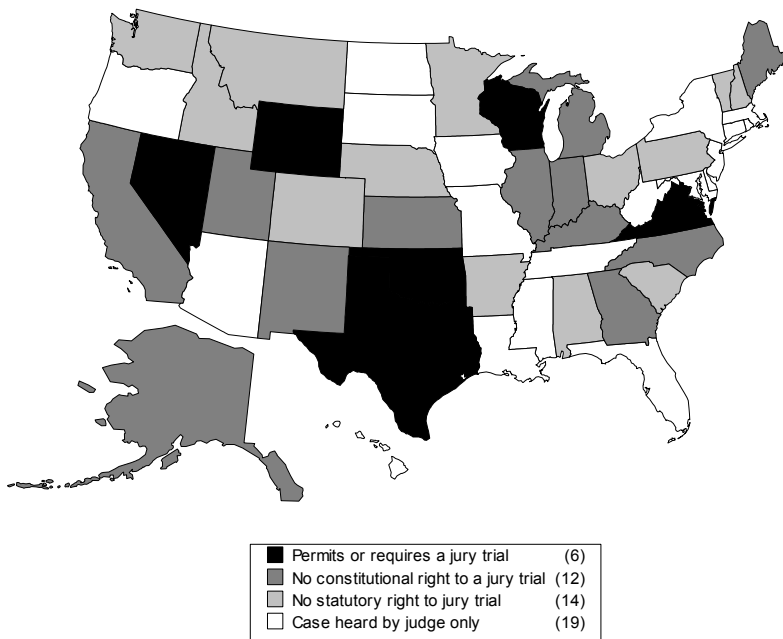


Jury Trial in Termination of Parental Rights Cases (2008 Update)

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Jury Trial in Termination of Parental Rights Cases



As of the end of the 2008 legislative session, the following 6 states have statutes or case law that permit or require a jury trial in termination of parental rights cases: Nevada, Oklahoma, Texas, Virginia, Wisconsin, and Wyoming. In Virginia, the jury is called an “advisory jury.”

The remaining 45 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 This law was repealed, effective January 1, 2007.

Of the states that permit or require jury trials in such cases, the procedure varies from state to state. For example, in Oklahoma, the demand for a jury trial must be granted unless waived. Also, the court, on its own motion, can call a jury to try such a case. This jury must consist of 6 persons.

In Virginia, the judge has the discretion to allow an advisory jury to hear an issue on appeal in a termination of parental rights case on the motion of any party.

And, in Wisconsin the powers of the jury are limited. If the facts of the case are determined by a jury, the jury can only decide whether any grounds for termination of parental rights have been proven. The court must then decide what disposition is in the best interest of the child.

Likewise states vary in the procedure used to deny jury trials in termination of parental rights cases.

In 12 states there is no constitutional right to a jury trial in a termination of parental rights case: Alaska, California, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Michigan, New Mexico, North Carolina, and Utah.

In 14 jurisdictions there is no right to a jury trial in a termination of parental rights case by statute: Alabama, Arkansas, Colorado, District of Columbia, Idaho, Minnesota, Montana, Nebraska, New Hampshire, Ohio, Pennsylvania, South Carolina, Vermont, and Washington.

In 19 states termination of parental rights cases are heard by a judge only: Arizona, Connecticut, Delaware, Florida, Hawaii, Iowa, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, New York, North Dakota, Oregon,

Rhode Island, South Dakota, Tennessee, and West Virginia.

State courts that have looked at the issue and denied a jury trial in such cases have noted that judges are well situated to make reliable findings, given their knowledge of and familiarity with the controlling law and the prior proceedings of the case.

Jury trials could delay permanent placement, reduce judicial economy, increase the number of contested adjudications and decrease the court’s ability to maximize its resources.

However, legislatures continue to debate the issue of permitting or requiring jury trials in termination of parental rights cases.

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