

Cherokee Nation Code Annotated

Title 10: Children

Chapter 51: Delinquent, Dependent and Neglected Children

Article I: Dependent and Delinquent Children

§ 1107. Taking child into custody prior to filing petition—Detention or release—Medical examination and treatment

Cite as: 10 CNCA § 1107

A. A child may be taken into custody prior to the filing of a petition:

1. By a peace officer, or employee of the Court without a court order if the child is found violating any law or ordinance, or if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, guardian or legal custodian for a substantial length of time or without intent to return, or if the child's surroundings are such as to endanger the welfare of the child.

2. Pursuant to an order of the District Court issued on the application of the office of the prosecuting attorney. The application presented by the prosecuting attorney may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the Court that there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child.

B. Whenever a child is taken into custody as a delinquent child or a child in need of supervision, the child shall be detained or be released to the custody of his parent, guardian, attorney or custodian, upon the written promise of such parent, guardian, attorney or custodian to bring the child to the Court at the time fixed. If detained, such child shall be taken immediately before a judge of the District Court. If no judge be available locally, the person having the child in custody shall immediately report his detention of the child to another judge, provided that the child shall not be detained in custody beyond the next judicial day or for good cause shown due to problems of arranging for and transporting the child to and from a designated juvenile detention center, beyond the next two (2) judicial days unless the Court shall so order after a detention hearing to determine if there exists probable cause to detain the child, as provided in 10 CNCA § 1107.1. If detained, a reasonable bond for release shall be set. Pending further disposition of the case, a child whose custody has been assumed by the Court may be released to the custody of a parent or other person appointed by the Court, or be detained pursuant to the provisions of 10 CNCA § 1107.1 in such place as shall be designated by the Court, subject to further order.

C. Whenever a child is taken into custody as a deprived child, he shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the Court, or he shall be taken immediately before a Judge of the District Court for the purpose of obtaining an order for protective custody. When a child has been taken into custody as a deprived child without a court order, the peace officer or employee of the Court taking the child into custody shall immediately report the fact of the detention of the child to a Judge of the District Court. If no Judge is available locally, the detention shall be reported immediately to any Judge of the District Court. Within the next two (2) judicial days following the child being taken into custody, and thereafter at such intervals as may be determined by the Court, the Court shall conduct a hearing to determine whether the child should remain in protective custody or be released to the parent, guardian, legal custodian or another responsible person pending further proceedings pursuant to this chapter. The parent or legal guardian of the child shall be given immediate notice of the custody of the child whenever possible and prior adequate notice of the hearing. The Court may release an alleged deprived child from protective custody upon such conditions as the Court finds reasonably necessary for the protection of the child and the Court shall determine whether the allegations regarding the child are such that additional time for the filing of a petition pursuant to 10 CNCA § 1104.1(B) is warranted.

D. When any child is taken into custody pursuant to this title and it reasonably appears to the peace officer, employee of the Court or person acting pursuant to court order that the child is in need of medical treatment to preserve his health, any peace officer, any employee of the Court or person acting pursuant to court order shall have the authority to authorize medical examination and medical treatment, for any child found to be in need of medical treatment as diagnosed by a competent medical authority in the absence of a parent or guardian who is competent to authorize medical treatment. The officer or the employee of the Court or person acting pursuant to court order shall authorize said medical treatment only after exercising due diligence to locate the parent, guardian or other person legally competent to authorize said medical treatment. The parent, guardian or custodian of the child shall be responsible for such medical expenses as ordered by the Court. No peace officer, any employee of the Court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such medical treatment shall have any liability, civil or criminal, for giving such authorization.