

# TPR Practice Skills

## TPR Preparation and Courtroom Readiness

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# Goals of Training

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Termination of  
Parental Rights  
by Consent

Involuntary  
Termination of  
Parental Rights

Preparation for  
court

# Preparation is Key

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# Preparation is Key

4



# Good Documentation

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- ▶ Search/Engagement of parent(s)
- ▶ Search/Engagement of relatives
- ▶ How services have reduced/eliminated the threats of danger
- ▶ How services have increased the protective capacities of the parent(s)
- ▶ Safety issues
- ▶ Facts, Facts, Facts!

# What is a fact?

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# Rules of Evidence

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- ▶ Fact vs. Opinion Testimony
- ▶ Expert Witness
  - ▶ Permitted to give factual testimony AND opinion testimony
  - ▶ Must be qualified as an expert
    - ▶ Has advanced knowledge in an area and can assist the court/jury in understanding those aspects of the case
    - ▶ Children's Division Case Managers may be qualified as experts in the child welfare field
- ▶ Avoid Speculation

## FOUNDATIONAL QUESTIONS

- Establishing a witness's connection to a case
- Establishing an expert's credentials



# Rules of Evidence

- ▶ Qualified Protective Orders
- ▶ Demonstrative Evidence (laying foundation)
- ▶ Admission of Business Records
- ▶ Other challenges?

# CASA Role

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- ▶ 210.160.6, RSMo states “The court may designate volunteer advocates, who may or may not be attorneys licensed to practice law, to assist in the performance of the guardian ad litem duties for the court...”

# GAL Role

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- ▶ 210.160.4, RSMo “The appointing judge shall require the guardian ad litem to faithfully discharge such guardian ad litem's duties, and upon failure to do so shall discharge such guardian ad litem and appoint another...”
- ▶ See also...

# Constitutional Rights of Parents

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“The fundamental liberty interest of natural parents in raising their children **does not evaporate** because they have not been model parents or have lost temporary custody of their children”

In the Interest of K.A.W., 133 S.W.3d 1 (Mo Banc 2004)

# Parental Rights

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- ▶ Statutes are strictly construed in favor of the parent and preservation of the relationship between parent and child

*In the Interest of K.A.W.*, 133 S.W.3d 1 (Mo Banc 2004)

- ▶ Best interest of the child when considering:
  - ▶ Rights of parties
  - ▶ Birth family relationship
  - ▶ Entitlement of every child to a permanent home (§211.443 RSMo)



# Due Process

- ▶ Constitutional entitlement to due process
  - ▶ Reasonable Notice
  - ▶ Opportunity for Hearing
  - ▶ Reasonable Time
  - ▶ Reasonable Manner

- ▶ Notice
  - ▶ Service of summons and TPR petition
- ▶ Hearing
  - ▶ Opportunity to test and rebut evidence
- ▶ Time
  - ▶ Within 30 days of filing of petition unless good cause exists
- ▶ Manner
  - ▶ Rules of Civil Procedure
  - ▶ Entitled to Counsel

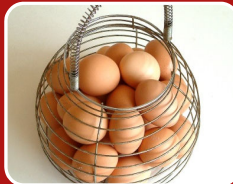
# Burden of Proof Standard of Evidence

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## Who has it?

- JO or CD (whomever files the petition)
- Attorney for Prospective adoptive parents



## What is it?

- Consent given voluntarily
- TPR ground (1 or more)
- Best Interest of Child



## How much evidence does it take?

- Clear, Cogent, Convincing Evidence
- Beyond Reasonable Doubt (ICWA case only)

# Procedure Before Filing

## Best Practice:

- TPR staffings are held regularly and cases are reviewed for legal sufficiency;
- Once the permanency plan becomes adoption, the worker submits the TPR referral with the supporting documentation;
- AJO reviews the referral and rejects or accepts the referral



# Procedure Before Filing

211.447. 1. Any information that could justify the filing of a petition to terminate parental rights may be referred to the juvenile officer by any person. If it does not appear to the juvenile officer that a petition should be filed, such officer shall so notify the informant in writing within thirty days of the referral. Such notification shall include the reasons that the petition will not be filed.

# Procedure After Filing

Within 30 days after the filing of the petition, the JO shall meet with the court to:

Determine that all parties have been served;

Request that the court order the investigation and social study

# Investigation and Social Study

Required in involuntary TPRs

Can be made by the JO, CD or a 3<sup>rd</sup> party agency designated by the court

Must be in writing and is to aid the court in determining whether TPR is in the child's best interests

# Investigation and Social Study

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## Shall address:

- Parental background
- Fitness and Capacity of the parent(s)
- The Child's home
- Present adjustment
- Physical, emotional and mental condition
- Other pertinent facts

# Investigation and Social Study

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## IMPORTANT

Inv/Soc Study **MUST**  
be made available  
to **ALL** parties at least

**15** days prior to  
the TPR hearing



# How Parental Rights are Terminated

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▶ Voluntary



▶ Involuntary



# VOLUNTARY

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Consent



Best Interest

- ▶ In writing
- ▶ Signed by parent
- ▶ In presence of:
  - ▶ Notary Public; OR
  - ▶ Judge; OR
  - ▶ 2 adult witnesses (can not be prospective adoptive parents or their attorney)
- ▶ Child 48 hours old
- ▶ ICWA Child 10 days old

(§211.444 and §453.030 RSMo)

# Consent Knowingly and Freely Given

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“Whether a parent has knowingly, voluntarily and intelligently consented to termination of parental rights turns upon the specific facts of the case”

**In re A.M.K.**, 723 S.W.2d 50 (Mo App E.D. 1986); **In re A.M.W.**, 64 S.W.3d 899 (Mo App S.D. 2002); **In re R.R.T.**, 744 S.W.2d 829 (Mo App W.D. 1988); **In re Baby Girl P**, 159 S.W.3d 862 (Mo App W.D. 2005)



# Consent Knowingly and Freely Given

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## Evidence Needed:

- Explanation of meaning
- Consequence of signing
- Plenty of time for questions
- Advised of right to counsel
- No guarantees regarding adoption
- No coercion

In re R.R.T., 744 S.W.2d 829 (Mo App W.D. 1988)

# Ability to Consent

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Minor – Must be represented by a GAL at time of consent (453.030.10 and .12, RSMo)

Incompetent parent – Entitled to have interests protected by a GAL. (In re the Interest of W.J.S.M, ED 88904, July 2007)

Impaired parent – Unable to consent

Illiterate parent – Must fully understand document, may be able to read the document to the individual

Foreign language parent – Entitled to have an interpreter present

# Revocation

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Irrevocable

at time of

execution  
of consent

# TPR Judgment

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- ▶ Hearing required separate from signing of consent

## **JUDGMENT**

terminates the rights of the parent

# INVOLUNTARY

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## Grounds



## Best Interest

- ▶ Abandoned Infant
- ▶ Abandoned Child
- ▶ Failure to Rectify
- ▶ Child Abused or Neglected
- ▶ Parental Unfitness
- ▶ Violent Parental Crimes Against a Child
- ▶ Felony Sex Conviction
- ▶ Child Conceived as a Result of Forcible Rape (Rape in the 1<sup>st</sup> degree)
  
- ▶ Best Interest Factors

# Judgment

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Judgment terminating parental rights **REQUIRES** at least one TPR ground and best interests (§211.447.6 RSMo)

Must be based on **CURRENT** conditions of the parent **AT TIME OF TRIAL**

# Abandoned Child (under 2)

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Child is LESS than 2 year(s) of age

1. No parental CONTACT with child and no parental SUPPORT
2. Although parent is ABLE to do so OR
3. When the child was under 1 for a period of 60 days or more the parent willfully and substantially and continuously neglected to provide the child with necessary care and protection

If identity of child unknown:

1. Child less than 2 year old
2. Identity of child unknown
3. Child is unclaimed



# Abandoned Child (2 + over)

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Child is 2 year(s) of age or older

For 6 months immediately prior to the filing of the petition

Willfully, substantially, and continuously neglected to provide the child with necessary care and protection

If identity of child unknown:

Child 2 year(s) of age or older

For 6 months or longer

Identity of child unknown

Child is unclaimed



# FAILURE TO RECTIFY

(§211.447.5(3), RSMo)

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## ELEMENTS (all 3 required)

1. Juvenile court jurisdiction over child for 1 year
2. Harmful conditions which lead to custody STILL PERSIST or other potentially harmful conditions EXIST
3. Conditions cannot be QUICKLY corrected for reunification OR parent-child relationship deprives child of permanency

## FACTORS (at least 1 required)

1. Severe mental condition preventing parent from parenting child
2. Untreatable chemical dependency preventing parent from parenting child
3. Social service plans and extent of compliance
4. Success or failure of effort to aid parent to change

# Mental Condition

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3 elements required:

**1. Documented mental condition**

**2. Duration:**

- ▶ Condition permanent OR
- ▶ Not likely to be reversed

**3. Severity of Effect**

- ▶ So severe that parent is unable to provide necessary care for the child

In the Interest of K.A.W., 133 S.W.3d 1 (Mo Banc 2004)



# Documented

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## Psychological Evaluations

- ▶ “An old psychological evaluation alone is not enough for TPR unless there is updated information at the time of trial” In the Interest of C.W., 211 S.W.3d 93, (Mo Banc 2007)
- ▶ Examples of TPR cases lost:
  - ▶ Psych eval 19 months old with no updated information
  - ▶ Psych eval 29 months old with no updated information

# Duration

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## Requirements:

- ▶ Permanent
- ▶ Not likely to be reversed

## Proving Duration:

- ▶ Condition cannot be reversed or improved in a reasonable time. *In the Interest of S.M.H.*, 160 S.W.3d 355 (Mo Banc 2005)

# Severity

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“The mere presence of mental or emotional instability is not enough for TPR”

“Incapacity must be so severe that it renders parent incapable of providing minimally acceptable care”

In the Interest of S.M.H, 160 S.W.3d 355 (Mo Banc 2005)

# Mental Condition

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“Potential for harm to the child because of the parent’s mental condition must exist at TIME OF TPR TRIAL”

In the Interest of K.A.W., 133 S.W.3d 1, (Mo Banc 2004)

- ▶ PAST harm alone NOT enough
- ▶ Must prove CURRENT ability to parent
- ▶ Potential for harm in the FUTURE

# Mental Condition

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Additional Case Law:

Proof that parent cannot parent child  
ALONE because of mental condition

AND

Cannot make arrangements for  
ASSISTANCE

*In the Interest of S.M.H.*, 160 S.W.3d 355 (Mo Banc 2005)

Importance of RELATIVES!

# Chemical Dependency

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3 elements required:

1. Documented chemical dependency

2. Cannot be treated

3. Prevents parent from providing necessary care for child





# Untreatable

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## Example of untreatable:

- ▶ Drug use for 11 years
- ▶ 3 of 5 kids born drug exposed
- ▶ 3 incarcerations for drug related crimes
- ▶ 10 drug treatment programs (unsuccessful discharge)
- ▶ 16 positive drug screens
- ▶ 40 refused drug screens

In the Interest of M.L.R., 249 S.W.3d 864 (Mo App W.D. 2008)

# Social Service Plans

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- ▶ **Documented goals**
  - ▶ Issue is whether parent is making **PROGRESS**
  - ▶ **NO** full or substantial compliance required
- ▶ Failure to comply with WSA alone does **NOT** constitute ground for TPR
- ▶ **Efforts to comply** or **lack of success** may predict future problems



Written Service Agreement

# Efforts to Aid the Parent

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## REASONABLE EFFORTS

- ▶ Identify **Safety** Issues
- ▶ Provide Services to Address **Safety** Issues
- ▶ Document whether **Safety** Issues Rectified through Services

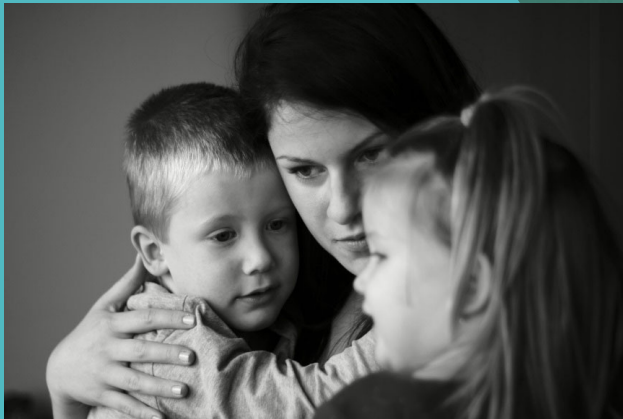
# CHILD ABUSED OR NEGLECTED

(§211.447.5(2), RSMo)

ELEMENTS (Required)

**ABUSE (4 elements)**

**NEGLECT (3 elements)**



**FACTORS (at least 1 required)**

1. Severe or recurrent acts of physical, emotional or sexual abuse by parent or another
2. Repeated or continuous neglect by parent
3. Severe mental condition preventing parent from parenting child
4. Untreatable chemical dependency preventing parent from parenting child

# Elements of Abuse and Neglect

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## ABUSE

1. Act of Abuse
  - ▶ Physical; OR Sexual; OR Emotional
2. Occurrence
  - ▶ Severe OR Recurrent
3. Perpetrator
  - ▶ Parent; OR
  - ▶ Another (parent knew or should have known)
4. Victim Child
  - ▶ Subject of TPR
  - ▶ Child in the Family

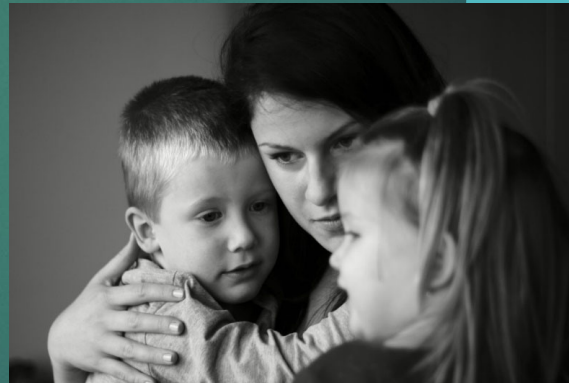
## NEGLECT

1. Parent
  - ▶ Repeatedly; OR Continuously
2. Fails to Provide
  - ▶ Food, clothing, shelter OR
  - ▶ Care necessary for child's health and development
  - ▶ Physical, Mental, Emotional
3. Parent physically and financially able to do so

# Factors

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- ▶ Mental Condition
- ▶ Chemical Dependency



# PARENTAL UNFITNESS

(§211.447.5(6), RSMo)

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1. Consistent Pattern of Specific Abuse
2. Presumption for Prior Involuntary TPR
3. Mother Presumed Unfit
4. Drug related Convictions
5. Child in foster care for 15/22 months\*

# Pattern of Specific Abuse or Condition

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- ▶ Specific Abuse
  - ▶ Adult Abuse; OR Child Abuse; OR Drug Abuse in front of child; OR
  - ▶ Specific conditions directly related to the parent/child relationship
- ▶ Duration or Nature renders parent unable to parent
- ▶ Reasonable Foreseeable Future





# Presumption for Prior Involuntary TPR

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- ▶ 3 years prior to TPR hearing
- ▶ Parent's rights involuntarily terminated
- ▶ TPR involved:
  - ▶ Abandonment, or Murder of another child, or Voluntary manslaughter of another child, or Felony assault to a child, or Child Abused/Neglected, or Failure to Rectify, or Felony sex conviction



# Mother Presumed Unfit

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1. **MOTHER** tests positive for (8 hrs)
  - ▶ Alcohol (.08 or above); or
  - ▶ Cocaine; or
  - ▶ Heroin; or
  - ▶ Methamphetamine; or
  - ▶ Controlled substance (195.010) or Prescription drug (196.973) (excluding substances given for medical treatment); AND
2. Mother has at least 1 other child adjudicated abused or neglected; OR
3. Mother had previously failed to complete treatment through an FCS case



# Mother Presumed Unfit

51

1. **CHILD** tests positive for (8 hrs)
  - ▶ Alcohol (.08 or above); or
  - ▶ Cocaine; or
  - ▶ Heroin; or
  - ▶ Methamphetamine; or
  - ▶ Controlled substance (195.010) or Prescription drug (196.973) (excluding substances given for medical treatment) ; AND
2. Mother has at least 1 other child adjudicated abused or neglected; OR
3. Mother had previously failed to complete treatment through an FCS case



# Drug Related Convictions

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1. 3 years prior to TPR hearing
2. Parent has pled guilty or convicted of a FELONY involving
3. Possession, distribution, manufacture of cocaine, heroin, or methamphetamine AND
4. Bio-parent of another child adjudicated abused or neglected OR
5. Parent has previously failed to complete treatment through an FCS case

# Violent Crimes Against a Child

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Parent convicted

Murder; or

Voluntary  
manslaughter; or

Aided, abetted,  
attempted, conspired,  
solicited to commit

Another child of the parent

OR:

Parent convicted

Felony assault resulting  
in serious bodily injury

The child or another child of  
the parent

# Violent Crimes Against a Child

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## FELONY SEX CONVICTION

(§211.447.5(4), RSMo)

Parent has a felony sex conviction under Chapter §566 or §568 RSMo 567 573

THE child or ANY child was the victim

# Violent Crimes

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## FORCIBLE RAPE/RAPE IN THE 1<sup>st</sup>

(§211.447.5(5), RSMo)

Child conceived as a result of  
Forcible Rape  
Rape in the 1<sup>st</sup> degree

Plea of guilty or conviction is conclusive proof

# BEST INTEREST FACTORS

(§211.447.7, RSMo)

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- ▶ Emotional ties of child to parent
- ▶ Extent of regular visits or contact
- ▶ Extent of support
- ▶ Efficacy of services
- ▶ Parental disinterest or lack of commitment to child
- ▶ Effect of parental felony conviction on stability of home
- ▶ Deliberate acts of parent or another that exposes child to substantial risk of physical or mental harm



# COURTROOM SKILLS

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# Preparing For Trial

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- ▶ Demeanor and Behavior
  - ▶ Dress professionally
  - ▶ Be aware of presence
  - ▶ Avoid distracting mannerisms
  - ▶ Don't look for help

# Preparing For Trial

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- ▶ Knowledge of Case
  - ▶ Role of Facts in a Legal Case
  - ▶ What you should know about every case
  - ▶ Preparing to meet with the attorney
  - ▶ Reports

# Reports

60

- ▶ Documentation

- ▶ ORGANIZATION

- ▶ FAMILIARITY

- ▶ KNOW YOUR SOURCES AND BASIS FOR REPORTS

# COURTROOM SKILLS

# Best Practices- Witness Prep

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Preparing your witnesses... Talk about:

- ▶ Listening carefully to the question being asked
- ▶ Answering the question asked
- ▶ Keeping responses short, yet complete
- ▶ Tone = credibility

# Best Practices-Witness Prep

63

- Remember, your TPR trial may be the first time your worker has ever testified
- Remind them to remain objective and discuss parent progress in a fair and unbiased manner
- Avoid jargon and long winded questions
- Anticipate problem areas

# Best Practices-Witness Prep-Cross Examination

64

Don't mistake this fake smile and professional body language. I'd punch you in the throat if I knew I wouldn't lose my job.



someecards  
user card



# Cross Examination

65

## ▶ Common Areas of Cross Examination

### ▶ TRAINING

- ▶ Education
- ▶ Case Specific
- ▶ Seminars
- ▶ Publications

### ▶ EXPERIENCE

- ▶ How long in current position
- ▶ Number of cases handled similar to the one in question
- ▶ Number of times testified

# Best Practices-Evidence

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- ▶ Demonstrative Evidence and Foundation
- ▶ Substance Abuse Records and Qualified Protective Orders
- ▶ Admission of Business Records

# REMEMBER...

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- ▶ Know your own case
- ▶ Know the adverse material
- ▶ Know your vulnerable areas
- ▶ Learn from mistakes

# Key To Success:

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▶ PREPARATION!!!

▶ PREPARATION!!!

▶ PREPARATION!!!

▶ EACH CASE, EVERY TIME

▶ EARLIER IS BETTER

# The End



*Compassionate*



*Knowledgeable*



*Communicative*