

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

Chapter 5: Treatment of Serious Acts

§ 2-5-208. Motion by Attorney General to sentence child as an adult--Considerations--Standard of proof--Sentencing

Cite as: 10A CNCA § 2-5-208

A. Whenever the Attorney General believes that there is good cause to believe that a person charged as a youthful offender would not reasonably complete a plan of rehabilitation or the public would not be adequately protected if the person were to be sentenced as a youthful offender, and should receive an adult sentence, the Attorney General shall file a motion for consideration of the imposition of the sentence as for an adult if the person is convicted:

1. Not more than thirty (30) days following formal arraignment and such motion will be ruled upon by the trial court; or the Attorney General may file the motion to impose adult sentence fourteen (14) days prior to the start of the preliminary hearing and the preliminary hearing magistrate will rule on that motion. The Attorney General must elect when to file the motion for adult sentence and if the motion is filed and argued to the magistrate, it cannot again be filed and argued to the trial court after arraignment; or

2. If, prior to that time, the accused person indicates to the court that the accused person wishes to plead guilty or nolo contendere, the court shall grant the state ten (10) days from that date to file the motion required by this subsection, if requested by the state.

B. Upon the filing of such motion and prior to the trial or before the entry of the plea of guilty or nolo contendere the court shall hold a hearing to determine the matter.

C. 1. The court shall order an investigation to be conducted unless waived by the accused person with approval of the court. Any such investigation required shall be conducted by the Department of Juvenile Justice. 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 the motion for imposition of an adult sentence are 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 either 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.

2. At the hearing the court shall consider, with the greatest weight given to subparagraphs a, b and c:

a. whether the offense was committed in an aggressive, violent, premeditated or willful manner,

b. whether the offense was against persons and, if personal injury resulted, the degree of injury,

c. the record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions,

d. the sophistication and maturity of the accused person and the capability of distinguishing right from wrong as determined by consideration of the psychological evaluation, home, environmental situation, emotional attitude and pattern of living of the accused person,

e. the prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system,

f. the reasonable likelihood of rehabilitation of the accused person if the accused person is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court, and

g. whether the offense occurred while the accused person was escaping or on escape status from an institution for youthful offenders or delinquent children.

D. After the hearing and consideration of the report of the investigation, the court shall certify the person as eligible for the imposition of an adult sentence only if it finds by clear and convincing evidence that there is good cause to believe that the accused person would not reasonably complete a plan of rehabilitation or that the public would not be adequately protected if the person were to be sentenced as a youthful offender.

In its decision on the motion of the state for imposition of an adult sentence, the court shall detail findings of fact and conclusions of law to each of the considerations in subsection C of this section and shall state that the court has considered each of its guidelines in reaching its decision.

E. An order certifying or denying certification for imposition of an adult sentence shall be a final order, appealable when entered.

F. If the person has been certified as eligible to be sentenced as an adult, the court shall, upon a verdict of guilty or the entry of a plea of guilty or nolo contendere, impose sentence as provided by law for an adult for punishment of the offense committed, subject to the power and authority of the court to suspend or delay sentence, defer judgment, or otherwise structure, limit, or modify sentence as provided in Title 22 of the Cherokee Nation Statutes or the Youthful Offender Act. When sentence is imposed pursuant to this subsection, the person shall be treated as an adult for purposes of supervision, incarceration and in all subsequent criminal proceedings.

G. Upon a verdict of guilty or a plea of guilty or nolo contendere, the court may order the person to pay a fee to the Department of Juvenile Justice of not less than Twenty-five Dollars (\$25.00), nor more than Five Hundred Dollars (\$500.00), for the presentence or certification investigation. In hardship cases, the court may waive the fee or set the amount of the fee and establish a payment schedule.

Historical Data

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