Interim Hearing: Termination of Parental Rights
October 17, 2011
IS11-070, IS11-111, IS11-010, and IS11-009: Mark McCullough

Committee:

Thank you for this opportunity to bring forth an issue of importance to our dependent and foster care youth and a recommendation for potential legislation. I am here today as Executive Director of the Oklahoma Therapeutic Foster Care Association. I also am an appointee of the Senate to the Foster Care Review Task Force that was established by this Legislature last Session. With me is Judge Doris Fransein, Chief of the Juvenile Division in Tulsa District Court and also a Member of the Task Force. We speak similarly for Judge Richard Kirby, Oklahoma County, and Judge Dynda Post, Rogers County. Both Judge Kirby and Judge Post are on the appointed Task Force.

The Child welfare system is dependent on a delicate, constant, volatile assessment and weighing of responsibility to protect dependent youth, the rights and privacy of parents/families, and the entitlement of foster youth to safety, well-being and permanency in their minority.

The US Supreme Court affirms the importance of familial rights and has set a standard to be used in determining whether to terminate parental rights "of equal to or greater than clear and convincing evidence" that termination is in best interests of the child. It also has said that in order for there to be fundamental fairness to parents and families, parents will have 'notice and opportunity to be heard'. The Oklahoma Supreme Court additionally affords parents due process in potential adjudicatory and termination proceedings by assuring parents a 'meaningful and fair opportunity to defend'.

A matter we bring to you today is that of Termination of Parental Rights and removal of the obligation for jury trial in these matters. Judge Fransein will provide background for you from both a legal and historical perspective. I will then follow with specific recommendation for legislative consideration.

Representative McCullough, as you know from your inquiry to the OK Office of Attorney General, while federal courts affirm the importance of the family, child termination itself is a matter of state law, not federal law, and as such is a legislative function.

We would like to request that you and this Interim Study consider the following proposed change to the Oklahoma state statutes:

Title 10. Children

Oklahoma Statutes Citationized

Title 10A. Children and Juvenile Code

Article 1 - Oklahoma Children's Code

Article Chapter 4, Part 5 - Conduct of Hearings

Section 1-4-502 - Jury Trial

(as amended by Laws 2010, SB 1793, c. 398, § 1, eff. November 1, 2010) (repealed by Laws 2011, SB 553, c. 1, § 5, emerg. eff. March 18, 2011)

~~A parent entitled to service of summons, the state or a child shall have the right to demand a trial by jury only in the following circumstances:~~

~~1. When the initial petition to determine if a child is deprived also contains a request for termination of parental rights; or~~

~~2. When, following a hearing in which the child is adjudicated deprived, a request for termination of parental rights is filed by the state or the child.~~

~~The demand for a jury trial shall be granted unless waived, or the court on its own motion may call a jury to try any such case. Such jury shall consist of six (6) persons. A party who requests a jury trial and fails to appear for such trial, after proper notice and without good cause, may be deemed by the court to have waived the right to be present at such trial.~~

A parent entitled to service of summons, the state, or a child, shall have the right to demand a trial in adjudicatory hearings to determine if a child is deprived and on the issue of termination of parental rights. The judge, on his or her own motion, may also require that a trial be held on either or both issues.

Respectfully,

Laura W. Boyd, Ph.D.

Laura W. Boyd, Ph.D.
lboyd5@cox.net
405-503-1123 cell
Executive Director
Oklahoma Therapeutic Foster Care Association