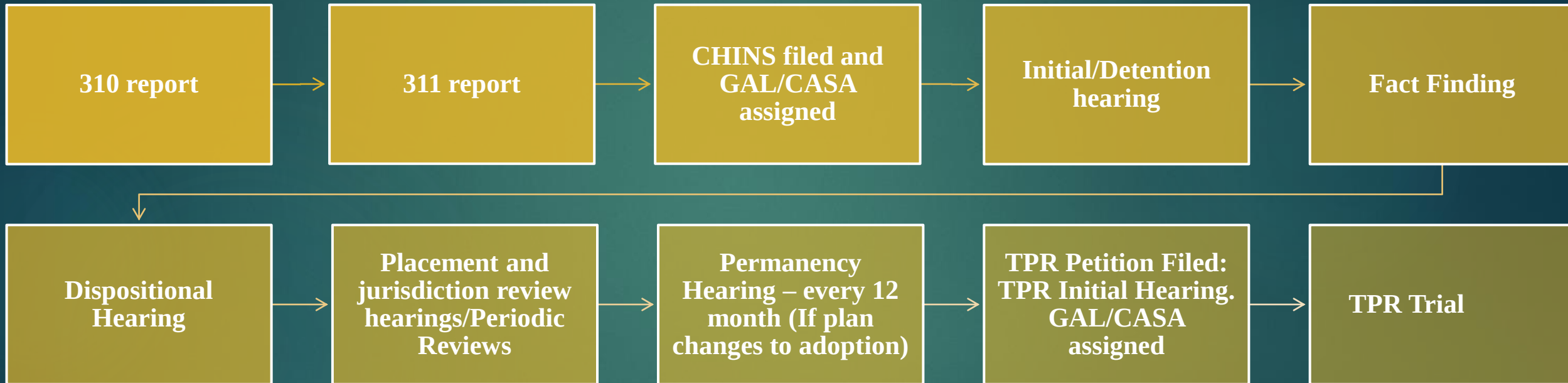




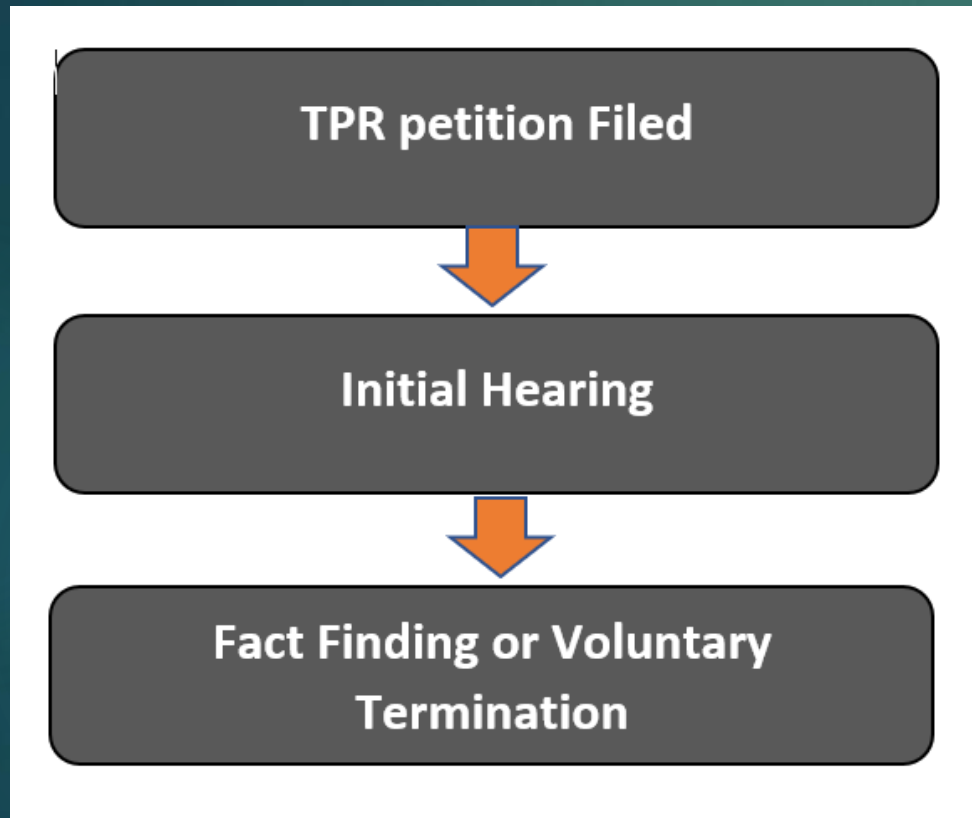
Termination of Parental Rights

THE LAW, THE PROCESS, AND THE CASA'S ROLE

How does a case get to TPR?



Termination of Parental Rights (TPR)



TPR cases are separate from CHINS cases. They run parallel.

If the child has been out of the home for 15 of the previous 22 months DCS is required to file a TPR petition (but they often don't)

TPR: Due process and parents' rights

- Due Process is essential because violations can lead to further delay of permanency for the child.
- Basic due process rights in a TPR
 - Notice of the petition and hearing dates
 - Right to be represented by an attorney
 - Must knowingly and voluntarily waive right to counsel (*In re C.C.*), 223 N.E.3d 238
 - Opportunity to be heard at a trial by an impartial judge
 - The right to discovery, to subpoena witness, confront and cross-examine witnesses, and to present evidence
 - To have a decision made based on the evidence presented at trial
 - Right to appeal and be represented in the same

TPR Procedure: Due process and service to parents

- A petition for TPR is a separate cause from the underlying CHINS and requires a separate proceeding with a new service of process to the parents.
- A basic of procedural due process is that the parties have notice of the lawsuit and an opportunity to present his/her response.
- The order of preferred service is as follows:
 - Personal delivery by the sheriff or process server, certified mail with receipt signed and returned by the parent, or service in court on the record
 - If unable to obtain personal service, a copy left at the parent's last known address
 - If this form is used, follow up of a copy being sent via mail is required
 - Publication service is the least desirable form of service and must be accompanied by and ADI (Affidavit of Diligent Inquiry) showing that the parent could not be located despite diligent efforts.

TPR: Due process and parents' rights

- A parent has the right to be represented by counsel in a TPR. If a parent does not hire counsel, and does not waive the right to counsel, the court **MUST** appoint an attorney to represent the parent.
- A parent has the right to participate in the TPR proceeding in a meaningful time and in a meaningful manner.
 - Right to an interpreter?
 - Yes, and the court must swear in and qualify the interpreter.
 - What if incarcerated? Right to be present?
 - Not an absolute right. But, if the court denies a motion to transport, the court must allow the parent to participate in a meaningful way. See *In re C.G.* 933 N.E.2d 494 (Ind. Ct. App. 2010)
 - What if the parent is out-of-state?
 - Again, there is no constitutional right to be present, but parent must be allowed to meaningfully participate and assist counsel.

TPR Initial Hearing

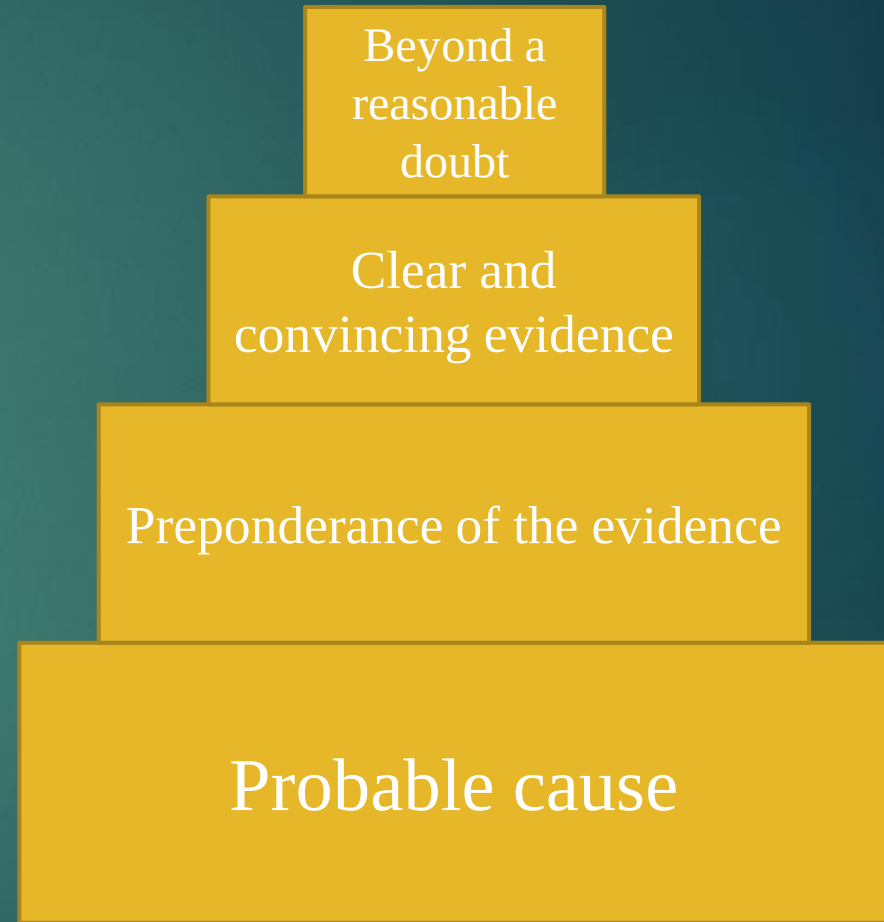
- ▶ Parents are informed of allegations, their rights, appointed attorneys, admit or deny, and future court dates are set
- ▶ CASA is appointed at initial hearing. **TPR cases MUST have a CASA. It is reversible error if a CASA is not appointed**
- ▶ Pre-trial and trial dates are set.
 - ▶ Fact Finding hearing must be commenced within 90 days of filing the TPR petition and completed within 180 days (Can go beyond timeframes for “good cause”)
- ▶ A parent’s CHINS attorney does not represent them in the TPR until they are reappointed. TPRs are separate cases.
- ▶ If a parent is not served DCS will typically request a continued initial hearing to serve parents
- ▶ If parent has been served and failed to appear, DCS can request a trial date

Pre-trial hearings

- Pre-trial conference/intervening hearings for Involuntary TPR
 - Mainly set to address housekeeping issues.
 - Examples: scheduling conflicts, trial dates, and discovery issues
 - GAL/CASA is a party and can weigh in on these issues if needed.
 - CHINS and TPRs are separate cases. Any issues of parenting time, placement, or services should be addressed under the CHINS.
 - Can also be used as an opportunity for parties to discuss resolution and any proposed agreements (discussed off the record outside the presence of the court).
 - Does your county/court have access to mediation? If so, this would be the time to request it if you foresee an opportunity to resolve.
 - Can also be used to expedite the trial by stipulating to evidence and exhibits (discussed off the record).
 - *GAL/CASA is a party to the TPR and should be provided copies of all evidence and exhibits parties intend to admit at trial. GAL/CASA should also exchange copies of any exhibits s/he intends to admit at trial.*

Burden of Proof: Clear and convincing

- Burden of proof for a criminal conviction?
 - Beyond a reasonable doubt
 - Evidence overcomes any reasonable doubt
- Burden of proof for a TPR?
 - Clear and convincing evidence
 - Substantially more likely to be true than not
- Burden of proof for a CHINS case?
 - Preponderance of the evidence
 - More likely than not
 - Greater than 50%
- Burden of proof to take a child into custody?
 - Probable cause
 - Facts and circumstances lead an ordinary person to believe



Old Elements of Involuntary Petition for Termination of Parental Rights (no longer the law)

- Petitioner must prove each of the 4 elements by clear and convincing evidence:
 1. One of the following must be found true:
 - The child has been removed from the parent(s) for at least 6 months under a dispositional decree;
 - the court has found NRE (no reasonable efforts) required; **or**
 - The child has been removed from the parent(s) for at least 15 of the most recent 22 months.
 2. One of the following is true:
 - There is a reasonable probability that the conditions that resulted in the child's removal will not be remedied;
 - There is a reasonable probability that continuation of the parent-child relationship poses a threat to the child's well-being; **or**
 - The child has been adjudicated CHINS on two separate occasions.
 3. Termination is in the child's best interest;
 4. There is a satisfactory plan for the care and treatment of the child (adoption).

New Involuntary TPR Petition Elements

IC 31-35-2-4

- ▶ **There is a Satisfactory plan for care and treatment of the child**
- ▶ **That termination of the parent-child relationship is in the child's best interest**
- ▶ **At least ONE of the follow 12 circumstances exists**
 - ▶ That a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required
 - ▶ The child has been removed for 15 of the most recent 22 months AND despite reasonable efforts the parent has been unable to remedy the circumstances that resulted in the child being placed in care outside the parent's home
 - ▶ there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied
 - ▶ there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being, safety, physical health, or life of the child

New Involuntary TPR Petition Elements

IC 31-35-2-4

- ▶ That the child has, on two (2) separate occasions, been adjudicated a child in need of services.
- ▶ at least ninety (90) days have passed since the filing of the petition alleging that the child is a child in need of services AND the identity or location of the parent is unknown despite reasonable efforts having been made to identify or locate the parent.
- ▶ That a parent failed to substantially comply with the child's dispositional decree for a period of at least 12 months following removal or the CHINS adjudication (which ever is first) AND is unlikely or unable to comply with the child's dispositional decree
- ▶ That a parent is incarcerated AND is expected to remain incarcerated for a significant portion of the remaining time during which the child is less than eighteen (18) years of age OR the parent is a sexually violent predator.

New Involuntary TPR Petition Elements

IC 31-35-2-4

- ▶ That the parent has a history of extensive, abusive, and chronic use of alcohol or a controlled substance that renders the parent incapable of caring for the child AND has refused or failed to complete available treatment for the alcohol or controlled substance use during the two (2) year period immediately preceding the filing date of the petition
- ▶ That a child is born drug positive AND the parent is the biological mother of at least one other child adjudicated to be a CHINS after a finding of harm to the child's health or welfare due to exposure to alcohol or a controlled substance AND the parent had the opportunity to participate in substance abuse treatment
- ▶ the child was conceived as a result of: human or sex trafficking, rape, child molestation, OR sexual misconduct with a minor
- ▶ the parent is required to register as a sex or violent offender

Side note: NRE = No reasonable efforts

- We use the term “no reasonable efforts” for two completely different scenarios.
 - NRE in the context of a TPR refers to I.C. 31-34-21-5.6. This is where the court finds an exception to the requirement that DCS make reasonable efforts to reunify the family.
 - I.C. 31-34-21-5.6 provides a list of offenses when reasonable efforts are not required.
 - Examples: certain crimes against the individual’s child, child of the individual’s spouse, or the parent of that child. The parent has a prior involuntary termination with a different child. The child is an abandoned infant.
 - NRE can be filed at any point in a CHINS case.
 - Can be filed by GAL/CASA.
 - Proven with certified records.
- No reasonable efforts is also used when DCS has **failed** to provide reasonable efforts to reunify a family. A court can make a no reasonable efforts finding to penalize DCS and results in a loss of funding.

Evidence used to prove TPR elements

- ▶ Witnesses:
 - ▶ FCMs, Service Providers, Law Enforcement, Doctors, Therapists, Placement, Parents, CASA
- ▶ Documents:
 - ▶ Certified Court records, Drug Screens, Pictures, Communications by parties
- ▶ Evidence can be presented by ALL parties including CASA
 - ▶ In your review you may find evidence or witnesses that you believe would be valuable to the court in making its decision that DCS has not included in its exhibits or witness list.
 - ▶ If this happens, the first step would be to reach out to your attorney or, if you are not represented, the DCS attorney and bring this to his/her attention.
 - ▶ It might be as simple as an oversight and the DCS attorney can amend his/her lists.
 - ▶ If the DCS attorney does not want to include the witness or evidence, you will need to draft your own pleading (depending on the court) to provide notice to the parties, or at the very least make sure you have circulated your proposed witness or evidence so that the other parties are able to adequately prepare.
 - ▶ We want to avoid a party requesting a continuance to prepare for GAL/CASA's witness or evidence.

Hearsay and Exceptions

- ▶ Indiana Rule of Evidence 801: Hearsay means a statement that:
 - ▶ is not made by the declarant while testifying at the trial or hearing AND
 - ▶ is offered in evidence to prove the truth of the matter asserted
- ▶ What does mean:
 - ▶ If the individual is NOT the one testifying, what they said is inadmissible
 - ▶ This includes statements made to the CASA by the child, reports from the CASA or service providers, etc.
 - ▶ Other parties have a right to cross exam and you can't cross exam a report or someone who isn't there.

Hearsay and Exceptions

- ▶ Common Hearsay exceptions
 - ▶ Statement by a Party opponent: Statements made by other parties such as the parents are admissible. (does not include the child)
 - ▶ Effect on the listener: Statements that are not offered “to prove the truth of the matter asserted” but are relevant to the motive of the listener’s actions.
 - ▶ Statement Made for Medical Diagnosis or Treatment: Statements by a child to a doctor or therapist may be admissible.
 - ▶ Business Records Exception: permits records of business activity to be admitted in circumstances when the recorded information will be trustworthy. Used to admit drug screens.

Preparing to Testify In Contested TPR Fact Finding

- ▶ Review Notes in Optima
- ▶ Review previous Court reports
- ▶ Review Discovery Materials
- ▶ Make Notes
 - ▶ Dates, numbers of visits, etc
 - ▶ Any relevant incidents you experienced first hand
 - ▶ Timeline
 - ▶ Ability to use notes depends on Judge, but most will let you use them as a reference
- ▶ Prep with your attorney or the DCS attorney

Testimony of GAL/CASA

- GAL/CASA will not be submitting a report for a TPR trial. At a trial those are inadmissible. GAL/CASA will be testifying.
- Be able to answer the following questions and back up your answers with facts and observations
 - Do you believe that the reasons for removal will be resolved?
 - Do you believe that continuing the parent-child relationship is harmful to the child?
 - Do you believe that termination is in the child's best interest?
 - Do you believe that there is a reasonable plan for the care and treatment of the child?

TPR: testimony of GAL/CASA

- At the outset be prepared to answer questions about your background, education, CASA training, and experience serving as a CASA. Let the court get to know you.
- You do not need to remember every date from your case, but remember the important dates like:
 - Child's DOB and age;
 - The date you were assigned, generally – “the end of July in 2019” is fine;
 - The dates of any prior cases, generally – “the child was previously a CHINS for several months in the beginning of 2017” works.
- Know how many times you have visited the child. If you visit once a month and the case has been open for a year, you know you have visited 12 times.
- How many CFTMs have you attended? How many of those have parents attended?
- How many times have you observed parenting time? Be prepared to talk about what you saw.
- Know how the child is doing in the home and any bonds you have observed with the placement. Be prepared to describe the home.

TPR: testimony of GAL/CASA

- You are there to talk about best interest. Be ready to tell the court why TPR is in the child's best interest, specifically as it relates to permanency.
 - Permanency: A home where a child is nurtured, safe, and loved. A home where the child's needs are met by an appropriate, loving adult who can provide the parenting every child needs. A forever, stable home for the child.
- You can bring notes with you to the trial, but you cannot recite from your notes on the stand. If you do need to refresh your recollection by reviewing your notes, you will have to produce the notes to all other parties.

Do's of Testifying

- ▶ Be prepared
- ▶ Relax and breathe
- ▶ Listen closely and actively
- ▶ Take your time, think before speaking
- ▶ Answer only what is asked; be concise and precise
- ▶ Tell the whole truth
- ▶ Stop talking when an objection is made
- ▶ Facts and details are better than conclusions
- ▶ Ask for clarification or rephrasing if you do not understand
- ▶ If you do not know the answer, say so
- ▶ Be courteous
- ▶ Talk loudly enough
- ▶ Give audible answer; don't shake your head

Don'ts of Testifying

- ▶ Guess
- ▶ Try to understand where the questioning is going
- ▶ Make assumptions or generalizations
- ▶ Be afraid to give credit where it's due
- ▶ Take it personally
- ▶ Worry about how your answers appear
- ▶ Stress about cross examination too much (attorney will clarify later)
- ▶ Lose your temper
- ▶ Argue with the lawyer
- ▶ Look to the lawyer for help

Alternatives to a Contested TPR Trial

- ▶ Voluntary Termination of Parental Rights

- ▶ Requires a separate petition

- ▶ A hearing on the petition is required pursuant to I.C. 31-35-1-6 (can be waived)

- ▶ The only issues at hearing are:

- ▶ 1) If consent was given freely; 2) Parent was competent to consent; 3) TPR is in child's best interest; and 4) There is a satisfactory permanency plan for the child.

- ▶ Adoption Consents

- ▶ Used to resolve contested TPRs because now the child is able to be adopted

- ▶ Must be executed voluntarily, without duress, and without undue influence

- ▶ Specific Consents vs General Consents

- ▶ Voluntary TPRs and adoption consents are NOT the same. Once a parent signs a voluntary relinquishment and a hearing is held, it is final. The child is free to be adopted. If a parent signs adoption consents and the adoption does not happen, the parents retain parental rights

Post Adoption Contact Agreements (PACAs)

- ▶ Post Adoption Contact Agreements (PACAs)
 - ▶ The child is at least 2 years of age
 - ▶ each adoptive parent consents to the granting of postadoption contact privileges
 - ▶ the adoptive parents and the birth parents execute and agreement and file the agreement with the court
 - ▶ the licensed child placing agency sponsoring the adoption and the child's court appointed special advocate or guardian ad litem appointed under IC 31-32-3 recommends to the court the postadoption contact agreement
 - ▶ consent to postadoption contact is obtained from the child if the child is at least twelve (12) years of age
 - ▶ the postadoption contact agreement is approved by the court.
- ▶ Violation of the PACA can not reverse the adoption.

QUESTIONS?

