

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 1607

By: Stiles of the House

and

Anderson of the Senate

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8 An Act relating to marriage and family; amending 43
O.S. 2001, Section 113, as amended by Section 1,
9 Chapter 373, O.S.L. 2002 (43 O.S. Supp. 2010, Section
113), which relates to child preference in certain
10 custody determinations; providing for consideration
of child preference for visitation; modifying court
11 considerations and procedure in determining custody
and visitation; providing for a record; and providing
12 an effective date.

13 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
entire bill and insert

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15 "An Act relating to child custody proceedings; amending
43 O.S. 2001, Section 113, as amended by Section 1,
Chapter 373, O.S.L. 2002 (43 O.S. Supp. 2010, Section
16 113), which relates to child preference in certain
custody determinations; providing for consideration of
17 child preference for visitation; modifying court
considerations and procedure in determining custody
18 and visitation; providing for a record; and providing
an effective date.

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21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. AMENDATORY 43 O.S. 2001, Section 113, as
23 amended by Section 1, Chapter 373, O.S.L. 2002 (43 O.S. Supp. 2010,
24 Section 113), is amended to read as follows:

1 Section 113. A. In any action or proceeding in which a court
2 must determine custody or limits ~~of to~~ or ~~period~~ periods of
3 visitation, the child may express a preference as to which of ~~its~~
4 the parents the child wishes to have custody or limits to or periods
5 of visitation.

6 B. ~~1.~~ The court shall first determine whether the best
7 interest of the child will be served by allowing the ~~child's~~
8 ~~expression of~~ child to express a preference as to which parent
9 should have custody or limits ~~of to~~ or ~~period~~ periods of visitation
10 ~~rights of~~ with either parent. If the court so finds, then the child
11 may express such preference or give other testimony.

12 ~~2.~~ C. There shall be a rebuttable presumption that a child who
13 is twelve (12) years of age or older is of a sufficient age to form
14 an intelligent preference.

15 D. If the child is of a sufficient age to form an intelligent
16 preference, the court shall consider the expression of preference or
17 other testimony of the child in determining custody or limits ~~of to~~
18 or ~~period~~ periods of visitation. Interviewing the child does not
19 diminish the discretion of the court in determining the best
20 interest of the child. The court shall not be bound by the child's
21 ~~choice and may take other facts~~ or wishes and shall take all factors
22 into consideration in awarding custody or limits of or period of
23 visitation. ~~However, if the child is of a sufficient age to form an~~
24 ~~intelligent preference and the court does not follow the expression~~

1 ~~of preference of the child as to custody, or limits of visitation,~~
2 ~~the court shall make specific findings of fact supporting such~~
3 ~~action if requested by either party.~~

4 ~~3. There shall be a rebuttable presumption that a child who is~~
5 ~~twelve (12) years of age or older is of a sufficient age to form an~~
6 ~~intelligent preference.~~

7 C. E. If the child expresses is allowed to express a preference
8 or gives give testimony, such preference or testimony may be taken
9 by the court may conduct a private interview with the child in
10 chambers without the parents, attorneys or other parties present.
11 ~~If attorneys are not allowed to be present, the court shall state,~~
12 ~~for the record, the reasons for their exclusion. At the request of~~
13 ~~either party, a record shall be made of any such proceeding in~~
14 ~~chambers~~ However, if the court has appointed a guardian ad litem for
15 the child, the guardian ad litem shall be present with the child in
16 chambers. The parents, attorneys or other parties may provide the
17 court with questions or topics for the court to consider in its
18 interview of the child; however, the court shall not be bound to ask
19 any question presented or explore any topic requested by a parent,
20 attorney or other party.

21 F. At the request of either party, a record shall be made of
22 any child interview conducted in chambers. If the proceeding is
23 transcribed, the parties shall be entitled to access to the
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1 transcript only if a parent or the parents appeal the custody or
2 visitation determination.

3 SECTION 2. This act shall become effective November 1, 2011."

4 Passed the Senate the 26th day of April, 2011.

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Presiding Officer of the Senate

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8 Passed the House of Representatives the ____ day of _____,

9 2011.

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Presiding Officer of the House
of Representatives

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1 ENGROSSED HOUSE
2 BILL NO. 1607

By: Stiles of the House

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4 Anderson of the Senate
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7 An Act relating to marriage and family; amending 43
8 O.S. 2001, Section 113, as amended by Section 1,
9 Chapter 373, O.S.L. 2002 (43 O.S. Supp. 2010, Section
10 113), which relates to child preference in certain
11 custody determinations; providing for consideration
12 of child preference for visitation; modifying court
13 considerations and procedure in determining custody
14 and visitation; providing for a record; and providing
15 an effective date.

16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 3. AMENDATORY 43 O.S. 2001, Section 113, as
18 amended by Section 1, Chapter 373, O.S.L. 2002 (43 O.S. Supp. 2010,
19 Section 113), is amended to read as follows:

20 Section 113. A. In any action or proceeding in which a court
21 must determine custody or ~~limits of~~ to or period periods of
22 visitation, the child may express a preference as to which of ~~its~~
23 the parents the child wishes to have custody or limits to or periods
24 of visitation.

25 B. ~~1-~~ The court shall first determine whether the best
26 interest of the child will be served by allowing the ~~child's~~

1 ~~expression of~~ child to express a preference as to which parent
2 should have custody or limits ~~of to~~ or ~~period~~ periods of visitation
3 ~~rights of~~ with either parent. If the court so finds, then the child
4 may express such preference or give other testimony.

5 2. C. There shall be a rebuttable presumption that a child who
6 is twelve (12) years of age or older is of a sufficient age to form
7 an intelligent preference.

8 D. If the child is of a sufficient age to form an intelligent
9 preference, the court shall consider the expression of preference or
10 other testimony of the child in determining custody or limits ~~of to~~
11 or ~~period~~ periods of visitation. Interviewing the child does not
12 diminish the discretion of the court in determining the best
13 interest of the child. The court shall not be bound by the child's
14 choice ~~and may take other facts~~ or wishes and shall take all factors
15 into consideration in awarding custody or limits of or period of
16 visitation. ~~However, if the child is of a sufficient age to form an~~
17 ~~intelligent preference and the court does not follow the expression~~
18 ~~of preference of the child as to custody, or limits of visitation,~~
19 ~~the court shall make specific findings of fact supporting such~~
20 ~~action if requested by either party.~~

21 ~~3. There shall be a rebuttable presumption that a child who is~~
22 ~~twelve (12) years of age or older is of a sufficient age to form an~~
23 ~~intelligent preference.~~

24

1 ~~C. E.~~ E. If the child expresses is allowed to express a preference
2 or gives give testimony, such preference or testimony may be taken
3 by the court shall conduct a private interview with the child in
4 chambers without the parents, attorneys or other parties present.
5 ~~If attorneys are not allowed to be present, the court shall state,~~
6 ~~for the record, the reasons for their exclusion. At the request of~~
7 ~~either party, a record shall be made of any such proceeding in~~
8 ~~chambers~~ The parents, attorneys or other parties may provide the
9 court with questions or topics for the court to consider in its
10 interview of the child; however, the court shall not be bound to ask
11 any question presented or explore any topic requested by a parent,
12 attorney or other party.

13 F. At the request of either party, a record shall be made of
14 any child interview conducted in chambers. If the proceeding is
15 transcribed, the parties shall be entitled to access to the
16 transcript only if a parent or the parents appeal the custody or
17 visitation determination. Otherwise, whether the transcript shall
18 remain sealed shall be within the discretion of the court.

19 SECTION 4. This act shall become effective November 1, 2011.
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1 Passed the House of Representatives the 17th day of February,
2 2011.

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5 Presiding Officer of the House of
6 Representatives

7 Passed the Senate the ____ day of _____, 2011.

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10 Presiding Officer of the Senate

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