

Cherokee Nation Code Annotated
Title 10A: Cherokee Nation Juvenile Code
Article 2
Chapter 2: Custody and Court Proceedings
§ 2-2-401.6. Competency hearing
Cite as: 10A CNCA § 2-2-401.6

A. Not more than fifteen (15) judicial days after receiving the evaluator's report, the court shall conduct a hearing to determine the child's competency to participate in the proceeding. The court may continue the hearing for good cause shown.

B. The competency evaluation report shall be admissible in evidence. The evaluator may be called as a witness and be subject to cross examination by all parties. If authorized by the court, hearings held pursuant to this section may be conducted via teleconference or videoconference. If the court contacts the evaluator to obtain clarification of the report contents, the court shall promptly inform all parties and allow each party to participate in each contact.

C. In determining the competency of the child to participate in the proceeding the court shall consider the content of all competency evaluation reports admitted as evidence. The court may consider additional evidence introduced at the hearing by the Attorney General and the child's attorney.

D. 1. Except as otherwise provided, the court shall make a written determination as to the child's competency based on a preponderance of the evidence within ten (10) judicial days after completion of the hearing. The burden of proof shall be on the moving party.

2. The court shall not find a child incompetent to proceed solely because the child is receiving or has received in-patient treatment as a voluntary or involuntary mentally ill patient pursuant to Section 5-501 et seq. of Title 43A of the Cherokee Nation Statutes, or is receiving or has received psychotropic or other medication, even if the child might become incompetent to proceed without that medication.

Historical Data

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