

Cherokee Nation Code Annotated

Title 10A: Cherokee Nation Juvenile Code

Article 2

Chapter 2: Custody and Court Proceedings

§ 2-2-401.7. Court responses to competency determination

Cite as: 10A CNCA § 2-2-401.7

A. After a hearing pursuant to Section 6 of this act, if the court determines by a preponderance of the evidence that the child is competent to proceed, the delinquency proceedings shall be resumed as provided by law.

B. After a hearing pursuant to Section 6 of this act, if the court determines by the preponderance of the evidence that the child is incompetent to proceed and cannot attain competency within the period of time application under subparagraph a of paragraph 3 of subsection C of this section, the court shall dismiss the petition without prejudice, and take either of the following actions:

1. Refer the matter to Cherokee Nation Indian Child Welfare; or
2. Refer the matter to the Attorney General for consideration of initiating a Child in Need of Supervision or Minor in Need of Mental Health and Substance Abuse Treatment proceeding in accordance with the Cherokee Nation Juvenile Code or Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

C. If the court determines by a preponderance of the evidence that a child is incompetent to proceed but may likely attain competency, the court shall stay the proceedings and order the child to receive services designated to assist the child in attaining competency, based upon the recommendations in the competency evaluation report unless the court makes specific findings that the recommended services are not justified. The court shall order the child's parent or legal guardian to contact a court-designated provider by a specified date to arrange for services.

1. The competency attainment services provided to a child shall be based on a court-approved competency attainment plan described in paragraph 2 of subsection D of this section, and are subject to the conditions and time periods required pursuant to this section measured from the date the court approves the plan.
2. The court shall order that the competency attainment services ordered are provided in the least-restrictive environment, taking into account the public safety and the best interests of the child. If the child has been released on temporary orders and refuses or

fails to cooperate with the service provider, the court may modify the orders to require a more appropriate setting.

3. No child shall be required to participate in competency attainment services for longer than is required to attain competency. The following maximum periods of participation shall apply:

- a. if the services are provided, the child shall not participate in those services for a period exceeding six (6) months or upon the child's 18th birthday, or up to the child's 19th birthday if ordered by the court in order to complete the six months of treatment, if the child is charged with an act that would be a misdemeanor if committed by an adult,
- b. if the services are provided, the child shall not participate for a period exceeding twelve (12) months or upon the child's 18th birthday, or up to the child's 19th birthday if ordered by the court in order to complete the twelve months of treatment, if the child is charged as a delinquent for an act that would be a felony if committed by an adult.

D. 1. Within ten (10) judicial days after the court orders the provider responsible for the child's competency attainment services, the court shall deliver to that provider:

- a. the name and address of the child's counsel,
- b. a copy of the child's Petition,
- c. a copy of the competency evaluation report,
- d. the name, address, and phone number of the child's parents or legal guardian,
- e. the name of the Department of Juvenile Justice employee responsible for the intake, supervision, or custody of the child, if adjudicated,
- f. the name of the Cherokee Nation Indian Child Welfare caseworker, if any, and
- g. any other relevant documents or reports concerning the child's health that have come to the attention of the court.

2. Not later than ten (10) judicial days after the child contacts the competency attainment provider, a plan for the child to attain competency shall be submitted to the court by the provider. The court shall provide copies of the plan to the Attorney General, the child's attorney, the guardian ad litem, if any, the Department of Juvenile Justice, and the child's parent or legal guardian.

E. The provider shall submit reports to the court pursuant to the following schedule:

1. Every ninety (90) calendar days and upon completion or the termination of services. Each report shall include the following:

- a. the services provided to the child, including medication, education and counseling,
- b. the likelihood that the competency of the child to proceed will be restored within the applicable period of time set forth in subparagraph a of paragraph 3 of subsection C of this section, and
- c. the progress made towards the goals and objectives for the restoration of competency identified in the recommendations from the competency evaluation as adopted by the court;

2. Three (3) judicial days after the provider's determination that the child is not cooperating to a degree that would allow the services to be effective to help the child attain competency;

3. Three (3) judicial days after the provider's determination that the current setting is no longer the least restrictive setting that is consistent with the child's ability to attain competency and taking into account the public safety and the best interests of the child. The provider shall include in the report an assessment of the danger the child poses to himself, herself or others and an assessment of the appropriateness of the placement;

4. Three (3) judicial days after the provider's determination that the child has achieved the goals of the plan and would be able to understand the nature and objectives of the proceedings against the child, to assist in the child's defense, and to understand and appreciate the consequences that may be imposed or result from the proceedings with or without reasonable accommodations. The report shall include recommendations for the accommodations that would be necessary or advantageous; and

5. Three (3) judicial days after the provider's determination that the child will not achieve the goals of the plan within the applicable period of time pursuant to subparagraph a of paragraph 3 of subsection C of this section. The report shall include recommendations for services for the child and taking into account the public safety and the best interests of the child.

F. The court shall provide copies of any report made by the provider to the Attorney General, the child's attorney, the child's intake worker, and the child's guardian ad litem, if any. The Court shall provide copies of any reports made by the provider to the child's parents or legal guardians, unless the court finds that doing so is not in the best interest of the child.

G. Within fifteen (15) judicial days after receiving a provider's report, the court may hold a hearing to determine if a new order is necessary.

1. If the court determines that the child is not making progress toward competency or is so uncooperative that attainment services cannot be effective, the court may order a change in setting or services that would help the child attain competency within the relevant period of time as set forth in subparagraph a of paragraph 3 of subsection C of this section.

2. If the court determines that the child has not or will not attain competency within the relevant period of time as set forth in subparagraph a of paragraph 3 of subsection C of this section, the court shall dismiss the delinquency charge without prejudice.

3. A dismissal under paragraph 2 of this subsection shall not preclude a future delinquent child proceeding as provided for under Title 10A of the Cherokee Nation Statutes.

H. After a hearing held pursuant to subsection G of this section, the court determines that the child has attained competency, the court shall proceed with the delinquent child's proceeding in accordance with the provisions of the Juvenile Code.

I. A dismissal under this section does not bar a civil action based on the acts or omissions that formed the basis of the petition.

Historical Data

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