeremy McNitt,

Respondent/Cross-Appellant,

vs.

Minnesota IT Services (MNIT),

Appellant/Cross-Respondent.

Gaitas, J.

Concurring in part, dissenting in part,

Hudson, C.J., Thissen, J.

Concurring in part, dissenting in part, Thissen, J.

Took no part, Procaccini, J.

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S Y L L A B U S

1. An administrative law judge’s report and recommendation does not become the final decision in the case if the agency commissioner timely accepts, modifies, or rejects the recommendation under Minnesota Statutes section 14.62, subdivision 2a (2022).

2. Under Minnesota Statutes section 364.03, subdivision 3 (2024), a public employer has discretion to determine whether an applicant for public employment has demonstrated sufficient rehabilitation and present fitness to perform the duties of the public employment sought once the applicant produces competent evidence of rehabilitation under subdivision 3(a).

Affirmed in part, reversed in part, and remanded.

O P I N I O N

GAÏTAS, Justice.

In this case, we interpret a provision of the Criminal Offenders Rehabilitation Act to determine if a public employer may disqualify a job applicant with a prior criminal conviction from public employment, even after the applicant has produced competent documentary evidence of rehabilitation under Minnesota Statutes section 364.03, subdivision 3(a) (2024). In 2022, respondent/cross-appellant Jeremy McNitt applied for a job with appellant/cross-respondent Minnesota IT Services (MNIT). MNIT offered

McNitt the position, subject to a background check. That background check revealed McNitt's prior conviction for possession of child pornography.

Following the process outlined in the Criminal Offenders Rehabilitation Act, MNIT determined that McNitt's conviction related to the position sought and asked McNitt for evidence of rehabilitation and present fitness for employment. Minn. Stat. § 364.03. McNitt provided MNIT with an order showing that he had been discharged from probation early and evidence that he had remained law-abiding for at least one year since his release from probation. Additionally, McNitt offered, among other things, a description of the circumstances surrounding his offense and several references. After receiving this information, MNIT determined that McNitt's criminal conviction disqualified him from the position and informed McNitt that he could not apply for public employment for ten years.

McNitt administratively appealed his disqualification under the Minnesota Administrative Procedure Act. After the parties cross-motivated for summary disposition, an administrative law judge found that McNitt had provided sufficient evidence of rehabilitation and present fitness, and he rejected MNIT's argument that under the Criminal Offenders Rehabilitation Act, the agency retained sole discretion to decide whether McNitt demonstrated sufficient rehabilitation once McNitt produced competent evidence of rehabilitation. The administrative law judge recommended that the Commissioner of MNIT rescind McNitt's disqualification and hire him.

The Commissioner rejected the recommendation. The Commissioner remanded for a contested case hearing and a new recommendation as to whether the agency had abused

its discretion in disqualifying McNitt and informing McNitt that he could not apply for public employment for ten years.

Based on an intervening case from this court, however, the administrative law judge determined that he no longer had jurisdiction to hold a contested case hearing, and he returned the matter to the Commissioner. The Commissioner issued an order dismissing McNitt's grievance, affirming the decision to disqualify McNitt from public employment based on the conviction, and directing McNitt that he could reapply for public employment in January 2027.

McNitt appealed the Commissioner's decision to the court of appeals. The court of appeals concluded that MNIT did not have discretion to disqualify McNitt because McNitt had provided competent evidence of rehabilitation under the Criminal Offenders Rehabilitation Act. Accordingly, the court of appeals reversed the Commissioner's decision and remanded for further proceedings.

MNIT petitioned for review, and McNitt petitioned for conditional cross-review. We accepted review of two issues: first, whether the administrative law judge's initial recommendation became the final decision because the Commissioner had no authority to remand the matter for an evidentiary hearing; and second, whether the agency had discretion to disqualify McNitt from the position after McNitt produced competent evidence of rehabilitation under section 364.03, subdivision 3(a).

We affirm in part as to the first issue and conclude that the administrative law judge's recommendation was not the agency's final decision. As to the second issue, we reverse and hold that a public employer retains discretion to disqualify an applicant after

the applicant produces competent evidence of rehabilitation under subdivision 3(a). Finally, because the court of appeals did not address McNitt’s remaining arguments after determining that the disqualification was improper—a determination we now reverse—we remand to the court of appeals to consider those remaining issues.

FACTS

Minnesota IT Services (MNIT) is a state agency that provides information technology services to state government agencies. In November 2021, MNIT posted a web-developer job opening with the Minnesota Department of Education. Jeremy McNitt applied for the position in January 2022. McNitt was offered the job, subject to a background check. That background check revealed McNitt’s 2017 conviction for possession of child pornography.

The Criminal Offenders Rehabilitation Act (CORA) establishes standards and procedures that public employers must follow when considering a job applicant with a criminal history.¹ Minn. Stat. §§ 364.01–.10. CORA seeks to “encourage and contribute to the rehabilitation of criminal offenders,” acknowledging that “[t]he opportunity to secure employment ... is essential to rehabilitation and the resumption of the responsibilities of citizenship.” Minn. Stat. § 364.01.

At issue here is the CORA provision in Minnesota Statutes section 364.03, which addresses disqualification from public employment due to a prior conviction.

¹ CORA defines “public employment” as including “all employment with the state of Minnesota, its agencies, or political subdivisions.” Minn. Stat. § 364.02, subd. 4. As a state agency, MNIT is a public employer.

Subdivision 1 states that “no person shall be disqualified from public employment” unless the conviction “directly relate[s] to the position of employment sought.” Subdivision 2 outlines factors that a public employer “shall consider” when determining whether the conviction “directly relates to the position of public employment sought.” Finally, subdivision 3 states that even if the prior conviction does directly relate to the position sought, an applicant “shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought.” Minn. Stat. § 364.03, subd. 3(a) (2024).² Subdivision 3(a) states that “[c]ompetent evidence of sufficient rehabilitation may be established by the production of” enumerated documents. *Id.* Subdivision 3(b) also lists evidence that, “[i]n addition to the documentary evidence presented,” an employer “shall consider,” including “the nature and seriousness of the crime,” “all circumstances relative to the crime,” “the age of the person at the time the crime was committed,” “the length of time elapsed since the crime,” and “all other competent evidence of rehabilitation and present fitness presented.” *Id.*, subd. 3(b) (2024).

After receiving the results of McNitt’s background check, MNIT first followed the process outlined in subdivision 2 and determined that McNitt’s conviction “directly

² We accepted review of the 2024 version of Minnesota Statutes section 364.03, subdivision 3. After the court of appeals issued its decision in this case, the Legislature amended subdivision 3. *See* Act of May 18, 2026, ch. 97, art. 9, § 2. To the extent that the parties submitted supplemental filings requesting that we consider the amended statute, these requests are not properly before us, and we do not consider them.

relates to the position of public employment sought.” *Id.*, subd. 2. Next, pursuant to subdivision 3, MNIT requested that McNitt provide proof of “any and all competent evidence of sufficient rehabilitation and present fitness to perform the duties of the position.” MNIT also identified for McNitt the documentary evidence listed in subdivisions 3(a) and 3(b) that “may be used as competent evidence of sufficient rehabilitation.”

McNitt provided MNIT with documents listed in subdivision 3(a), including his release order showing his early discharge from probation and a document stating that his background check verified that he had remained law-abiding for at least one year since his release from a correctional institution. He also provided MNIT with documents listed under subdivision 3(b), including a description of the circumstances surrounding his offense and several reference letters.

In March 2022, MNIT informed McNitt that the agency would not be hiring him for the position “based upon [his] background check results and [his] prior conviction.” It advised McNitt that he would be disqualified from public employment for ten years. MNIT explained that “the nature and seriousness of the crime is very high.”

McNitt administratively appealed his disqualification, and MNIT initiated a contested case hearing pursuant to the Minnesota Administrative Procedure Act. Minn. Stat. §§ 14.001–.69. In December 2022, both parties cross-moved for summary disposition, which is the “administrative equivalent of summary judgment.” *Pietsch v. Minn. Bd. of Chiropractic Exam’rs*, 683 N.W.2d 303, 306 (Minn. 2004). Following a hearing on the motions, the administrative law judge (ALJ) issued a report and

recommendation on February 10, 2023. The ALJ found that McNitt provided sufficient evidence of rehabilitation and present fitness and rejected MNIT’s argument that it retained sole discretion in determining whether McNitt demonstrated sufficient rehabilitation. Thus, the ALJ recommended that McNitt’s motion for summary disposition be granted. The ALJ recommended that MNIT rescind McNitt’s disqualification from public employment and provide McNitt with the applied-for position or a comparable one. The record in the matter closed on March 31, 2023.

Under the version of the Minnesota Administrative Procedure Act then in effect, the Commissioner of MNIT had 90 days to accept, modify, or reject the ALJ’s recommendation. Minn. Stat. § 14.62, subd. 2a (2022) (stating that the report or order of the ALJ becomes the final decision unless the agency “modifies or rejects it” within 90 days of the record closing).³ Before issuing his order, the Commissioner asked the parties how they wished to proceed if genuine issues of fact precluded the Commissioner from granting either of the motions for summary disposition. McNitt requested that the matter be remanded for a contested case hearing in such a situation.

Within the 90-day window, on June 21, 2023, the Commissioner issued Findings of Fact, Conclusions of Law, and Order determining that CORA afforded MNIT with

³ Under this previous version of the Minnesota Administrative Procedure Act, an agency did not have express authority to remand to an ALJ following an ALJ’s report and recommendation. *In re Surveillance & Integrity Rev. (SIRS) Appeals by Trinity Home Health Care Servs. & Etyane Ayana*, 996 N.W.2d 178, 187 (Minn. 2023). The Legislature has since amended the Minnesota Administrative Procedure Act to give agencies the express authority to remand to an ALJ if certain conditions are met. *See* Act of May 23, 2025, ch. 39, art. 2, §§ 19–21, 2025 Minn. Laws 1195, 1219–21 (codified at Minn. Stat. § 14.62 (Supp. 2025)).

discretion to disqualify McNitt. The Commissioner adopted some of the ALJ's findings of fact and modified others. The Commissioner also adopted some of the ALJ's legal conclusions. However, the Commissioner rejected the ALJ's legal conclusion that CORA does not afford MNIT with discretion to determine whether an applicant has been disqualified from public employment, and the Commissioner similarly rejected the ALJ's conclusion that the subdivision 3(a) evidence submitted by McNitt conclusively established sufficient rehabilitation. Finally, the Commissioner rejected the ALJ's conclusion that there were no genuine issues of material fact and thus rejected the recommendation to grant McNitt's summary disposition motion. The Commissioner then remanded for an evidentiary hearing to address, in part, whether MNIT abused its discretion when it concluded that McNitt was disqualified from public employment for ten years.

Before an evidentiary hearing was held, we issued our decision in *In re Surveillance & Integrity Rev. (SIRS) Appeals by Trinity Home Health Care Servs. & Etyane Ayana*, 996 N.W.2d 178 (Minn. 2023). There, we held that under the then-current version of the Minnesota Administrative Procedure Act, a state agency does not have the authority to remand an ALJ's report or order. *Id.* at 179. Given this decision, the ALJ determined that he lacked jurisdiction to conduct a contested case hearing on remand. The ALJ returned the file to MNIT on October 30, 2023. One month later, in November 2023, the Commissioner issued his second Findings of Fact, Conclusions of Law, and Order, affirming the earlier determination of disqualification and dismissing

McNitt’s administrative appeal. This time, the Commissioner’s order stated that McNitt could reapply for public employment as of January 28, 2027.

McNitt then appealed to the court of appeals by writ of certiorari. *McNitt v. Minn. IT Servs.*, 14 N.W.3d 284 (Minn. App. 2024). In a precedential opinion, the court of appeals held that, once an applicant provides the documents required under Minnesota Statutes section 364.03, subdivision 3(a), public employers lack discretion to disqualify the applicant based on a previous conviction. *Id.* at 285. The court of appeals further held that because McNitt provided all required documentation under subdivision 3(a), MNIT could not disqualify McNitt from the position. *Id.* at 292–93. The court of appeals reversed the Commissioner’s final November 2023 order and remanded for further proceedings. *Id.* at 294.

In doing so, the court of appeals rejected McNitt’s argument that *SIRS* independently required reversal. *Id.* at 288–90. McNitt contended that under this court’s decision in *SIRS*, the Commissioner did not have authority to remand the matter to the ALJ for an evidentiary hearing, and thus, the Commissioner exceeded the 90-day window for action under the Minnesota Administrative Procedure Act. *Id.* He argued that this, in turn, made the ALJ’s original report—recommending that summary disposition be granted in McNitt’s favor—the final decision in the case. *Id.* The court of appeals disagreed, concluding that *SIRS* was distinguishable and that the Commissioner “timely modified and rejected the ALJ’s report and recommendation in its order remanding the matter to the ALJ.” *Id.* at 290.

MNIT filed a petition for review challenging the court of appeals’ decision that a public employer lacks discretion to disqualify applicants once the documents in subdivision 3(a) are produced. McNitt petitioned for conditional cross-review, challenging whether the ALJ’s report and recommendation granting summary disposition was instead the final decision. We granted both petitions.

ANALYSIS

I.

We first must determine what is the final decision that we are reviewing. Thus, we begin by addressing the issue raised in McNitt’s cross-petition as to whether the ALJ’s report and recommendation granting summary disposition became the final decision in this case. This is a question of statutory interpretation, which we review *de novo*. *SIRS*, 996 N.W.2d at 184. “We consider our prior interpretations of a statute in reviewing subsequent disputes over the meaning of the statute.” *Keystone Township v. Red Lake Watershed Dist.*, 20 N.W.3d 612, 620 (Minn. 2025) (citation omitted) (internal quotation marks omitted).

The Minnesota Administrative Procedure Act establishes a procedure for state agencies to follow in reviewing an ALJ’s report and recommendations in a contested case. At the time of McNitt’s administrative appeal, Minnesota Statutes section 14.62, subdivision 2a, gave an agency 90 days to “modif[y] or reject[.]” an ALJ’s report. Under this provision, if the agency failed to timely modify or reject the report, the ALJ’s report “constitute[d] the final decision in the case.” Minn. Stat. § 14.62, subd. 2a.

We recently addressed this provision in *SIRS*. There, the ALJ issued a report and recommendation following a contested case hearing where the agency presented evidence that a company had failed to comply with the requirements of a government program. *SIRS*, 996 N.W.2d at 182. The agency determined that the ALJ had failed to give proper weight to certain evidence. *Id.* at 183. Rather than rejecting the ALJ’s report and recommendation, however, the agency issued an order remanding the case to the ALJ for further proceedings. *Id.*

On review, we concluded that the agency in *SIRS* did not have the authority to remand the case to the ALJ. *Id.* at 187. Interpreting section 14.62, we stated that the statute “provides the agency with three options after receiving the ALJ’s report with recommendation: to accept the ALJ’s report as the agency’s final decision; to ‘modif[y]’ the ALJ’s report; or to ‘reject’ the ALJ’s report.” *Id.* Because we determined that a remand was not an implied rejection, and because the agency failed to timely accept, modify, or reject the ALJ’s recommendations, we concluded that the ALJ’s report and recommendation was the binding decision in that case. *Id.* at 180.⁴

McNitt argues that here, as in *SIRS*, the ALJ’s report and recommendation became the final decision in his case because MNIT had no authority to remand to the ALJ for an evidentiary hearing. According to McNitt, the only options available to the agency were accepting, modifying, or rejecting the ALJ’s report. And he asserts that MNIT failed to

⁴ As noted above, after our decision in *SIRS*, the Legislature amended the Minnesota Administrative Procedure Act to allow agencies to remand to an ALJ when a limited set of conditions exist. *See* Act of May 23, 2025, ch. 39, art. 2, §§ 19–21, 2025 Minn. Laws 1195, 1219–21 (codified at Minn. Stat. § 14.62 (Supp. 2025)).

accept, modify, or reject the ALJ's report before the 90-day period under the Minnesota Administrative Procedure Act expired. McNitt contends that the ALJ's report and recommendation—that McNitt's motion for summary disposition be granted and that MNIT rescind McNitt's disqualification from public employment—thus became the agency's final decision.

MNIT responds that the court of appeals properly rejected McNitt's analysis. The court of appeals distinguished the circumstances in McNitt's case from those presented in *SIRS* in two ways. First, the court of appeals noted that in *SIRS* the ALJ's report and recommendation followed an evidentiary hearing, whereas here, there was no evidentiary hearing. *McNitt*, 14 N.W.3d at 289–90. Rather, the ALJ's report and recommendation was made in connection with the grant of summary disposition to McNitt. *Id.* Second, the court of appeals observed that, unlike *SIRS*, here the agency expressly rejected the ALJ's report and recommendation within the statutory 90-day period. *Id.* at 290.

We disagree with the court of appeals that our holding in *SIRS* does not apply to an ALJ's report and recommendation at the summary disposition stage. Our reasoning in *SIRS* did not depend on the procedural posture of the contested case, but on the fact that the contested-case requirement of Minnesota Statutes section 14.62, subdivision 2a, applied. We determined that the plain language of the statute “does not provide an option to ‘remand.’ ” *SIRS*, 996 N.W.2d at 191. Noting that, in some instances, agency authority may be implied from express powers granted by the Legislature, we further concluded that agencies did not have an implied power to remand. *Id.* at 188, 191. Thus, under the then-existing version of the statute, the Commissioner did not have the authority to

remand the case back to the ALJ. *See id.* at 194–97 (Chutich, J., dissenting) (discussing the court’s conclusion “that a commissioner may never remand a case to an ALJ”). To the extent that the court of appeals’ decision holds that under the then-existing version of section 14.62, an agency had authority to remand a contested case at the summary disposition stage, we reverse the decision.

However, we are persuaded by the court of appeals’ reasoning that our decision in *SIRS* does not dictate the outcome here because the cases are distinguishable in one critical respect. As the court of appeals observed, unlike in *SIRS*, where the agency took no action beyond remanding to the ALJ, the Commissioner’s initial order here expressly *rejected* a number of the ALJ’s conclusions within the 90-day statutory deadline. The Commissioner’s initial order rejected the ALJ’s legal conclusions that under CORA, an applicant who presents competent evidence of rehabilitation is per se rehabilitated and an agency lacks discretion to determine whether the applicant has been sufficiently rehabilitated. And the Commissioner rejected the ALJ’s ultimate recommendation that summary disposition be granted to McNitt. In *SIRS*, we held that a remand is not an implicit rejection of an ALJ’s report and recommendation. But here, the Commissioner *explicitly* rejected the ALJ’s conclusions. Thus, the ALJ’s report and recommendation does not “constitute[] the final decision in the case” because “the agency modifie[d] or reject[ed] it ... within 90 days after the record of the proceeding close[d].” Minn. Stat. § 14.62, subd. 2a. Instead, the Commissioner’s order—and not the ALJ’s report and

recommendation, which was timely rejected and modified by MNIT—is the final decision in the case.⁵

II.

Having determined that the Commissioner’s order was the final decision in the case under the Minnesota Administrative Procedure Act, we now turn to the merits of the issue presented here—whether Minnesota Statutes section 364.03 provides a public employer with discretion to decide whether a job applicant has demonstrated sufficient rehabilitation and present fitness once the applicant has presented competent evidence of rehabilitation under subdivision 3(a) of the statute. To address this issue, we must interpret section 364.03.

We review questions of statutory interpretation *de novo*. *State v. Holl*, 966 N.W.2d 803, 808 (Minn. 2021). First, we determine whether the statute’s language, on its face, is ambiguous. *State v. Henderson*, 907 N.W.2d 623, 625 (Minn. 2018). In doing so, we give the text of the statute its plain and ordinary meaning. *Emerson v. Sch. Bd. of Indep. Sch. Dist. 199*, 809 N.W.2d 679, 682 (Minn. 2012). We examine the language of a statute as a whole to give effect to all its provisions, Minn. Stat. § 645.16, and “no word, phrase, or

⁵ We, like the court of appeals, treat the Commissioner’s November 2023 Findings of Fact, Conclusions of Law, and Order as the final decision in this case. Critically, the cross-petition issue for which we granted review only asked whether “the administrative law judge’s report and recommendation granting summary disposition bec[a]me the final decision, in accordance with Minn. Stat. § 14.62, subd. 2(a) and *In re Surveillance and Integrity Review (SIRS)*, 996 N.W.2d 178 (Minn. 2023)” We have rejected that argument, and we were not otherwise asked to review whether the Commissioner’s June 2023 order or November 2023 order should be treated as the final decision in this case.

sentence should be deemed superfluous, void, or insignificant,” *In re Reichmann Land & Cattle, LLP*, 867 N.W.2d 502, 509 (Minn. 2015) (citation omitted) (internal quotation marks omitted). A statute is ambiguous only if its language is susceptible to more than one reasonable interpretation. *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). If the statute is ambiguous, we seek to resolve the ambiguity using applicable canons of construction. *Holl*, 966 N.W.2d at 808. If the statute is unambiguous, however, our inquiry ends there—we must “abide by the plain language of the statute.” *Id.*

Before turning to the specific statutory interpretation questions presented here, we briefly provide an overview of CORA and section 364.03. In CORA, the Legislature “declare[d] that it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship.” Minn. Stat. § 364.01. To that end, CORA establishes when employers may consider a job applicant’s criminal record and the procedures they must follow when doing so. Under section 364.03, subdivision 1, an employer may disqualify an applicant for a prior conviction only when that conviction “directly relate[s] to the position of employment sought.” Minn. Stat. § 364.03, subd. 1. Section 364.03, subdivision 3(a) further provides the following:

A person who has been convicted of a crime or crimes which directly relate to the public employment sought or to the occupation for which a license is sought shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought or the occupation for which the license is sought.

Id. Subdivision 3(a) goes on to state that “competent evidence of sufficient rehabilitation may be established by the production of” documentation listed in that subdivision. These documents are the person’s United States Department of Defense form DD-214 showing their honorable discharge from military service, or:

- (1) a copy of the local, state, or federal release order; and
- (2) evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or
- (3) a copy of the relevant Department of Corrections discharge order or other documents showing completion of probation or parole supervision.

Minn. Stat. § 364.03, subd. 3(a).

Subdivision 3(b) states that “in addition” to the documentary evidence listed in subdivision 3(a), “the licensing or hiring authority shall consider any evidence presented by the applicant regarding” the crime committed, including its nature and seriousness; “all circumstances relative to the crime,” including mitigating circumstances; the age of the person at the time of the crime; the length of time elapsed since the crime; and “all other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by persons who have been in contact with the applicant since the applicant’s release from any local, state, or federal correctional institution.” *Id.*, subd. 3(b).

Both McNitt and MNIT contend that the statutory text is unambiguous. But they offer competing interpretations of the text.

McNitt focuses on the words “shall not be disqualified” in the first sentence of subdivision 3(a). Minn. Stat. § 364.03, subd. 3(a). He argues that this phrase—and the use of the word “shall” in particular—guarantees that an applicant who produces competent evidence of sufficient rehabilitation and present fitness is not disqualified from public employment. McNitt then directs us to the second sentence in subdivision 3(a), which identifies types of “[c]ompetent evidence of sufficient rehabilitation,” including “a copy of the local, state, or federal release order” and “evidence showing that at least one year has elapsed since release ... without subsequent conviction of a crime.” *Id.* According to McNitt, because he presented an order showing that he had been released from probation and evidence that he had been law-abiding for at least one year following his discharge from probation, he “shall not be disqualified” from public employment.

MNIT, on the other hand, focuses on the latter half of the first sentence of subdivision 3(a), which states that the applicant shall not be disqualified “if the person can show competent evidence of sufficient rehabilitation and present fitness.” *Id.* Under MNIT’s interpretation of this phrase, an applicant “shall not be disqualified” *only if* the applicant “can show competent evidence of sufficient rehabilitation and present fitness.” In other words, according to MNIT, the statute provides a process for demonstrating sufficient rehabilitation and present fitness for a job but does not guarantee a result.

MNIT also directs our attention to the second sentence of subdivision 3(a), which states that “[c]ompetent evidence of sufficient rehabilitation *may* be established by the production of” certain documents. *Id.* (emphasis added). Noting that the word “may” is generally interpreted as permissive, MNIT contends that the listed documents *may* or *may*

not establish sufficient rehabilitation. *See* Minn. Stat. § 645.44, subd. 15 (“ ‘May’ is permissive.”). And, MNIT argues, if the documents listed in subdivision 3(a) were *conclusive* evidence of sufficient rehabilitation, then subdivision 3(b)—which states that a public employer “shall consider any evidence presented by the applicant” regarding the circumstances underlying the conviction and “all other competent evidence of rehabilitation and present fitness presented,” such as “letters of reference”—would be superfluous. Minn. Stat. § 364.03, subd. 3(b).

McNitt interprets the second sentence of subdivision 3(a) differently. He contends that the word “may” simply means that the listed documents are not the *exclusive* means of proving sufficient rehabilitation. According to McNitt, subdivision 3(a) provides “multiple avenues” that an applicant *may* use to show sufficient rehabilitation: either by presenting the documents that constitute “competent evidence of sufficient rehabilitation” or the other evidence that a public employer must consider.

The court of appeals was persuaded by McNitt’s interpretation of section 364.03. It concluded that, under the unambiguous language of the statute, “once an applicant provides the documentation listed in subdivision 3(a), the applicant has satisfied the statutorily defined means of demonstrating rehabilitation and shall not be disqualified from employment.” *McNitt*, 14 N.W.3d at 292–93.

We disagree. For the reasons stated below, we conclude that McNitt’s reading of the statute is unreasonable and that the language and structure of section 364.03 plainly confer discretion on a public employer to decide whether an applicant has established

sufficient rehabilitation even after the applicant has produced the documents identified in subdivision 3(a).

Our analysis starts with the language of subdivision 3. The first sentence of subdivision 3(a) states that an applicant “shall not be disqualified ... *if* [the applicant] can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought.” Minn. Stat. § 364.03, subd. 3(a) (emphasis added). To state the obvious, the ordinary meaning of the word “if” makes the first part of the sentence conditional upon the latter. *See The American Heritage Dictionary of the English Language* 874 (5th ed. 2011) (defining “if” as “[i]n the event that,” “[g]ranting that,” or “[o]n the condition that”); *State v. Thonesavanh*, 904 N.W.2d 432, 436 (Minn. 2017) (noting that this court may “look to dictionary definitions to determine the common and ordinary meanings” of terms). Thus, the statute directs that *if* an applicant “can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought” the applicant “shall not be disqualified.” Minn. Stat. § 364.03, subd. 3(a).

The critical question, then, is what constitutes “competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought.” This takes us to the second sentence of section 364.03, subdivision 3(a), which lists “documentary evidence” that “may” establish sufficient rehabilitation, and subdivision 3(b), which lists other evidence that the hiring authority “shall consider.” Subdivision 3(a) provides that “[c]ompetent evidence of sufficient rehabilitation may be established by the production of” several listed documents, including the United States

Department of Defense form DD-214, a release order, or a Department of Corrections discharge order. Minn. Stat. § 364.03, subd. 3(a). Subdivision 3(b) then instructs the following: “In addition to the documentary evidence presented, the licensing or hiring authority shall consider any evidence presented by the applicant regarding” several enumerated factors, such as the nature and seriousness of the crime, the length of time elapsed since the crime, and “all other competent evidence of rehabilitation and present fitness presented.” *Id.*, subd. 3(b). For three reasons we conclude that under this language, a public employer is not stripped of its discretion by the production of documentation under subdivision 3(a).

First, we are persuaded by the Legislature’s decision to use words that convey discretion throughout subdivision 3 of the statute. The use of the permissive word “may” in the second sentence of subdivision 3(a)—“[c]ompetent evidence of sufficient rehabilitation *may* be established by [certain documents]”—indicates the Legislature’s intent to give a public employer discretion to decide whether the documents identified in subdivision 3(a) constitute “competent evidence of sufficient rehabilitation.” *Id.*, subd. 3(a) (emphasis added). The words “competent” and “sufficient” further enforce our conclusion that the Legislature intended to give public employers discretion in decision-making. See *The American Heritage Dictionary of the English Language* 376, 1742 (5th ed. 2011) (defining “competent” as “[a]dequate for the purpose” and “sufficient” as “[b]eing as much as is needed; adequate; enough”). We decline to read these words out of the statute. As written, it is not enough for the applicant to merely produce “evidence of

rehabilitation”—that evidence must be *competent* and demonstrate *sufficient* rehabilitation.

Indeed, by requiring evidence of “sufficient” rehabilitation in CORA, the Legislature recognized that the rehabilitation of individuals with criminal convictions is a process, not a black-and-white result. *See Rehabilitation, Black’s Law Dictionary* (12th ed. 2024) (defining “rehabilitation” as “[t]he *process* of seeking to improve a criminal’s character and outlook so that he or she can function in society without committing other crimes” (emphasis added)); Minn. Stat. § 364.01 (declaring it the policy of the state of Minnesota to “encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship”). And this necessarily means that some entity must be empowered to decide when an applicant has been sufficiently rehabilitated. The surrounding language makes it evident that this entity is the public employer. *See* Minn. Stat. § 364.03, subd. 2 (stating that it is the “hiring or licensing authority” that considers the enumerated factors to determine if the conviction “directly relates to the position of public employment sought”); *Id.*, subd. 3(b) (“In addition to the documentary evidence presented, the licensing or hiring authority shall consider any evidence presented by the applicant regarding ...”). Thus, by requiring that a person show “sufficient” rehabilitation, and that the evidence of rehabilitation be “competent,” the Legislature empowered the public employer to evaluate the evidence presented and make that determination.

Second, if producing the documents in subdivision 3(a) is interpreted to constitute per se evidence of sufficient rehabilitation, an employer then cannot comply with the

Legislature’s mandate in subdivision 3(b)—that the hiring authority consider the other evidence “*in addition to* the documentary evidence” itemized in subdivision 3(a). *Id.*, subd. 3(b). By providing that the employer “shall consider” the additional evidence listed in subdivision 3(b), the Legislature *requires* the employer to consider additional evidence provided—such as evidence of the seriousness of the crime and the circumstances surrounding the crime. *See* Minn. Stat. § 645.44, subd. 16 (stating that unless “another intention clearly appears,” the term “shall” must be interpreted as “mandatory”). But if the documents listed in subdivision 3(a) alone are per se evidence of sufficient rehabilitation, a public employer then cannot comply with the statutory mandate contained in subdivision 3(b).

Third, and relatedly, only MNIT’s interpretation gives effect to all provisions in the statute. The canon against surplusage mandates that “[e]very law shall be construed, if possible, to give effect to all its provisions.” Minn. Stat. § 645.16; *see also Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 170 (Minn. 2021) (stating that the canon of surplusage is a “pre-ambiguity” canon of interpretation). This canon is often applied in tandem with the whole-statute canon, which provides that statutory language should not be read in isolation; rather, “all provisions in the statute must be read and interpreted as whole.” *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019); *Hagen*, 963 N.W.2d at 170–71. If an applicant is per se sufficiently rehabilitated when the applicant produces the documents listed in subdivision 3(a), the language in subdivision 3(b), which requires the public employer to consider other evidence “*in addition to* the documentary evidence presented,” is superfluous. Minn. Stat. § 364.03, subd. 3(b) (emphasis added). The

evidence identified in subdivision 3(b) would never factor into a public employer's decision as to whether an applicant is "sufficiently rehabilitated" once the applicant presented the documentary evidence identified in subdivision 3(a). Put another way, an employer can never meaningfully "consider" the additional factors "in addition to" the documents in subdivision 3(a)—under McNitt's interpretation, once an applicant produces a document under subdivision 3(a), the employer is stripped of discretion. Thus, for the language of subdivision 3(b) to have meaningful effect, subdivision 3(a) cannot mean that an applicant automatically establishes sufficient rehabilitation by producing the documentary evidence listed in that provision.

The primary dissent does not dispute that "may" is permissive. But it disagrees that the use of the word "may" in subdivision 3 means that the public employer has discretion to determine whether the documents provided demonstrate sufficient rehabilitation. It argues that, because the subject of the phrase "may be established by the production of" is the applicant, not the employer, the word "may" "is best understood to enumerate what an applicant is allowed—but not required—to provide to an employer." To support this interpretation, the primary dissent asks us to consider a phrase that, it maintains, is equivalent to the language of subdivision 3: "A person's age may be established by the production of a certified birth certificate or a valid driver's license." The primary dissent states that "[t]he common understanding of this sentence is that production of either a certified birth certificate or a valid driver's license is sufficient to establish a person's age." Accordingly, it argues that the production of the documents in subdivision 3(a) is sufficient to demonstrate a person's rehabilitation.

But the primary dissent’s example overlooks the unique context of CORA. Establishing a person’s age—an objective, known fact—differs from establishing “sufficient rehabilitation”—a question of the *degree* of an individual’s reintegration into society. Further, while the primary dissent insists that the first two sentences of the subdivision must be read together, it disregards the language of the third sentence—that “[i]n *addition* to the documentary evidence presented, *the licensing or hiring authority* shall consider any evidence presented by the applicant regarding” the enumerated factors. Minn. Stat. § 364.03, subd. 3(b) (emphasis added); *see also Pakhnyuk*, 926 N.W.2d at 920 (“The statutory language in dispute is not examined in isolation; rather, all provisions in the statute must be read and interpreted as whole.”). Reading the statute in context, it is the hiring authority who “may” consider the documentary evidence produced by the applicant.

The structure of the statute is thus more akin to the following: Sufficient qualifications for the job may be established by the production of a diploma or an academic transcript. In addition to the documentary evidence presented, the hiring department must also consider any evidence presented by the applicant regarding their past work experience, the strength of their coursework, and all other evidence of sufficient qualifications, including, but not limited to, letters of reference. The common-sense understanding of these sentences is that, even after the applicant produces a diploma, the hiring authority still retains its discretion to consider other evidence to determine if an applicant is sufficiently qualified for the position. Similarly, even once an applicant produces documentation listed under subdivision 3(a), the hiring or licensing

authority retains discretion to determine whether the applicant has demonstrated sufficient rehabilitation.

The primary dissent also faults our decision today for “ignor[ing] the declared policy of the state of Minnesota” and “turn[ing] a blind eye to the very injustice CORA was designed to rectify.” It points us to CORA’s policy statement, which “declares that it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders.” Minn. Stat. § 364.01. But the Legislature also detailed precisely *how* Minnesota would “encourage and contribute to the rehabilitation of criminal offenders” in the very provisions of CORA at issue here. CORA does not establish a sweeping prohibition on the disqualification of applicants based on a prior criminal conviction. As the primary dissent correctly observes, the Legislature carved out specific licensed occupations and offenses that are not subject to the statute. *See* Minn. Stat. § 364.09. The provision at issue here, section 364.03, subdivision 3, falls under yet another exception: when “the crime or crimes for which convicted directly relate to the position of employment sought.” Minn. Stat. § 364.03, subd. 1. It is thus evident that, in crafting CORA, the Legislature weighed the goal of encouraging rehabilitation against competing public interests and set limits on its application. It is not our job to decide where the Legislature *should have* drawn the line—our only inquiry here is to interpret the plain language of the statute. “[I]n doing this work of statutory interpretation, we do not make public policy; we attempt to interpret the policy that the Legislature has already determined in the statutory language at issue.” *In re Guardianship of Tschumy*, 853 N.W.2d 728, 741 n.10 (Minn. 2014).

Here, the plain language of Minnesota Statutes section 364.03, subdivision 3, compels us to conclude that there is just one reasonable interpretation of section 364.03, subdivision 3—that a public employer has discretion to determine if the evidence presented by an applicant constitutes competent evidence of sufficient rehabilitation. If the public employer determines that an applicant has shown “competent evidence of sufficient rehabilitation,” then that applicant “shall not be disqualified.”

* * *

We therefore conclude that the court of appeals erred in determining that, under section 364.03, a public employer has no discretion to decide whether an applicant has been rehabilitated after the applicant presents the documentary evidence identified in subdivision 3(a) of the statute. Because the court of appeals did not reach the other issues before it, including whether the Commissioner applied an incorrect burden of proof, whether the Commissioner relied on factors not intended by the Legislature, whether the Commissioner’s decision was arbitrary and capricious, and whether McNitt’s substantial rights were prejudiced, we remand to the court of appeals to consider the remaining issues.

CONCLUSION

For the foregoing reasons, we affirm in part and reverse in part the decision of the court of appeals, and we remand this case to that court for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

PROCACCINI, J., took no part in the consideration or decision of this case.

CONCURRENCE & DISSENT

HUDSON, Chief Justice (concurring in part, dissenting in part).

When the Legislature enacted the Criminal Offenders Rehabilitation Act (CORA), Minn. Stat. §§ 364.01–.10, it acknowledged the reality that individuals with a criminal record struggle to find employment, no matter how much time has passed since the conviction or the person’s rehabilitation efforts. And as amici Southern Minnesota Regional Legal Services and Mid-Minnesota Legal Aid note, absent gainful employment, it is difficult for those with a criminal record to reenter society and reintegrate themselves into the fabric of our communities. Thus, a specific goal of CORA was to guarantee that if an individual meets the requirements to show rehabilitation and present fitness as set forth in Minnesota Statutes section 364.03, subdivision 3(a) (2024), public employers cannot disqualify that individual from employment based on a directly related prior conviction.

But the court today ignores the declared policy of the state of Minnesota to “encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship.” Minn. Stat. § 364.01. Because the court turns a blind eye to the very injustice CORA was designed to rectify, I respectfully dissent from Part II of the court’s opinion. Instead, I would affirm the court of appeals and hold that public employers do not have discretion to determine whether an applicant

has sufficient rehabilitation and present fitness for a position if the applicant has provided the documents listed in Minnesota Statutes section 364.03, subdivision 3(a).¹

Thus, appellant/cross-respondent Minnesota IT Services (MNIT) did not retain discretion to determine whether respondent/cross-appellant Jeremy McNitt demonstrated sufficient rehabilitation and present fitness for a position with the Department of Education after he satisfied the documentary requirement in Minnesota Statutes section 364.03, subdivision 3(a).

A.

As part of the state’s recognition that “[t]he opportunity to secure employment ... is essential to rehabilitation,” Minn. Stat. § 364.01, CORA provides that a job applicant with a prior criminal conviction that directly relates to the position of public employment sought “shall not be disqualified” if that individual can show “competent evidence of sufficient rehabilitation and present fitness” to perform the role, Minn. Stat. § 364.03, subd. 3(a). CORA specifies that “[c]ompetent evidence of sufficient rehabilitation may be established by the production of” evidence of honorable military discharge, or:

- (1) a copy of the local, state, or federal release order; and
- (2) evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or
- (3) a copy of the relevant Department of Corrections discharge order or other documents showing completion of probation or parole supervision.

¹ I join Part I of the court’s opinion.

Minn. Stat. § 364.03, subd. 3(a). CORA also requires that a public employer “shall consider” additional evidence presented by the applicant, including “the nature and seriousness of the crime,” mitigating circumstances surrounding the commission of the crime, the applicant’s age at the time of the crime, the time since the crime occurred, and “all other competent evidence of rehabilitation and present fitness presented.” *Id.*, subd. 3(b) (2024).

There is no dispute that McNitt fulfilled the conditions detailed in subdivision 3(a) when he provided MNIT an order showing that he had been discharged from probation early and evidence that he had remained law-abiding since his release from probation. *See id.*, subd. 3(a). McNitt also provided reference letters and an explanation of the nature and seriousness of his crime. Even so, MNIT argues that it retained the discretion to determine whether McNitt demonstrated sufficient rehabilitation for a position with the Department of Education.

This dispute asks the court to address who gets to determine whether an applicant has demonstrated “sufficient rehabilitation and present fitness.” Answering that question requires understanding what the Legislature meant when it used the phrase “[c]ompetent evidence of sufficient rehabilitation *may be established by the production of* [specified documents]” in subdivision 3(a).² (Emphasis added.)

² Subdivision 3(a) also requires that an applicant must establish “present fitness to perform the duties of the public employment sought.” The court of appeals reasoned that “sufficient rehabilitation” and “present fitness” could reasonably be read as two separate inquiries, but recognized that this interpretive question was not properly before it. *McNitt v. Minn. IT Servs.*, 14 N.W.3d 284, 290–91 (Minn. App. 2024). I agree that MNIT failed to argue that “present fitness” imposes a separate requirement before either the

To help think about the meaning of the phrase “may be established by the production of” and its role in subdivision 3(a), consider a similarly constructed sentence: “A person’s age may be established by the production of a certified birth certificate or a valid driver’s license.” The common understanding of this sentence is that production of either a certified birth certificate or a valid driver’s license is sufficient to establish a person’s age. As this example highlights, when a rule states that a result “may be established” by a specified method, the sentence ordinarily describes a list of allowable means where each option, alone, can achieve the result. A similarly natural understanding of the sentence in section 364.03, subdivision 3(a)—“[c]ompetent evidence of sufficient rehabilitation may be established by the production of [specified documents]”—is that the production of one of the specified documents is enough to establish competent evidence of sufficient rehabilitation.³

This intuitive understanding is supported by principles of usage and grammar. *Snell v. Walz*, 6 N.W.3d 458, 467 (Minn. 2024). Regarding usage, the phrase at issue gains context from the rest of section 364.03, subdivision 3(a). The first sentence of the subdivision provides that even if an applicant’s prior conviction directly relates to the public employment sought, the applicant “shall not be disqualified from the

administrative law judge or the MNIT Commissioner and thus forfeited the argument. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (noting a reviewing court must generally consider only those issues presented and considered below).

³ I recognize that the production of some of the specified documents, alone, is insufficient to satisfy subdivision 3(a). *See* Minn. Stat. § 364.03, subd. 3(a)(1)–(2). Here, because there is no dispute that McNitt satisfied the other conditions, I focus on the production of a document that satisfies subdivision 3(a).

employment ... if the [applicant] can show competent evidence of sufficient rehabilitation.” Minn. Stat. § 364.03, subd. 3(a). This sentence makes clear that the public employer cannot disqualify the applicant if the individual produces competent evidence of sufficient rehabilitation. In the next sentence—the sentence at issue here—the Legislature identifies three specific documents that demonstrate “competent evidence of sufficient rehabilitation.” *Id.* Reading the first two sentences of subdivision 3(a) together demonstrates that a public employer cannot refuse to hire an applicant if the person produces one of the three identified documents.

Grammatical principles also bolster this interpretation. The sentence “[c]ompetent evidence of sufficient rehabilitation may be established by the production of [specified documents]” is written in the passive voice. The subject of the sentence is “competent evidence of sufficient rehabilitation.” That is what the sentence is about: what constitutes competent evidence of sufficient rehabilitation. Thus, in the sentence at issue in subdivision 3(a), “competent evidence of sufficient rehabilitation” is the legal condition that receives the action of being established.

The next clause in the sentence, “may be established by the production of [specified documents],” includes a verb phrase, “may be established,” and a prepositional phrase, “by the production of.” Because the sentence is passive with an abstract subject—“competent evidence of sufficient rehabilitation” as opposed to an entity that can actually receive permission—“may” conveys a permissible way for the applicant to accomplish something: here, demonstrating rehabilitation. “May” modifies the verb phrase “be established,” not the public employer’s decision whether to accept the evidence. The

clause governs the method by which the evidentiary condition can be satisfied, not the public employer's freedom to disregard the method once it has occurred.

In passive voice constructions, phrases introduced by the word “by” identify the method or instrument through which the action occurs. As it is used in subdivision 3(a), the phrase “by the production of” specifies how the subject of the sentence—“competent evidence of sufficient rehabilitation”—is established. Read naturally, the phrase communicates that producing one of the three specified documents is a recognized way of establishing the evidentiary condition. Put differently, the sentence “[c]ompetent evidence of sufficient rehabilitation may be established by the production of [specified documents]” conveys that the production of one of the listed documents is enough for the applicant to establish competent evidence of sufficient rehabilitation.

The court comes to the opposite conclusion by reading “may” in the phrase “competent evidence of sufficient rehabilitation *may* be established [by the specified documents]” as empowering the public employer to determine whether the provided documents are sufficient to prove rehabilitation. Minn. Stat. § 364.03, subd. 3(a) (emphasis added). The court relies on the idea that the word “may” is permissive, which the court reads to mean that the Legislature provided public employers the power to determine whether the documents that the applicant produced constitute “competent evidence of sufficient rehabilitation.”

While it is true that the word “may” is often “permissive,” *see* Minn. Stat. § 645.44, subd. 15 (“ ‘May’ is permissive.”), that does not end the analysis. The mere use of the word “may” does not automatically mean that *the public employer* has broad

discretion to determine whether the provided documents demonstrate sufficient rehabilitation.⁴ The surrounding context again proves helpful. Nowhere in that phrase, nor anywhere in subdivision 3(a), does it specify that it is the employer who has discretion to make the rehabilitation judgment. *See* Minn. Stat. § 364.03, subd. 3(a). Reading subdivision 3 as a whole is instructive. Subdivision 3(a) begins by specifying its subject: “[a] person who has been convicted of a crime or crimes” *Id.* The rest of subdivision 3(a) identifies what *that person* may submit to show rehabilitation. It is only in subdivision 3(b) that the public employer is named and is the subject of a statutory directive.

⁴ For instance, in *McDeid v. Johnson*, we held that state officials did not have discretion to ignore a transfer order from the Minnesota Commitment Appeals Panel (CAP). 984 N.W.2d 864, 876–77 (Minn. 2023). The statutory provision at issue noted that “[a] civilly committed sex offender *may* be placed in community preparation services only upon an order of the [CAP] under section 253B.19.” Minn. Stat. § 246B.01, subd. 2a (emphasis added). State officials argued that a CAP transfer order was not binding because “‘may’ makes the statutory language permissive and that accordingly, CAP transfer orders merely provide authorization for them to transfer patients at their discretion.” *McDeid*, 984 N.W.2d at 875. We rejected the argument:

The State Officials misread the provision. Read in context, the statutory language that they rely upon places a *limit* on the State Officials’ power to transfer patients to CPS; it does not expand their discretion. The word “may” in the sentence is used in the sense of “having permission to.” *May*, *Merriam Webster’s Collegiate Dictionary* 719 (10th ed. 1996); *see State v. Stirens*, 506 N.W.2d 302, 305 (Minn. 1993) (interpreting “may” as “ha[ving] authority to”).

Id. at 876. In other words, we concluded that a statute—which, like section 364.03, subdivision 3(a), uses the passive voice—did not grant the CAP broad discretion to ignore the condition for action identified in the statute.

This contrast must mean something. And it does: subdivision 3(a) is plainly directed to applicants, not employers. To hold otherwise would require us to read words into CORA that do not exist. *See Rohmiller v. Hart*, 811 N.W.2d 585, 590 (Minn. 2012) (“We cannot add words or meaning to a statute that were intentionally or inadvertently omitted.”). The word “may” is best understood to enumerate what an applicant is allowed—but not required—to provide to an employer. This interpretation fits the subject of subdivision 3(a), the applicant, and recognizes that not every applicant will possess every piece of evidence listed in subdivision 3(a) but can still demonstrate sufficient rehabilitation.

This interpretation of subdivision 3(a) also comports with the express policy statement enacted by the Legislature in section 364.01 and the overall structure of CORA. *See Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 278–79 (Minn. 2000) (considering express statements of a statute’s purpose when conducting statutory interpretation). The policy statement in CORA provides:

The legislature declares that it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship. The opportunity to secure employment ... is essential to rehabilitation and the resumption of the responsibilities of citizenship.

Minn. Stat. § 364.01. Consistent with this declared policy, section 364.03 prohibits a public employer from disqualifying an applicant “because of a prior conviction of a crime or crimes.” Minn. Stat. § 364.03, subd. 1. Thus, a primary purpose of CORA is allowing people with a prior conviction to be employed by the state, as consistent with the policy purpose articulated by the Legislature. The statute then creates an exception to this

general prohibition for an applicant with a prior conviction for crimes that “directly relate to the position of employment sought.” *Id.*; *see also id.*, subd. 2 (defining the scope of the exception to the general prohibition). Next, section 364.03, subdivision 3, creates an exception to the exception: *even if* the crime directly relates to the position of employment sought, public employers must not disqualify persons with a criminal conviction if they show competent evidence of rehabilitation and fitness for the job. *Id.*, subd. 3(a)–(b). This interpretation of CORA supports the State’s policy by interpreting the statute in a way that will most likely achieve the Legislature’s stated policy goals.

B.

The court disagrees, positing that the prohibition that an applicant who fulfills the requirement in subdivision 3(a) “*shall not* be disqualified” is not mandatory in all circumstances, because the phrase “shall not be disqualified” is followed by the phrase “if [the applicant] can show competent evidence of sufficient rehabilitation and present fitness.” *Id.*, subd. 3(a) (emphasis added); *contra* Minn. Stat. § 645.44, subd. 16 (“ ‘Shall’ is mandatory.”). I agree that “if” makes “shall not” conditional. Accordingly, absent sufficient documentation to fulfill the requirement in subdivision 3(a), the employer prohibition is not implicated. But this inquiry misses the point. The question is not *whether* the documentary condition has been fulfilled, but *who* gets to make the rehabilitation determination. In my view, the Legislature emphatically answered that question by enacting CORA and thereby divesting public employers of the discretion to disqualify an applicant upon provision of sufficient documentary evidence as identified in Minnesota Statutes section 364.03, subdivision 3(a).

The court also contends that reading subdivision 3(a) as eliminating public employer discretion would render subdivision 3(b) superfluous. Subdivision 3(b) provides that the public employer “shall consider any evidence presented by the applicant” related to “the nature and seriousness of the crime,” mitigating circumstances, the applicant’s age at the time of the crime, the time since the crime occurred, and “all other competent evidence of rehabilitation and present fitness” presented. The court claims that my reading of subdivision 3(a) makes it impossible for the public employer to fulfill the mandate in subdivision 3(b) to consider additional circumstances provided by an applicant. This is incorrect for three reasons.

First, turning to the question of the meaning and role of subdivision 3(b) in section 364.03, I observe that the first clause of subdivision 3(b) is stated as a directive to the public employer that it must consider “any evidence presented *by the applicant*” regarding the five specified topics. *Id.*, subd. 3(b) (emphasis added). In other words, the Legislature is instructing the public employer that it cannot ignore evidence that is (1) presented by the applicant, and (2) falls within one of the five categories of evidence in subdivision 3(b). Subdivision 3(b) provides a limiting principle for agencies in line with CORA’s stated policy of promoting rehabilitation. It ensures that a public employer cannot independently identify and consider other evidence of the type listed in subdivision 3(b)—evidence not presented by the applicant—as a basis for rejecting an applicant who satisfies the requirement for showing “competent evidence of sufficient rehabilitation” in subdivision 3(a).

Second, the court overlooks that subdivision 3(b) remains critical for applicants who cannot satisfy subdivision 3(a) but who can show rehabilitation and present fitness through additional contextual information. McNitt did not need to rely on this avenue because he fulfilled the conditions of subdivision 3(a). But the pathway provided in subdivision 3(b) remains extant and becomes operative when an employer retains discretion because of an insufficient showing of documentary evidence under 3(a). This interpretation of subdivisions 3(a) and (b) working together to provide multiple opportunities for an applicant to demonstrate rehabilitation is more aligned with the stated purpose of CORA. *See* Minn. Stat. § 364.01 (declaring the policy of the state to “encourage and contribute to the rehabilitation of criminal offenders” through preserving the opportunity to secure employment). Indeed, if an applicant does not provide additional circumstances to the employer, subdivision 3(b) never comes into effect. Stated otherwise, an applicant can establish sufficient rehabilitation under subdivision 3(a), subdivision 3(b), or both.

Third, the court places significant emphasis on the words that start section 364.03, subdivision 3(b): “*In addition to* the documentary evidence presented” (Emphasis added.) The court suggests that this language supports a conclusion that the types of evidence identified in subdivision 3(b) shall be considered “in addition to” the production of one of the three documents identified in subdivision 3(a), meaning a public employer is required to review any evidence produced under subdivision 3(b). But this reads a lot into the isolated phrase “in addition to,” especially in light of the above context. More important is that the words “in addition to” are also consistent with the interpretation that

understands subdivision 3(b) as creating an alternative path to show “competent evidence of sufficient rehabilitation” for individuals who cannot produce a document identified in subdivision 3(a). Accordingly, the words “in addition to” do nothing to distinguish the competing interpretations. *Wocelka v. State*, 9 N.W.3d 390, 398 (Minn. 2024) (explaining language that is consistent with each of two competing interpretations cannot be used to resolve which meaning is reasonable).

The court also suggests that because “sufficient” and “competent” appear throughout subdivision 3, the public employer has discretion to determine whether the provided documents indicate sufficient rehabilitation. But again, the court never explains why those words necessarily apply to the *employer*, and there is no indication in subdivision 3(a) that the employer is authorized to make the ultimate sufficiency decision. That the Legislature uses words that may, in some contexts, convey discretion does not mean that the public employer has discretion under the sentences that make up section 364.03, subdivision 3.

Rather than supporting the court’s position, the fact that subdivision 3(b)—unlike 3(a)—explicitly identifies the hiring employer as the entity considering additional evidence is a strong indication that the Legislature knew how to confer authority when it wished. *Gen. Mills, Inc. v. Comm’r of Revenue*, 931 N.W.2d 791, 800 (Minn. 2019) (“When the Legislature uses limiting or modifying language in one part of a statute, but omits it in another, we regard that omission as intentional and will not add those same words ... to parts of the statute where they were not used.”). The more obvious interpretation from the use of “sufficient” and “competent” is that the Legislature made

its own determination of what evidence constituted “competent evidence of sufficient rehabilitation” in subdivision 3(a) and removed from the employer’s discretion the ability to discount those documents once provided.

That the Legislature selected what documents establish rehabilitation is bolstered by another provision of CORA, which the court contends is inapplicable to the provision at issue here. In Minnesota Statutes section 364.09, the Legislature exempted specific occupations and offenses from CORA, including, for example, “juvenile corrections employment, where the offense involved child physical or sexual abuse or criminal sexual conduct,” and—more broadly—law enforcement and fire protection agencies. Minn. Stat. § 364.09(a). In designating what public positions and offenses were not subject to CORA, the Legislature made its own assessment of what occupations, positions, criminal offenses, and agencies needed greater insulation; neither McNitt’s past offense nor the position to which McNitt applied at MNIT is excepted from CORA’s protection.⁵ Amicus League of Minnesota Cities argues that other occupations should also be excluded from CORA’s protection. That may well be. But those are policy arguments that are more properly directed to the Legislature, where all stakeholders have an

⁵ The court contends that section 364.03, subdivision 3, falls under “another exception” to CORA and thus the excepted occupations and offenses in section 364.09 do not inform the court’s statutory interpretation. But when an applicant with a prior conviction applies for public employment is when CORA’s policy of encouraging and facilitating opportunities for employment is arguably most needed. I agree with the majority that the Legislature already balanced competing policy goals—the result is section 364.03, subdivision 3, and the language indicating what documentary evidence constitutes competent evidence of sufficient rehabilitation. Allowing the public employer to make a second assessment undermines CORA and the goal of promoting employment for those that have demonstrated sufficient rehabilitation.

opportunity to participate. *In re Est. of Karger*, 93 N.W.2d 137, 142 (Minn. 1958) (“What the law ought to be is for the legislature; what the law is, rests with the courts.”). Our role, in contrast, is to interpret the law as it is; not as others believe it should be. *Id.*

* * *

In sum, in Minnesota Statutes section 364.03, subdivision 3(a), the Legislature directs what documents an applicant for public employment is allowed to provide to show sufficient rehabilitation and present fitness for the role. If an applicant is unable to submit the documentation, subdivision 3(b) provides another pathway by which an applicant can make the same demonstration. Upon submission of the documentary evidence, subdivision 3(a) goes into effect and a public employer “shall not” further evaluate whether a candidate is sufficiently rehabilitated. An employer can ensure the submitted documents are complete and accurate, but after that review CORA provides no additional discretion for a public employer to deem an applicant insufficiently rehabilitated for the role.

For the foregoing reasons, I would affirm the court of appeals’ holding that public employers do not have discretion to determine whether an applicant has sufficient rehabilitation and present fitness for a position if the applicant has provided the documents listed under Minnesota Statutes section 364.03, subdivision 3(a).

THISSEN, Justice (concurring in part, dissenting in part).

I join in the opinion of Chief Justice Hudson concurring in part and dissenting in part.

CONCURRENCE & DISSENT

THISSEN, Justice (concurring in part, dissenting in part).

I agree with and join Chief Justice Hudson's concurrence and dissent. I understand that some may consider it distasteful or poor public policy to allow respondent/cross-appellant Jeremy McNitt, or any person who was once convicted of possessing child pornography, to ever work as a state employee. But it is not our job in this case to make such judgments. We are interpreting a statute. Our job is to apply the statute as written and enacted by the Legislature.

I write for two reasons. First, in addition to Chief Justice Hudson's cogent interpretive arguments on why McNitt's presentation of his more-than-a-year-old release order and evidence of a clean probation record since his release established competent evidence of sufficient rehabilitation, it is worth noting that the court's emphasis on the "obvious" meaning of "if" in the phrase "a person ... shall not be disqualified ... *if* [the applicant] can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought," Minn. Stat. § 364.03, subd. 3(a) (emphasis added), is beside the point. The court asserts that the word "if" makes the first part of the sentence ("shall not be disqualified") conditional upon the latter part of the sentence (showing "competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought"). True as far as it goes. But the court ignores that the text goes on to define how one of the conditions—showing competent evidence of sufficient rehabilitation—may be fulfilled: by producing certain statutorily identified documents, including "a copy of the local, state, or federal release

order” and “evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole.” Minn. Stat. § 364.03, subd. 3(a)(1)–(2). In other words, the fact that “if” makes the “shall not be disqualified” conditional on “competent evidence of sufficient rehabilitation” tells us nothing meaningful to resolve this case, which turns on the central question of whether McNitt satisfied the condition. Even if the court is correct about how the rest of the sentence operates, its focus on “if” is merely a nice decoration for the result the opinion reaches.

That, of course, leaves open the question of how to address the other condition: present fitness to perform the duties of the public employment sought. My second reason for writing is that under the plain language of the statute, producing the documents set forth in section 364.03, subdivision 3(a), does not definitively show a person’s present fitness. I would remand the case to the administrative law judge (ALJ) to consider whether McNitt is presently fit to perform the duties of the public employment sought under Minnesota Statutes section 364.03, subdivision 3(a).

Under section 364.03, a state agency generally cannot refuse to hire a person because the applicant has a prior criminal conviction. Minn. Stat. § 364.03, subd. 1. The statute, however, creates an exception to the general rule. When the crime of conviction “directly relate[s] to the position of employment,” the agency may refuse to hire the

person because of the conviction. *Id.* In assessing whether the crime is “directly relate[d] to the position of employment sought,” the agency must consider:

- (1) the nature and seriousness of the crime or crimes for which the individual was convicted;
- (2) the relationship of the crime or crimes to the purposes of regulating the position of public employment sought or the occupation for which the license is sought;
- (3) the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.

Minn. Stat. § 364.03, subd. 2.

Even if, however, the crime is directly related to the position sought based on the criteria set forth in section 364.03, subdivision 2, the agency may not disqualify a person from employment based on a prior criminal conviction “if the person can show competent evidence of sufficient rehabilitation and *present* fitness to perform the duties of the public employment sought or the occupation for which the license is sought.”

Minn. Stat. § 364.03, subd. 3(a) (emphasis added) (stating that the person “shall not be disqualified” even if the crime relates to the position of employment if those conditions are met).

As explained in Chief Justice Hudson’s well-reasoned concurrence and dissent, McNitt “show[ed] competent evidence of sufficient rehabilitation” when he produced “a copy of the local, state, or federal release order” and “evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all

terms and conditions of probation or parole.” Minn. Stat. § 364.03, subd. 3(a) (identifying several documents by which an applicant may establish sufficient rehabilitation). The plain language of section 364.03, subdivision 3(a), tells us that producing the release order shows that McNitt is sufficiently rehabilitated. But according to that same text, producing a release order in conjunction with other listed requirements does not definitively show that McNitt is presently fit to perform the duties of the public employment he seeks. Minn. Stat. § 364.03, subd. 3(a).

The words “present fitness” are nowhere used in the second sentence of subdivision 3(a). Instead, section 364.03, subdivision 3(b), provides the standard to analyze whether an applicant meets the present fitness condition. This statute’s language does not support McNitt’s argument on appeal that “competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought” are a single inquiry—at least insofar as the production of one of the three documents in subdivision 3(a) establishes without further inquiry that the applicant is sufficiently rehabilitated.

This plain language reading of subdivision 3(b) also undermines another supporting pillar of the court’s opinion—its heavy reliance on subdivision 3(b). Subdivision 3(b) is best understood as an alternate pathway for a person to establish sufficient rehabilitation, as Chief Justice Hudson forcefully points out. It also is *the only* pathway for proving present fitness. Indeed, unlike the second sentence of subdivision 3(a), which refers only to “competent evidence of sufficient rehabilitation,” subdivision 3(b) expressly refers to “all other competent evidence of rehabilitation *and*

present fitness.” Minn. Stat. § 364.03, subd. 3(b)(5) (emphasis added). I leave for another case the precise contours of the present fitness requirement in subdivision 3.

My review of the record, including the decisions of the ALJ and the MNIT Commissioner, suggests that neither the ALJ nor McNitt nor the Commissioner made a distinction between the analysis to assess sufficient rehabilitation and the analysis to assess present fitness. Moreover, the additional facts the MNIT Commissioner used to support rejecting the ALJ’s recommendation seem more relevant to the question of McNitt’s sufficient rehabilitation and less (if at all) relevant to his present fitness to perform the duties of the job for which he applied. Accordingly, I conclude that we should remand to the ALJ to specifically address whether McNitt is presently fit to perform the duties of the public employment he seeks.