

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 22: Insanity of Accused

§ 1175.3. Hearing—Date—Evidence—Orders—Examination of accused—Instructions to physician

Cite as: 22 CNCA § 1175.3

A. Upon filing of an application for determination of competency, the Court shall set a hearing date, which shall be as soon as practicable, but at least one (1) day after service of notice as provided by 22 CNCA § 1175.2.

B. The Court shall hold a hearing on the date provided. At the hearing, the Court shall examine the application for determination of competency to determine if it alleges facts sufficient to raise a doubt as to the competency of the person. Any additional evidence tending to create a doubt as to the competency of the person may be presented at this hearing.

C. If the Court finds there is no doubt as to the competency of the person, it shall order the criminal proceedings to resume.

D. If the Court finds there is a doubt as to the competency of the person, it shall order the person to be examined by doctors or appropriate technicians. The doctors or technicians shall be practitioners in the appropriate branch of medicine relevant to the alleged incompetency of the person. The person may be examined on an outpatient or inpatient basis, as ordered by the Court. The Court may commit the person to the custody of Cherokee Nation or the Oklahoma Department of Mental Health and Substance Abuse Services or any other state agency or private facility for the examination provided by this act. The person shall be required to undergo examination for a period of time sufficient for the doctor or doctors or technicians to reach a conclusion as to competency, and the Court shall impose a reasonable time limitation for such period of examination. If the Court determines that the person whose competency is in question may be a threat to the safety of himself or others, it shall order the person retained in a secure facility until the completion of the competency hearing provided in 22 CNCA § 1175.4.

E. The doctor or doctors shall receive instructions that they shall examine the patient to determine:

1. Is this person able to appreciate the nature of the charges against him?
2. Is this person able to consult with his lawyer and rationally assist in the preparation of his defense?

3. If the answer to question 1 or 2 is no, can the person attain competency within a reasonable time if provided with a course of treatment, therapy or training?
4. Is the person a mentally ill person or a person requiring treatment as defined by 43A O.S. § 1-103?
5. If the person were released without treatment, therapy or training, would he probably pose a significant threat to the life or safety of himself or others?

Historical Data

LA 10-90, eff. November 13, 1990.