

Cherokee Nation Code Annotated
Title 10A: Cherokee Nation Juvenile Code
Article 2
Chapter 2: Custody and Court Proceedings
§ 2-2-401.5. Competency evaluation report
Cite as: 10A CNCA § 2-2-401.5

A. The evaluator shall file with the court a written competency evaluation report within thirty (30) days after the date of the order of appointment. For good cause shown, the court may extend the time for filing for a period not to exceed thirty (30) days. The report shall include the evaluator's opinion as to whether the child, due to developmental disability, developmental immaturity, intellectual disability, or mental illness, is currently incapable of understanding the nature and objective of the proceedings against the child or of assisting in the child's defense. The report shall not include the evaluator's opinion as to the details of the alleged offense as reported by the child, or an opinion as to whether the child actually committed the offense or could be culpable for committing the offense. No statement made by a child during an evaluation or hearing conducted pursuant to this act shall be used against the child on the issue of responsibility or guilt in subsequent court proceedings.

B. A competency evaluation report shall address the following questions:

1. Whether the child is able to understand and appreciate the charges and their seriousness;
2. Whether the child is able to consult with an attorney and rationally and factually assist in his or her defense;
3. Whether the child can understand and reasonably participate in the proceedings;
4. If the answer to question 1, 2 or 3 is no, whether the child can attain competency within a reasonable time pursuant to Section 7 of this act if provided with a course of treatment, therapy, or training;
5. Whether the child poses an imminent threat to the life or safety of him or herself or others; and
6. Whether the child is mentally ill or is a minor in need of treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

C. If the evaluator concludes that the child's competency is impaired, but that the child may be rendered competent by reasonable accommodations, the report shall include

recommendations for reasonable accommodations which the court shall order to assist in compensating for the competency impairments.

D. If the evaluator concludes there is a substantial probability that the child could attain competency within the periods set forth in subparagraph a of paragraph 3 of subsection C of Section 7 of this act, the competency evaluation report shall include a recommendation as to the least restrictive setting for child competency attainment services consistent with the child's ability to attain competency and the safety of both the child and the public.

E. The competency evaluation report shall also include:

1. The evaluation procedures used, including psychometric tests administered, records reviewed, and identity of persons interviewed;
2. Pertinent background information, including history of educational performance, psychiatric history, and family history;
3. Results of mental status examination; and
4. A description of any psychiatric symptoms or cognitive deficiencies, including a diagnosis, if one has been made.

F. The court shall provide a copy of each competency evaluation report it receives to the Attorney General and the child's attorney, and may provide a copy upon request to the child's parents, legal guardian, and guardian ad litem, if one was appointed.

G. The expense of an evaluation ordered by the court may be recovered from the child or the child's parents or legal guardians based upon their ability to pay. Expenses associated with missed appointments may be recovered from the child's parents or legal guardians.

Historical Data

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