

Testimony on Senate Bill 395
Providing for the Right to a Jury Trial in
Termination of Parental Rights Proceedings
Shirley K. Brown, Administrator
Child and Family Services Division
C-114 Cogswell Building, Helena
406/444-5906
shbrown@mt.gov

- Oppose 395
- 1. Impact on the Child
 - Child's privacy rights should outweigh the parent's right to a jury trial during termination of parental rights (TR) proceedings
 - Child's right to permanency should outweigh the parent's right to a jury trial during termination of parental rights proceedings
 - Oklahoma
 - Wisconsin
- 2. Look to Other States which currently permit TPR jury trials
 - 45 states, plus the District of Columbia, do not permit jury trials at termination of parental rights proceedings
 - 2003: 10 states permitted jury trials at TPR proceedings
 - 2005: 7 states permitted jury trials at TPR proceedings
 - Currently: 5 states permit jury trials at TPR proceedings
 - Contacted four of the states which permit jury trials at TPR proceedings
 - Consistently expressed significant concerns with TPR jury trials
- 3. Arizona Experience
 - Created the right to jury trial for parents in 2003
 - Sunsetting the statute in 2006

- Summary of Findings:
 - Vast majority of both jury and bench trials resulted in termination of parental rights on all or some of the children named in the petition
 - Most requested jury trials were never held but a substantial number of the requests for jury trials were withdrawn right before or after the trial began
 - Direct costs for TPR jury trials were substantially higher than direct costs for TPR bench trials
 - Jury trials have an adverse impact on court calendars whether or not they occur
 - Jury trials pose substantially higher workload demands than bench trials for most key parties
 - Jury trials have more elements that can lead to mistrials or appeals
 - Jury trials took priority over other hearings which meant that safety and permanency issues for other children in the system could be delayed
- Primary recommendation after first year: Based on the first year's experience of TPR jury trials, including the negative impact on workloads affecting other dependent children's safety, well-being, and permanency needs, the legislature should allow the TPR jury provision to sunset.
 - If not sunsetted, the legislature should appropriate sufficient funds to support the additional costs for jury trials and to address workloads of all involved parties

4. Consider the costs of TPR jury trials

- Cost to the child who is the subject of the proceeding
- Cost to the other children in the foster care system
- Cost to the system

Please vote "do not pass" on SB 395