

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1567

By: Jordan

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6 AS INTRODUCED

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 1. 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 pursuant to the requirements of this section.

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

8 ~~2.~~ D. If the child is of a sufficient age to form an
9 intelligent preference, the court shall consider the expression of
10 preference or other testimony of the child in determining custody or
11 limits ~~of~~ to or period periods of visitation. Interviewing the
12 child does not diminish the discretion of the court in determining
13 the best interest of the child. The court shall not be bound by the
14 child's choice ~~and may take other facts~~ or wishes and shall take all
15 factors into consideration in awarding custody or limits of or
16 period of visitation. ~~However, if the child is of a sufficient age~~
17 ~~to form an intelligent preference and the court does not follow the~~
18 ~~expression of preference of the child as to custody, or limits of~~
19 ~~visitation, the court shall make specific findings of fact~~
20 ~~supporting such 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~~ However, if the court has appointed a guardian ad litem for
9 the child, then the guardian ad litem shall be present with the
10 child in chambers. The parents, attorneys or other parties may
11 provide the court with questions or topics for the court to consider
12 in its interview of the child; however, the court shall not be bound
13 to ask any question presented or explore any topic requested by a
14 parent, attorney or other party.

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

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

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23 53-1-6168 SDR 01/09/11

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