

Cherokee Nation Code Annotated

Title 10A: Cherokee Nation Juvenile Code

Article 2

Chapter 2: Custody and Court Proceedings

§ 2-2-401.3. Motion for determination of competency--Competency evaluation

Cite as: 10A CNCA § 2-2-401.3

A. When the Attorney General or the child's attorney has reasonable basis to believe that a child is incompetent to proceed in the delinquency action, the party shall file a motion for determination of competency. The motion shall state that the child is incompetent to proceed and shall state facts sufficient to set forth the reasonable basis to conduct a competency evaluation. If the court raises the issue sua sponte, the court by written order shall set forth the reasonable basis that the child is incompetent to proceed.

B. Within five (5) judicial days after the motion is made, the court shall make one of the following determinations:

1. That the child is incompetent pursuant to subsection B of Section 2 of this act; or
2. Without conducting a hearing, that there exists a reasonable basis to conduct a competency evaluation; or
3. To schedule a hearing to determine whether there exists a reasonable basis to conduct a competency evaluation. Such hearing shall be held within ten (10) judicial days. The court's determination shall be announced no later than one (1) judicial day after the conclusion of the hearing.

C. If the court determines there is a reasonable basis for a competency evaluation or if the Attorney General and the child's attorney agree to the evaluation, the court shall order a competency evaluation. If the court orders a competency evaluation, the court shall order that the competency evaluation be conducted in the least-restrictive environment, taking into account the public safety and the best interests of the child.

1. The court shall provide in its order that the evaluator shall have access to all relevant confidential and public records related to the child, including competency evaluations and reports conducted in prior delinquent proceedings. The court shall provide to the evaluator a copy of the petition and the names and contact information for the judge, Attorney General, child's attorney, and parents or legal guardians.

2. Within five (5) judicial days after the court orders an evaluation, the Attorney General shall deliver to the evaluator copies of relevant police reports and other background information relevant to the child that are in the Attorney General's possession.

3. Within five (5) judicial days after the court orders an evaluation, the child's attorney shall deliver to the evaluator copies of relevant police reports and other relevant records including, but not limited to, educational, medical, psychological, and neurological records that are relevant to the evaluation and that are in the attorney' s possession.

Historical Data

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