

Cherokee Nation Code Annotated
Title 10A: Cherokee Nation Juvenile Code
Article 2

Chapter 5: Treatment of Serious Acts

§ 2-5-204. Treatment of a child certified as an adult or youthful offender in criminal proceedings

Cite as: 10A CNCA § 2-5-204

A. A child who is arrested for an offense pursuant to subsection A or B of Section 2-5-206 of this title, or who is certified as a youthful offender pursuant to Section 2-5-205 of this title, shall be charged by information in the same manner as provided for adults.

B. If the child is not otherwise represented by counsel and requests an attorney prior to or during interrogation, or whenever charged by information, as provided in subsection A of this section, the court shall appoint an attorney, who shall not be the Attorney General, for the child regardless of any attempted waiver by the parent, legal guardian, or other legal custodian of the child of the right of the child to be represented by counsel. Counsel shall be appointed by the court only upon determination by the court that the parent, legal guardian or legal custodian is found to be indigent.

C. When a person is certified to stand trial as an adult or a youthful offender as provided by the Youthful Offender Act, the accused person shall have all the statutory and constitutional rights and protections of an adult accused of a crime. All proceedings shall be as for a criminal action and the provisions of Title 22 of the Cherokee Nation Statutes shall apply, except as provided for in the Youthful Offender Act.

D. All youthful offender court records for a person who is certified to stand trial as an adult or youthful offender shall be considered adult records and shall not be subject to the provisions of Chapter 6 of the Cherokee Nation Juvenile Code; provided, however, all reports, evaluations, motions, records, exhibits or documents regarding the educational history, mental health or medical treatment or condition of the offender that are submitted to the court or admitted into evidence during the hearing on the motion for certification as a youthful offender to the juvenile system or motion for imposition of an adult sentence shall be confidential and shall be filed or admitted under seal, except that such records shall be provided to the Department of Juvenile Justice. Any testimony regarding the reports, evaluations, motions, records, exhibits or documents shall be given in camera and shall not be open to the general public; provided, all persons having a direct interest in the case as provided in paragraph 1 of subsection A of Section 2-2-402 of this title shall be allowed to be present during the testimony but shall be admonished not to discuss the testimony following the hearing. All reports, evaluations, motions, records, exhibits or

documents shall be released from under seal by order of the court if the youthful offender is sentenced to the custody or supervision of the contracted detention facility by the court pursuant to paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of Section 2-5-210 of this title or if the juvenile or youthful offender is later charged as an adult with a felony crime.

E. Proceedings against a youthful offender shall be heard by any judge of the district court.

F. Upon arrest and detention of a person subject to the provisions of Section 2-5-205 or 2-5-206 of this title, the person has the same right to be released on bail as would an adult in the same circumstances and, if detained, may be detained in a county jail if separated by sight and sound from the adult population as otherwise authorized by law. If no such county jail is available, then such person may be detained at a juvenile detention facility. The sheriff, chief of police, or juvenile or adult detention facility operator shall forthwith notify the Department of Juvenile Justice of any such arrest and detention.

G. Upon certification for the imposition of an adult sentence, a verdict of guilty or entry of a plea of guilty or nolo contendere by a youthful offender who has been certified for the imposition of an adult sentence as provided by Section 2-5-208 of this title, the person may be detained as an adult and, if incarcerated, may be incarcerated with the adult population.

H. A child or youthful offender shall be tried as an adult in all subsequent criminal prosecutions, and shall not be subject to the jurisdiction of the juvenile court as a juvenile delinquent or youthful offender processes in any further proceedings if:

1. The child or youthful offender has been certified to stand trial as an adult pursuant to any certification procedure provided by law and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentence has been deferred; or
2. The youthful offender has been certified for the imposition of an adult sentence as provided by Section 2-5-208 of this title and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred.

I. Except as otherwise provided in the Youthful Offender Act, a person who has been certified as a youthful offender shall be prosecuted as a youthful offender in all subsequent criminal proceedings until the youthful offender has attained eighteen (18) years of age.

All proceedings for the commission of a crime committed after a youthful offender has reached eighteen (18) years of age shall be adult proceedings.

Historical Data

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