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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A26-0517**

In the Matter of the Civil Commitment of: Peter Lonergan.

**Filed September 14, 2026
Affirmed
Bratvold, Judge**

Commitment Appeal Panel (CAP)
File No. AP21-9193

Peter Lonergan, Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Brandon Boese, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Direct Care and Treatment)

Kathryn M. Keena, Dakota County Attorney, Elizabeth M. Swank, Assistant County Attorney, Hastings, Minnesota (for respondent Dakota County)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant Peter Lonergan seeks review of a decision by the commitment appeal panel (CAP) denying his petition for discharge from civil commitment and granting the motion to dismiss submitted by respondent Minnesota Department of Direct Care and Treatment Executive Board (executive board). First, Lonergan argues that CAP erred in determining that he failed to present a prima facie case for his discharge. Lonergan also contends that CAP committed three errors during the petition proceedings: (1) the duration

of CAP proceedings, including the delay before the CAP hearing, violated a statute and his right to due process; (2) the executive board's participation as a party violated Minn. Stat. § 253D.28, subd. 2(c) (2024); and (3) CAP abused its discretion by excluding three of Lonergan's exhibits and restricting his time to conduct direct examination of some witnesses. Alternatively, Lonergan argues that the statutory discharge criteria violated constitutional guarantees of substantive due process. We affirm.

FACTS

The following summarizes the uncontested facts and procedural history as detailed in CAP's order and is supplemented by the record evidence that is relevant to the issues on appeal. Lonergan was civilly committed as a sexually dangerous person (SDP) in 2009 and is currently committed to the Minnesota Sex Offender Program (MSOP) facility in Moose Lake.

In 2020, Lonergan petitioned for a reduction in custody (discharge petition). "Reduction in custody" includes "transfer out of a secure treatment facility, a provisional discharge, or a discharge from commitment." Minn. Stat. § 253D.27, subd. 1(b) (2024). Lonergan initially petitioned for transfer, provisional discharge, or discharge. Lonergan later withdrew his requests for transfer and provisional discharge but continued to pursue discharge. In December 2021, the special review board (SRB) recommended denial of Lonergan's petition.¹ In May 2022, Lonergan petitioned CAP for rehearing and reconsideration of SRB's decision.

¹ An SRB consists of three-member panels established by statute to "hear and consider all petitions for a reduction in custody." Minn. Stat. § 253B.18, subd. 4c (2024); *see* Minn.

In November 2022, Lonergan filed several motions, requesting that CAP (1) take judicial notice of facts based on evidence he filed; (2) appropriate funds to hire an independent forensic psychiatrist; (3) bar any appearance by the attorney general in these proceedings;² (4) show cause for CAP's failure to hold a hearing within 180 days of Lonergan's May 2022 request for reconsideration; and (5) allow Lonergan to "fully participate" in proceedings by allowing him to conduct cross-examination and offer evidence. CAP granted Lonergan's motion in part, allowing him to participate in proceedings and conduct "limited cross examination" within parameters determined by CAP. CAP denied Lonergan's other motions.

Lonergan moved to certify questions about self-representation to this court in February 2023, which CAP granted in part, but this court dismissed the matter, concluding that CAP could not certify questions under the Minnesota Rules of Civil Appellate Procedure. CAP then appointed a focused-review examiner, who testified at the hearing as summarized below. Lonergan objected to the examiner's report filed in December 2023, and CAP denied Lonergan's requests to appoint a second examiner. CAP scheduled a hearing on Lonergan's petition in May 2024.

Stat. § 253D.27, subd. 2 (2024) (stating that an SRB must hear petitions by civilly committed sex offenders for reductions in custody).

² Lonergan also moved to exclude the commissioner of human services from appearing in these proceedings. While Lonergan's discharge petition was pending, authority over MSOP was transferred from the commissioner of human services to the executive board. Minn. Stat. § 246C.04, subds. 1-3 (2024).

At the hearing in May 2024, CAP granted Lonergan's request for a continuance based on his "longstanding and clearly expressed desire to self-represent" and the then-pending *Benson* case in the Minnesota Supreme Court. In October 2024, the supreme court decided *In re Civil Commitment of Benson* and held that "[a] civilly committed person may waive the right to counsel granted in Minnesota Statutes section 253D.20 (2022), provided that the person is deemed competent to enter a knowing and intelligent waiver." 12 N.W.3d 711, 713 (Minn. 2024). After an evaluation determined that Lonergan was competent to enter a waiver of his right to counsel, CAP granted Lonergan's request to represent himself in December 2024. CAP also appointed advisory counsel for Lonergan.

Between April and December 2025, CAP held a hearing over four days on Lonergan's discharge petition. Lonergan filed 33 exhibits, 19 of which he offered as evidence during the hearing. CAP admitted 16 of Lonergan's exhibits. Lonergan also presented witness testimony as summarized below.

Lonergan's Testimony

After Lonergan was sworn in, his advisory counsel conducted his direct examination. Lonergan began his testimony by arguing that "there is literally nothing" to justify his commitment "except the 34-year-old criminal record, which [he] can demonstrate [he] wasn't guilty of committing." Lonergan acknowledged that he has admitted to one sexual offense and that he is alleged to have committed multiple offenses, including offenses against children. Lonergan testified that "MSOP has failed to yet record" any sexual predatory behavior or sexual dangerousness, despite ongoing

monitoring of his behavior. Lonergan also testified that he is “at near zero percent risk for recidivism after the age of 60.”

Lonergan described his participation at MSOP, stating that he “no longer go[es] to core group” therapy sessions but he meets with his primary therapist. Lonergan also testified that he has “completed [his] treatment” and referred to a correspondence sex-offender treatment program. Lonergan’s advisory counsel asked Lonergan if he would “go back to treatment if there was an established completion time.” Lonergan responded, “No.” Lonergan denied that he is a pedophile and testified that he has no symptoms of pedophilia, no “volitional problems,” and no antisocial personality traits. Lonergan also testified that his “chart at the MSOP states clearly” that he has no pedophilic interests “because people that are there with pedophilic interests, it does come to the surface.”

Expert Testimony

Lonergan questioned four witnesses about his mental-health diagnoses and need for treatment as summarized below.

Testimony of Dr. Leal

Dr. Leal is a clinical psychologist who completed an interview and mental-health assessment of Lonergan in 2023. Lonergan did not offer Dr. Leal’s written report of his mental-health assessment into evidence. Dr. Leal testified that she completed the assessment according to the Diagnostic and Statistical Manual of Mental Disorders, Fifth

Edition, Text Revision (DSM), which she agreed was the “gold standard for professionals to follow when they’re doing a diagnostic assessment.”

Dr. Leal diagnosed Lonergan with pedophilia disorder, which she agreed “focuse[d] primarily on reports of sexual behavior with pre-pubescent children.” Dr. Leal stated that she relied on factual findings in Lonergan’s commitment order as well as his statements during a 2023 interview and other assessments in his file. In the 2023 interview, Lonergan told Dr. Leal that he “felt as though the abuse with [his] sister-in-law’s eight-year-old daughter was underreported and that it did span approximately five years and began when she was about five years old.”

Dr. Leal testified that, according to the DSM, “[p]edophilia is the only diagnosis in the paraphilic section that does not have a remission qualifier. The other diagnoses will specify once you’re out of a controlled setting for five years then you can get the in-remission status.” Dr. Leal acknowledged that she was not aware of Lonergan exhibiting “any behaviors consistent with pedophilia at the time of my interview.” Dr. Leal also testified that Lonergan is not currently exhibiting sexually offending behavior toward children because there are no children at MSOP. Dr. Leal disagreed that the “remission rule applies to pedophilia,” explaining that she relied on the DSM. Dr. Leal does not consider Lonergan’s pedophilia to be in remission.

Dr. Leal acknowledged that “there is evidence that [pedophilic] behavior decreases with age.” Dr. Leal disagreed with Lonergan’s statement that recidivism “reaches zero percent” for a pedophile over 60 years old. Dr. Leal stated that she did not have in front of her the studies to which Lonergan referred in his questions. Dr. Leal added that, even if she

assumed that studies documented the recidivism rate that Lonergan asserted, she still would have diagnosed Lonergan with pedophilia.

On cross-examination by the executive board, Dr. Leal agreed that, at the time she completed Lonergan's mental-health assessment, she was "not trained as a forensic risk assessor." She also agreed that a mental-health assessment "does not include a component about future risk of recidivism."

Testimony of Charles Fai

Charles Fai "is an MSOP clinical supervisor and was Mr. Lonergan's primary therapist in the past." Fai testified that the purpose of Lonergan's treatment at MSOP is to "identify and address what issues related to [his] sexual offending, explore [his] dynamics, identifying and addressing specific issues that are related to that." Fai testified that MSOP provided Lonergan with "an opportunity to participate" in services to address his treatment needs, but that Lonergan "didn't attend treatment, nor participate in MSOP process groups and psycho-educational groups." Fai testified that he could not identify Lonergan's "specific treatment needs" because Lonergan did not participate in MSOP therapy services. Fai agreed that Lonergan is currently scheduled for "core group" treatment "once a week for two hours" and that MSOP does not currently offer "psycho-educational groups or modules." Fai agreed that Lonergan attended all scheduled meetings with him.

Testimony of Dr. Powers

Dr. Powers is a clinical and forensic psychologist who completed Lonergan's focused review in December 2023. Dr. Powers explained, "The purpose of the focused review is to conduct a record review based on the available records provided and provide

an opinion to the Court on whether or not a full evaluation appears necessary.” Lonergan did not offer Powers’s written focused review as an exhibit.

Dr. Powers testified that she concluded Lonergan did not need a full evaluation and explained that Lonergan had

not been in treatment since 2015 with the exception of a few individual treatment sessions and then attending something external with some consulting company. Other than that, no group therapy, no psycho-education modules and several statements made by [Lonergan] about why [he]—all the reasons why [he] dislike[s] MSOP, I guess, to wrap that up in one sentence. And given [the] lack of treatment and therefore lack of observable change it appears that there is no need for a full evaluation.

Dr. Powers testified that, among other records, she reviewed a sexual-violence risk assessment of Lonergan that was completed in 2021 and the 2023 mental-health assessment. She did not observe any flaws in either assessment. Dr. Powers testified that “by and large risk assessments as a whole should be conducted every 6 to 12 months due to changes that a person may exhibit.” Dr. Powers disagreed that an assessment more than 12 months old was necessarily inaccurate. Dr. Powers also reviewed additional updated records for the hearing and reiterated her opinion that a full evaluation of Lonergan was not warranted.

Dr. Powers testified that symptoms of pedophilia may “wax and wane” and “can be absent for a period of time.” She acknowledged that recidivism may decrease “after an individual turns 60.” Dr. Powers disagreed that “after the age of 60 sexual recidivism drops off dramatically.”

Dr. Powers opined that Lonergan “need[s] sex offender treatment” based on his commitment and that a less restrictive alternative was not available. Dr. Powers explained that MSOP has a three-phase treatment program and that Lonergan never advanced to the second phase of treatment to address his sexual offending. Dr. Powers disagreed that Lonergan’s individual therapy sessions would allow “symptoms” of pedophilia to “come to the forefront.” Dr. Powers referred to therapy notes that described Lonergan as focused on “complaints about MSOP and the civil commitment” and “very externally focused.” Dr. Powers also testified that Lonergan denies “any symptoms at all” and does not “go to group and share anything so we don’t know what may or may not be there.” Dr. Powers added that Lonergan had “numerous unmet treatment needs” and that “people who have untreated sexual disorders tend to be at higher risk [to reoffend] than those who are treated.”

Dr. Powers disagreed that the lack of “reports of sexual behavior” by Lonergan since he was civilly committed indicates that he is in a “kind of remissive disorder.” Dr. Powers stated that “[a]ll the data should be taken into consideration” for a forensic risk assessment, and that, because Lonergan does not attend MSOP core group therapy, “in this case there is a profound lack of data.”

On cross-examination, Dr. Powers testified that a diagnosed pedophile reaching age 60 does not, standing alone, justify a release from civil commitment. She stated that age was “one piece of information that is in [Lonergan’s] favor” and that “it brings his risk [of recidivism] to average risk for the static portion of a risk assessment.” Dr. Powers summarized factors “not in [Lonergan’s] favor” as “treatment non-participation”; a “high

psychopathy score”; and the “combination of the high psychopathy score with the sexual disorder diagnosis.”

Testimony of Dr. Spielman

Dr. Spielman is an MSOP forensic evaluator who completed a sexual-violence risk assessment of Lonergan in 2021. Lonergan did not offer the risk assessment into evidence. Dr. Spielman testified that she reviewed Lonergan’s records in his MSOP file. Dr. Spielman concluded that Lonergan suffered from a pedophilic disorder and explained that pedophilia “can be managed” with “treatment and supervision.” Dr. Spielman also testified that, “[o]verall, advanced age is associated with a decrease in all criminal behaviors.” She disagreed that being over age 60 means a pedophile has “zero percent risk” of reoffending.

Dr. Spielman testified that MSOP had not administered a “full-disclosure polygraph” of Lonergan, which “is a part of a person’s treatment process.” Dr. Spielman added that “someone who is a nonparticipant probably is not going to be offered” a full-disclosure polygraph. She also testified that she is not authorized to order a polygraph or determine whether one should be done.

Dr. Spielman testified that Lonergan has not completed treatment at MSOP. As for the correspondence treatment program described in the certificate of completion that Lonergan offered into evidence as exhibit 103, Spielman opined that the program “would not address someone who has been assessed as dangerous to the degree” that Lonergan has through the civil-commitment process. She testified that “[p]edophilia is a lifelong

diagnosis” and that, because Lonergan has done “no treatment work,” his record at MSOP lacks “current information” about the “status” of his diagnosis.

Other Witnesses

Lonergan presented testimony from two MSOP security counselors who testified about Lonergan’s general good behavior in MSOP. One security counselor acknowledged that she does not “attend group treatments.” The second security counselor agreed that he was not “expressing any kind of opinion about Lonergan’s risk for re-offense if he were to be released” and that his “role at MSOP is not to make a decision about Mr. Lonergan’s diagnosis one way or another.”

Lonergan also offered testimony from a friend who communicates with Lonergan frequently and has known him for 25 years. She testified that she owns a home in Minneapolis and that Lonergan could stay with her and her husband upon his discharge without paying any rent. She also testified that she would help Lonergan seek employment and connect with community support groups.

At the conclusion of the December 2025 hearing, the executive board moved to dismiss Lonergan’s petition. In a written order filed in January 2026, CAP granted the motion to dismiss and denied Lonergan’s petition for discharge from civil commitment.

Lonergan appeals.

DECISION

Lonergan challenges CAP’s denial of his petition for discharge. CAP dismissed Lonergan’s petition under Minnesota Rule of Civil Procedure 41.02(b), which provides, “After the [petitioner] has completed the presentation of evidence, the [opponent], without

waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law, the [petitioner] has shown no right to relief.”³ We apply de novo review to CAP’s dismissal of Lonergan’s petition for discharge. *Larson v. Jesson*, 847 N.W.2d 531, 534 (Minn. App. 2014).

A person committed as an SDP may petition the SRB for a reduction in custody, including discharge. Minn. Stat. § 253D.27, subds. 1(b), 2. If the SRB recommends denial of the petition, the petitioner may seek reconsideration by CAP. Minn. Stat. § 253D.28, subd. 1 (2024). Discharge-petition proceedings before CAP occur in two phases. *See Larson*, 847 N.W.2d at 535 (describing the two phases). During the first phase, the petitioner “bears the burden of going forward with the evidence, which means presenting a prima facie case with competent evidence to show that the person is entitled to the requested relief.” Minn. Stat. § 253D.28, subd. 2(d) (2024). This is “merely a burden of production.” *Larson*, 847 N.W.2d at 535. If the petitioner satisfies their first-phase burden, the burden shifts to the party opposing the petition to demonstrate “by clear and convincing evidence that the discharge . . . should be denied.” Minn. Stat. § 253D.28, subd. 2(d).

After the petitioner has presented their evidence, the opposing party may move to dismiss the petition under Rule 41.02(b). *Larson*, 847 N.W.2d at 535. In considering a Rule 41.02(b) motion, CAP “may not weigh the evidence or make credibility determinations.” *Coker*, 831 N.W.2d at 490-91. CAP must “view the evidence produced at

³ The supreme court has held that the remaining language in Rule 41.02(b) does not apply to civil-commitment discharge petitions because it conflicts with the civil-commitment statute. *Coker v. Jesson*, 831 N.W.2d 483, 490-91 (Minn. 2013).

the first-phase hearing in a light most favorable to the committed person.” *Id.* at 491. Dismissal under Rule 41.02(b) may be appropriate when the committed person does not meet their burden of production. *See id.* at 492.

I. Lonergan failed to present a prima facie case to support his discharge petition.

Lonergan argues that CAP erred in dismissing his discharge petition without holding a second-phase hearing because he submitted evidence that, “at the current age of 64,” he is “at or very near a recidivism risk of 0%.” Minnesota law provides that “[a] person who is committed as an [SDP] . . . shall not be discharged” unless CAP determines that the committed person (1) “is capable of making an acceptable adjustment to open society”; (2) “is no longer dangerous to the public”; and (3) “is no longer in need of treatment and supervision.” Minn. Stat. § 253D.31 (2024). On appeal, Lonergan appears to emphasize the second of three elements of a prima facie case for discharge.

CAP concluded that Lonergan did not meet his prima facie burden and dismissed his petition without a second-phase hearing. CAP’s written order does not address the first element of the prima facie case: whether Lonergan is capable of making an acceptable adjustment to open society. Because all three elements are needed to establish a prima facie case, neither CAP nor this court need consider the first element if Lonergan’s prima facie case fails on either of the other two elements.

As for the second element—whether Lonergan is no longer dangerous to the public—CAP acknowledged that Lonergan’s most recent sexual-violence risk assessment was completed in 2021. CAP concluded that there had been “no reduction in [Lonergan’s] dynamic risk factors due to treatment effect.” *See In re Civ. Commitment of Spicer*,

853 N.W.2d 803, 808 (Minn. App. 2014) (explaining that “dynamic risk factors” are a component of “a statistical prediction of a person’s likelihood of reoffending”). CAP explained that Lonergan failed to reduce his risk of reoffending because he refused to participate in sex-offender treatment.

CAP also acknowledged Lonergan’s arguments that his risk of reoffending was zero based on his age, his completion of a correspondence course, and his view that he is not a pedophile. CAP rejected Lonergan’s arguments as conclusions that were “not supported by anyone else in this matter.” CAP determined that “there was no competent evidence that [Lonergan’s] mental illness is in remission or no longer applies.”

As for the third element—whether Lonergan is no longer in need of treatment or supervision—CAP found that Lonergan “never reached Phase II” of MSOP treatment where he would “address the roots of his offending, his sexual offense dynamics and cycle, and how he can mitigate or manage his risk to reoffend.” CAP agreed that Lonergan’s behavioral record while at MSOP was “positive” but nonetheless found that the record did “not support a reasonable inference that [Lonergan] no longer requires sex offender treatment and supervision, that his mental disorder is in remission, or that he is no longer sexually dangerous.”

We also conclude that Lonergan failed to present a prima facie case in support of his discharge petition. “Conclusory and otherwise unsupported assertions that a committed person is not a danger to the public do not make a prima facie case for discharge.” *In re Civ. Commitment of Poole*, 921 N.W.2d 62, 63 (Minn. App. 2018), *rev. denied* (Minn. Jan. 15, 2019). Lonergan offered only his own conclusions that were not supported by

“competent evidence” to show that he was entitled to discharge. *Larson*, 847 N.W.2d at 536. The undisputed evidence offered during the first-phase hearing shows that Lonergan is diagnosed with pedophilic and antisocial personality disorders, has sexually abused children in the past, was committed as an SDP in 2009, and while at MSOP has refused to participate in phase II treatment including core group therapy. No expert witness supported Lonergan’s discharge petition based on the statutory elements.

In particular, none of the expert witnesses agreed with Lonergan’s assertion that his age, by itself, supported discharge. We acknowledge that Lonergan offered evidence of studies on the relationship between sex-offender age and recidivism. Although the articles identified trends showing a lower risk of recidivism for sexual offenders over 60 years old, the findings varied based on other factors, such as type of offense and the offender’s relationship to the victim. The articles do not provide evidence that Lonergan meets the criteria for discharge merely because he is 64 years old.

In other words, generalized information about the reduced risk of recidivism for sex offenders over 60 years old is not prima facie evidence that Lonergan himself “is no longer dangerous to the public” based solely on his age. *See* Minn. Stat. § 253D.31 (setting out the criteria for discharge). Also, Lonergan’s risk of reoffending is only one part of a prima facie case and does not satisfy either the first or second element: that Lonergan is “capable of making an acceptable adjustment to open society” or “is no longer in need of treatment

and supervision.” *Id.*⁴ Thus, Lonergan’s advanced age alone does not make a prima facie case for discharge.

We conclude that Lonergan failed to present a prima facie case for discharge on either of two required elements. Even when we view the evidence in a light favorable to Lonergan, as we must for a dismissal decision, the evidence he offered did not establish that he is “no longer dangerous to the public” and “no longer in need of treatment or supervision.” Minn. Stat. § 253D.31. Thus, CAP did not err in dismissing Lonergan’s petition for discharge without holding a second-phase hearing.

II. Lonergan is not entitled to relief based on the delayed date of the CAP hearing.

Lonergan argues that CAP failed to comply with the statutory timeline for conducting a hearing. He contends that he has “been mired [in] a statutory process that is extremely long to the point of violating procedural” due process. Lonergan does not specify what relief he seeks based on the duration of the CAP proceedings.

Upon a party’s request for reconsideration of an SRB decision on a reduction-in-custody petition, a hearing before CAP “must be held within 180 days of the filing of the petition unless an extension is granted for good cause.” Minn. Stat. § 253D.28, subd. 1(b). The consequences for CAP’s failure to comply with the statutory time limit for

⁴ On appeal, Lonergan does not renew his argument, raised before CAP, that his good behavior while in MSOP proves that his pedophilia is “in remission” and that he is no longer dangerous. Even so, “good behavior in the artificial environment of, in this case, a prison, is not conclusive on the question of dangerousness to the public, when experts testify the proposed patient remains mentally ill and dangerous.” *In re Irwin*, 529 N.W.2d 366, 374 (Minn. App. 1995) (quotations omitted) (affirming an initial civil commitment), *rev. denied* (Minn. May 16, 1995).

holding a hearing presents a question of statutory interpretation, which we review de novo. *Wood v. County of Blue Earth*, 994 N.W.2d 309, 312 (Minn. 2023); see *Szzech v. Comm’r of Pub. Safety*, 343 N.W.2d 305, 307-09 (Minn. App. 1984) (analyzing as a question of statutory interpretation whether the statutory time limit for holding an implied-consent revocation hearing was directory or mandatory).

In its written decision, CAP acknowledged that it shared Lonergan’s “concerns about the length of [CAP] proceedings generally” but determined that “the timelines in this matter were not excessive.” CAP also concluded that the proceedings were delayed or continued to (1) allow Lonergan’s late filing of a request for reconsideration of the SRB decision; (2) await the pending release of the supreme court’s decision in *Benson* and Lonergan’s subsequent waiver of counsel; and (3) allow Lonergan to present his final witness.

We agree with Lonergan that CAP proceedings on his petition did not comply with the statutory time limit of 180 days. Approximately two years elapsed between when Lonergan filed his petition and the first hearing before CAP, and another 18 months passed before CAP filed its decision. We nevertheless conclude that no relief is warranted because the 180-day limit under section 253D.28, subdivision 1(b), is directory, not mandatory.

“A statute may contain a requirement but provide no consequence for noncompliance, in which case [courts] regard the statute as directory, not mandatory.” *Johnson v. Cook County*, 786 N.W.2d 291, 295 (Minn. 2010) (quotation omitted). Because section 253D.28, subdivision 1(b), does not provide any consequence for noncompliance, it is a directory time limit. In contrast, the statutory timeline for initial commitment

proceedings provides for dismissal. Minn. Stat. § 253B.08, subd. 1(a) (2024) (stating that, in the context of an initial commitment proceeding, that the “proceeding shall be dismissed if the proposed patient has not had a hearing on the commitment petition within the allowed time”). The supreme court has held that the timeline in the initial commitment procedure is mandatory, relying in part on the statutory consequence for failure to follow the timeline. *In re Civ. Commitment of Giem*, 742 N.W.2d 422, 428 (Minn. 2007).

Because the statutory time limit for a discharge petition is directory, CAP’s failure to conduct a hearing within that time limit does not invalidate CAP’s decision. *See Benedictine Sisters Benevolent Ass’n v. Pettersen*, 299 N.W.2d 738, 740 (Minn. 1980) (holding that the commissioner of health’s decision was valid, even though it did not comply with a directory time limit). But even if CAP’s decision were invalid based on its exceeding the statutory time limit, Lonergan cites no authority that he would be entitled to discharge based on this error. We conclude, therefore, that Lonergan is not entitled to relief based on the duration of CAP proceedings.

III. The executive board is not prohibited from participating in CAP proceedings.

Lonergan argues that it was “reversible error” for the attorney general to appear on behalf of the executive board in opposition to his discharge petition. Lonergan maintains that the executive board’s participation was prohibited by statute.⁵ CAP rejected this

⁵ Lonergan also argues that the executive board had an “inherent *conflict of interest* because of the unjust enrichment [the executive board] enjoys, perpetuated by [Lonergan’s] continued confinement.” Lonergan does not explain the conflict of interest or cite authority; therefore, we decline to consider this argument. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (stating that an assignment of error in a

argument when it denied Lonergan’s prehearing motion. This issue does not appear to be related to the dismissal of Lonergan’s petition for failure to present a prima facie case; therefore, it is unclear whether we need to decide this issue. Assuming without deciding that this issue is properly before us, it is one of statutory interpretation, which appellate courts review de novo. *Wood*, 994 N.W.2d at 312.

Minnesota Statutes section 253D.28, subdivision 2 (2024), sets out the procedure for CAP proceedings. Paragraph (b) provides that certain parties, including the executive board, “*shall participate as parties* to the proceeding pending before” CAP and “inform [CAP] and the opposing party in writing whether they support or oppose the petition and provide a summary of facts in support of their position.” Minn. Stat. § 253D.28, subd. 2(b) (emphasis added). Paragraph (c) states, in part, that “[t]he committed person, the committed person’s counsel, and the county attorney of the committing county or the county of financial responsibility have the right to be present and may present and cross-examine all witnesses and offer a factual and legal basis in support of their positions.” *Id.*, subd. 2(c).

Lonergan contends that, because the executive board is not listed in paragraph (c), its participation is limited to the written disclosure described in paragraph (b). We disagree. Paragraph (b) provides that the executive board is a party to CAP proceedings. Paragraph (c) enumerates the rights of certain parties but does not negate or restrict the

brief based on “mere assertion” and not supported by argument or authority is forfeited unless prejudicial error is “obvious on mere inspection”).

executive board's participation as a party. We conclude that the executive board's participation in CAP proceedings was proper.

IV. CAP did not abuse its discretion in excluding Lonergan's exhibits or in restricting Lonergan's examination of witnesses.

Lonergan challenges CAP's decision to exclude three of his exhibits and also argues that CAP erroneously excluded evidence by limiting the time he had to examine witnesses. Minnesota Special Rule of the Commitment and Treatment Act 15, which governs evidence, applies in both initial commitment and CAP proceedings. *See* Minn. Spec. R. Commit. & Treat. Act 1(a). This court has applied an abuse-of-discretion standard to review the district court's evidentiary rulings in initial commitment proceedings under chapter 253B. *In re Civ. Commitment of Ramey*, 648 N.W.2d 260, 270 (Minn. App. 2002), *rev. denied* (Minn. Sept. 17, 2002). We therefore consider whether CAP abused its discretion in excluding Lonergan's three exhibits or limiting the duration of his witness examinations. We discuss Lonergan's evidentiary arguments in turn.

Exhibit 103

Exhibit 103 is Lonergan's "Certificate for Completion of Treatment and Discharge Summary." The certificate states it is a "voluntary program that focuses on Recovery Development for Sexual Addiction and Offending." During the hearing, Dr. Fai testified that MSOP "did not provide this treatment" and that he had determined that the certificate "wasn't pertinent" to Lonergan's treatment at MSOP.

CAP excluded exhibit 103 and appears to have determined it was not relevant. In its written order, CAP explained that, "[a]t most [Lonergan's] correspondence showed some

knowledge of sex offender treatment concepts, but Mr. Lonergan showed no insight or application of treatment concepts or that he has worked through the intensity of treatment required by civil commitment to reduce his risk to sexually reoffend.”

Lonergan argues that “Exhibit 103 is reliable because [he] testified to its authenticity, being subject to cross examination.” Lonergan also argues that exhibit 103 is relevant to whether he “requires further inpatient treatment.”

We conclude that the record supports CAP’s determination that exhibit 103 was not relevant to the issue of discharge. *See* Minn. R. Evid. 401 (stating that evidence is relevant if it has “any tendency” to make an issue of fact “that is of consequence to the determination of the action” more or less probable “than it would be without the evidence”). Exhibit 103 does not address Lonergan’s need for treatment or any other element of a prima facie case for discharge. Exhibit 103 does not touch on Lonergan’s diagnoses or his refusal to participate in phase II treatment. Thus, CAP acted within its discretion by excluding exhibit 103 after it concluded that the certificate is not relevant to the statutory elements for discharge.

Exhibit 112

Exhibit 112 is a 2024 report by the Mitchell Hamline Sex Offense Litigation and Policy Resource Center. The report summarizes empirical data on MSOP and other states’ sex-offender civil-commitment programs and includes legal and policy critiques of Minnesota’s program.

CAP did not explain its decision to exclude exhibit 112. Lonergan argues that exhibit 112 is “relevant competent evidence” because the author of the article argued the

“landmark *Linehan* cases,” was a “legislative special session testifier during enactment of the SDP/SPP Act,” and also filed an amicus brief in the *Karsjens* litigation. Lonergan argues that the author “has literally been at *ground zero* over the entire life of the SDP/SPP Act. He has earned the right to be relevant.” The executive board responds that the report “contains no information or conclusions about [Lonergan] at all, and certainly no competent evidence suggesting he no longer needs inpatient treatment for a sexual disorder or is no longer dangerous.”

We do not discern an abuse of discretion. Exhibit 112 supports Lonergan’s “general indictment of society or the MSOP program” but is not relevant to CAP’s “focus on the reduction in custody determination” presented in Lonergan’s petition. The policy analysis provided in exhibit 112 does not have “any tendency” to prove the three elements in Lonergan’s *prima facie* case for discharge. *See* Minn. R. Evid. 401 (describing relevant evidence as having “any tendency” to prove that a material issue is “more probable or less probable than it would be without the evidence”). CAP therefore did not abuse its discretion in excluding exhibit 112.

Exhibit 127

Exhibit 127 is a 2002 polygraph report and affidavit of the polygraphist. During the polygraph examination, Lonergan denied that he engaged in various sexual acts with A.M. During CAP proceedings, Lonergan implied that A.M. was the victim in his 1992 conviction for first-degree criminal sexual conduct. *See State v. Lonergan*, 505 N.W.2d 349, 352 (Minn. App. 1993) (affirming Lonergan’s conviction for first-degree criminal sexual conduct), *rev. denied* (Minn. Oct. 19, 1993). The 1992 conviction was

among the evidence that supported Lonergan's initial commitment as an SDP. *See In re Civ. Commitment of Lonergan*, No. A08-0394, 2008 WL 2967088, at *1 (Minn. App. Aug. 5, 2008), *rev. denied* (Minn. Oct. 21, 2008).

CAP did not explain its decision to exclude exhibit 127. Lonergan argues that exhibit 127 provided evidence that "[t]here is a strong probability" that he was "innocent of committing the 1992 conviction." Lonergan also argues that exhibit 127 was relevant to determine his current sexual dangerousness. The executive board counters that issue preclusion bars Lonergan from challenging his 1992 conviction and, alternatively, that Minnesota courts do not admit polygraph results because they are unreliable.

The executive board's arguments are persuasive. First, issue preclusion generally "prohibits a party from relitigating issues that have been previously adjudicated." *All Finish Concrete, Inc. v. Erickson*, 899 N.W.2d 557, 566 (Minn. App. 2017). This court has stated that "the collateral estoppel effect of a criminal judgment should be determined in the same manner and under the same criteria as any other judgment." *Fain v. Andersen*, 816 N.W.2d 696, 700 (Minn. App. 2012), *rev. granted* (Minn. Sept. 25, 2012) *and ord. granting rev. vacated* (Minn. May 21, 2013). Courts apply a four-step test to determine whether collateral estoppel is available in a particular case:

(1) the issues in the prior and present adjudication must be identical; (2) there must have been a final adjudication on the merits; (3) the estopped party must have been a party or in privity with a party to the prior adjudication; (4) and the estopped party must have been given a fair and full opportunity to be heard on the adjudicated issue.

Heine v. Simon, 702 N.W.2d 752, 761 (Minn. 2005). The executive board persuasively argues that all four steps are satisfied here, and Lonergan does not contend otherwise. Absent more, we cannot say that CAP abused its discretion in excluding exhibit 127.

Second, “[p]olygraph test results are not admitted in Minnesota civil or criminal actions because there is insufficient evidence of their reliability.” *State v. Anderson*, 379 N.W.2d 70, 79 (Minn. 1985). Because the supreme court has held that polygraph tests are not sufficiently reliable to be evidence in civil or criminal proceedings, CAP was within its discretion to exclude exhibit 127 as unreliable. *See* Minn. Spec. R. Commit. & Treat. Act 15 (allowing the admission of “all relevant, *reliable* evidence” (emphasis added)). Thus, CAP did not abuse its discretion in excluding exhibit 127.

Restrictions on Lonergan’s Witness Examination

Lonergan argues that CAP effectively excluded evidence “by implementing restrictions on live testimony, actually and forcefully stopping evidence from becoming part of the record.” Lonergan contends that “he was not treated as he would have been, if he was a licensed attorney” in that he was not given sufficient time to question witnesses.

During the hearing, CAP imposed a time limit and ended Lonergan’s examination of several witnesses before Lonergan concluded his questioning. For example, during Dr. Spielman’s testimony, CAP stated that Lonergan had exceeded the one hour scheduled for direct examination by 24 minutes, found that Lonergan had “made his points,” and ended Lonergan’s examination. CAP also noted that Lonergan’s questioning had become repetitive. Lonergan objected, stating he was “only on question 30 of 118.” Similar exchanges occurred with other witnesses.

In its written order, CAP acknowledged Lonergan’s objections to the termination of his direct examinations but concluded that Lonergan “was not unduly restricted in his presentation of evidence.” CAP observed that Lonergan received “extra time to present his case, beyond the half-day that is generally provided.” Citing Minnesota Rule of Evidence 611(a), CAP stated that it is “obligated to exercise reasonable control over the mode and order of the presentation of evidence for the effective ascertainment of the truth and to avoid the needless consumption of time.”

CAP’s order and the briefs submitted by both parties assert that the Minnesota Rules of Evidence apply to resolve this issue. We agree. The civil-commitment rules “supersede any other body of rules otherwise applicable . . . in conflict with these Special Rules.” Minn. Spec. R. Commit. & Treat. Act 1(b). We discern no conflict between the civil-commitment rules and Minnesota Rule of Evidence 611, which provides:

The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

Minn. R. Evid. 611(a).

Here, CAP granted Lonergan additional time for questioning witnesses. And the record supports CAP’s determination that Lonergan’s questions became repetitive before CAP terminated Lonergan’s examination. We conclude, therefore, that CAP acted within its discretion by imposing reasonable time limits on Lonergan’s examination of witnesses and terminating his examinations when they exceeded those time limits. *Cf. In re Preston*,

629 N.W.2d 104, 115 (Minn. App. 2001) (rejecting Preston’s challenge to time constraints on expert-witness examination in the context of initial commitment proceedings, stating that “the mode, manner, and method of receiving testimony rest almost wholly in the discretion of the trial court”).

In addition to CAP’s discretion to limit testimony, we reject Lonergan’s position for a second reason. “Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . . the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.” Minn. R. Evid. 103(a)(2). Lonergan made no offer of proof as to what testimony he would have elicited during further questioning of his witnesses. Because Lonergan made no offer of proof and has not shown that CAP’s restrictions on his examination of witnesses prevented him from introducing evidence that was relevant to making a prima facie case for statutory discharge, he has established no prejudice from CAP’s reasonable time restrictions.

In sum, we conclude that CAP did not abuse its discretion by excluding exhibits 103, 112, and 127 or by restricting Lonergan’s examination of witnesses.

V. This court is bound by precedent upholding the constitutionality of CAP discharge proceedings.

Lonergan alternatively asks this court to order his discharge from civil commitment on the grounds that chapter 253D “violates substantive due process, because it imprisons citizens who are not suffering mental disorders/not sexually dangerous.” Minnesota Statutes chapter 253D addresses the civil commitment of individuals determined to be

sexually dangerous persons or sexual psychopathic personalities. *See generally* Minn. Stat. §§ 253D.01-.36 (2024). Chapter 253D allows for the “indeterminate” commitment of a person “[a]fter a determination that a respondent is a sexually dangerous person or a person with a sexual psychopathic personality” and includes the criteria for reduction in custody, transfer, or discharge. Minn. Stat. §§ 253D.07, .31. Lonergan specifically challenges the criteria for discharge.⁶

Both the United States and Minnesota Constitutions provide that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. “[C]urtailment of a person’s liberty is entitled to substantive due process protection.” *In re Blodgett*, 510 N.W.2d 910, 914 (Minn. 1994) (analyzing a substantive due-process challenge to the predecessor statutory scheme to chapter 253D). Appellate courts review constitutional challenges to a statute de novo. *Anderson v. Comm’r of Health*, 811 N.W.2d 162, 166 (Minn. App. 2012), *rev. denied* (Minn. Apr. 17, 2012).

CAP determined that it lacked authority to evaluate the constitutionality of chapter 253D and noted that there are “other venues for arguments which are beyond CAP’s authority.” Even if we assume without deciding that Lonergan’s constitutional

⁶ Lonergan also argues that the discharge process under chapter 253D “violates procedural due process.” This opinion has considered and rejected Lonergan’s challenge to CAP’s failure to comply with the statutory deadline. Because Lonergan’s constitutional challenge appears to question the discharge criteria under chapter 253D, we conclude that Lonergan’s argument is best understood as a substantive due-process challenge. We do not separately consider whether his procedural due-process rights were violated because he does not make an as-applied argument. *Cf. Olson v. One 1999 Lexus*, 924 N.W.2d 594, 607 n.8 (Minn. 2019) (stating, in the context of a deprivation of property rights, that procedural due-process analysis “is so fact-intensive, it makes sense that . . . a constitutional challenge will and should be decided on an as-applied basis”).

challenge is properly before us, we decline to rule that chapter 253D's discharge criteria violate substantive due-process guarantees.

In *Poole*, this court considered a substantive due-process challenge to chapter 253D. 921 N.W.2d at 69-71. We stated that “[t]he supreme court has upheld the constitutionality of the SDP statute and the predecessor to the [current] SPP statute.” *Id.* at 70 (first citing *In re Linehan*, 594 N.W.2d 867 (Minn. 1999); and then citing *Blodgett*, 510 N.W.2d 910). We also relied on the Eighth Circuit's decision in *Karsjens v. Piper*, which rejected a substantive due-process challenge to chapter 253D and held that the “extensive process and the protections to persons committed under [chapter 253D] are rationally related to the State's legitimate interest of protecting its citizens from sexually dangerous persons or persons who have a sexual psychopathic personality.” *Id.* (quoting *Karsjens v. Piper*, 845 F.3d 394, 410 (8th Cir. 2017)). The Eighth Circuit in *Karsjens* specifically determined that chapter 253D “provides proper procedures and evidentiary standards for a committed person to petition for a reduction in his custody or his release from confinement.” 845 F.3d at 409-10 (quotation omitted). Based on this caselaw, we determined in *Poole* that we were bound by existing supreme court caselaw and could not conclude that the discharge criteria in chapter 253D are unconstitutional. 921 N.W.2d at 70.

Because we are bound by the precedential decisions of the supreme court and this court, we need not further consider Lonergan's constitutional challenge to the discharge criteria under chapter 253D. *Jackson ex rel. Sorenson v. Options Residential, Inc.*,

896 N.W.2d 549, 553 (Minn. App. 2017) (stating that this court is “bound by precedent established in the supreme court’s opinions and our own published opinions”).

Affirmed.