

Cherokee Nation Code Annotated

Title 10A: Cherokee Nation Juvenile Code

Article 2

Chapter 2: Custody and Court Proceedings

§ 2-2-401.2. Delinquency proceedings--Competency of child--Rebuttable presumption

Cite as: 10A CNCA § 2-2-401.2

A. 1. At any time prior to or during delinquency proceedings pursuant to the Cherokee Nation Juvenile Code, the child's attorney, the Attorney General, or the court may raise the issue of a child's competency to participate in the proceeding. If at the time the issue of competency is raised the child is not represented by counsel, the court shall immediately appoint counsel. The court shall stay all proceedings except to allow the filing of a delinquency petition.

2. In any delinquency proceeding pursuant to the Juvenile Code, if the child who is the subject of the proceeding is thirteen (13) years or older and if the child is not otherwise found to be developmentally disabled, developmentally immature, intellectually disabled, or mentally ill, there exists a rebuttable presumption that the child is competent. Such presumption applies only for making a determination as to whether the child is competent and shall not be used or applicable for any other purpose.

B. The court may find a child incompetent without ordering a competency evaluation or hearing if the Attorney General and the child's attorney, and at least one of the child's parents, legal guardians, or guardian ad litem agree to the determination.

Historical Data

LA 11-21, eff. March 15, 2021.