

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 10: Evidence and Depositions

§ 752. Admissibility of recorded statement of child twelve years of age or younger

Cite as: 22 CNCA § 752

A. This section shall apply only to a proceeding in the prosecution of an offense alleged to have been committed against a child twelve (12) years of age or younger, and shall apply only to the statement of that child or other child witness.

B. The recording of an oral statement of the child made before the proceedings begin is admissible into evidence if:

1. The Court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;
2. No attorney for any party is present when the statement is made;
3. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
4. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;
5. The statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;
6. Every voice on the recording is identified;
7. The person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party;
8. Each party to the proceeding is afforded an opportunity to view the recording at least ten (10) days before trial, unless such time is shortened by leave of the Court for good cause shown; and
9. The child either:
 - a. testifies at the proceedings; or
 - b. is unavailable as defined in this Title as a witness. When the child is unavailable as defined in this Title as a witness, such recording may be admitted only if there is corroborative evidence of the act.

Historical Data

LA 10–90, eff. November 13, 1990.