

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 10: Evidence and Depositions

**§ 753. Taking testimony of child age twelve or under in room other than courtroom—
Recording**

Cite as: 22 CNCA § 753

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 testimony of that child.

B. The Court may, on the motion of the attorney for any party, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the Court and the finder of fact in the proceeding. Only the attorneys for the defendant, the Nation and the child, persons necessary to operate the equipment and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony but does not permit the child to see or hear them. The Court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

C. The Court may, on the motion of the attorney for any party, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the Court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (B) of this section may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided in subsection (B) of this section. Only the attorneys may question the child. The Court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The Court shall also ensure that:

1. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
2. 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;
3. Every voice on the recording is identified; and

4. Each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript transcribed by a Licensed or Certified Court Reporter is provided to the parties.

D. If the Court orders the testimony of a child to be taken under subsections (B) or (C) of this section, the child shall not be required to testify in Court at the proceeding for which the testimony was taken.

Historical Data

LA 10–90, eff. November 13, 1990.