

Nationwide:

At the end of the 2010 legislative session, 5 states have statutes or case law that permit or require a jury trial in termination of parental rights cases: Texas, Virginia, Wisconsin, Wyoming and Oklahoma.

The remaining 46 jurisdictions have case law or statutes or local court rules or common practice that specifically prohibits a jury trial in termination of parental rights cases.

Oklahoma is the only state that claims a constitutional right to jury trial.

History:

Common law did not recognize juvenile law. It was a creation of statute and hence, did not carry with it a complete right to a jury trial as did criminal and most civil cases.

Further, the United States Supreme Court held that there was no federal constitutional right to a jury trial in parental termination of rights cases that were brought by the State. Whether jury trials would be granted to parents was to be a decision made by the states – either by state constitution or statute.

For many years, Oklahoma did not grant jury trials in juvenile matters. However, in 1969, our State Constitution was amended to provide for 6 person juries in “juvenile proceedings.” Soon thereafter, the Oklahoma legislature provided for jury trials in the adjudication of a child to determine whether the child was a delinquent, in need of supervision, or deprived.

As a result of this constitutional and statutory change, the Oklahoma Supreme Court determined, in *AE v. State* – 1987 – that proceedings to terminate parental rights in deprived actions now provided the parents with a right to a jury trial.

I do not have statistics for Oklahoma – however, Arizona’s experiences within the first year of the pilot is more than likely reflective of the experiences in Oklahoma:

- Parents requesting jury trials were often incarcerated parents, parents with severe mental illnesses, and parents with chronic substance abuse problems.
- Very few jury trial requests actually resulted in completed jury trials. 87% of the requests were resolved before jury trials were held (e.g., failed to appear, requested non jury, voluntarily relinquished). 8% of the cases, the State withdrew its motion to terminate.
- Jury trials resulted in the vast majority of verdicts recommending termination. This did not differ with bench trials.
- Bench trials were more likely to be held and completed as scheduled than TPR jury trials.
- Bench trials are completed in far shorter period of time
- Jury trials have more elements that could lead to mistrials or appeals of the verdicts.
- Because so few jury trial requests actually result in trials held, some of the judges experienced substantial blocks of down time – which leads to stacking trials – but...
- Preparation time for participants and their attorneys for jury trials take from 3 to 10 times more than TPR bench trials.
- Jury trials costs more than bench trials – jurors fees, expert witness fees, days for court appointed attorneys in trial, additional witnesses that are not necessary in bench trials.
- Jury trials require additional training for witnesses. Different to testify before a jury than a court.