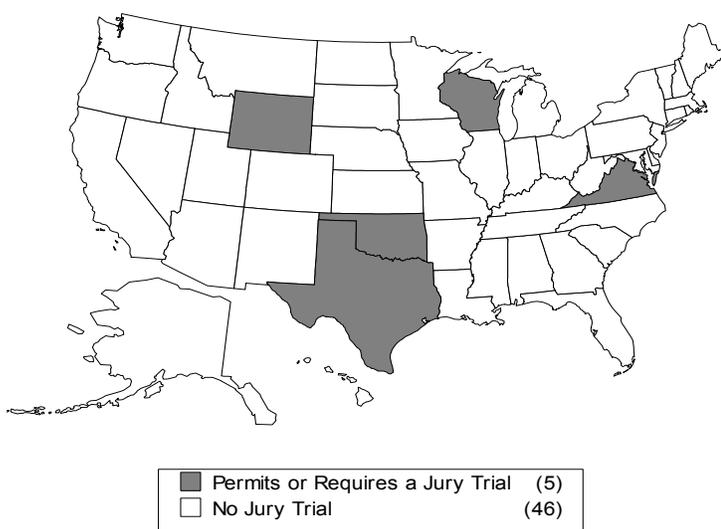


Is a Jury Trial Ever Available in a Termination of Parental Rights Case?

Linda A. Szymanski, Esq., Chief of Legal Research, NCJJ

Jury Trial in a Termination of Parental Rights Case



As of the end of the 2010 legislative session, the following 5 states have statutes or case law that permit or require a jury trial in termination of parental rights cases: Oklahoma, Texas, Virginia, Wisconsin, and Wyoming. In Virginia, the jury is called an “advisory jury.”

In 2011, legislation has been proposed (but not yet enacted) to repeal jury trials in termination of parental rights cases in 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.

As an experiment, effective December 18, 2003, Arizona enacted statutory law permitting jury trials in termination of parental rights cases. This law was repealed, effective January 1, 2007.

As might be expected, jury trials create additional complexities in the case.

For example, before Arizona repealed its law permitting jury trials in termination of parental rights cases, an Arizona appellate court held that a jury instruction on the best interests of the child was legally defective.

In that case, the parents challenged the jury instruction. The Arizona appellate court

agreed with the parents that the juvenile court’s instruction required the jury to find that termination was in the child’s best interests if the child was found to be adoptable. This is a misstatement of the law. While a jury may find that termination is in a child’s best interests if the child is found to be adoptable, the jury is not required to do so. The jury might ultimately conclude that termination would not be in the best interests of an adoptable child because of other circumstances.

Because the instruction was incorrect as a matter of law, the appellate court vacated the jury’s best interest verdict and the court’s order terminating parental rights. (*Lawrence R. v. Arizona Department of Economic Security*, 177 P.3d 327 (2008)).

A Wisconsin appellate court recently held that a father was deprived of his right to a jury trial in a termination of parental rights case because the judge, rather than the jury, answered one of the questions on an element of parental unfitness.

The appellate court explained: termination of parental rights statute allows a parent to demand a jury trial but does not provide a means to withdraw such a demand. In view of the seriousness of the state action involved in

termination of parental rights, the courts should ensure that the individual’s rights in such a proceeding are not waived involuntarily or without adequate understanding. (*In re the Termination of Parental Rights of Brandon J.*, 757 N.W.2d 842 (2008)).

Finally, a Texas appellate court recently held that trial courts have the discretion to allow a jury trial in a termination of parental rights case, even when a party fails to request it, if it can be done without interfering with the court’s docket, delaying the trial, or injuring the opposing party. (*In re L.R.*, 324 S.W.3d 885 (2010)).

NCJJ Snapshot is a copyrighted publication of the National Center for Juvenile Justice. NCJJ is a non-profit organization that conducts research (statistical, legal, and applied) on a broad range of juvenile justice topics and provides technical assistance to the field.

For additional information or to request a custom analysis, contact NCJJ at 3700 S. Water St., Ste. 200, Pittsburgh, PA 15203 Phone: (412) 227-6950.

ISSN 1093-9369

Suggested Citation:
 Szymanski, L. (2011) Is a Jury Trial Ever Available in a Termination of Parental Rights Case? *NCJJ Snapshot*, 16(3). Pittsburgh, PA: National Center for Juvenile Justice.