

1 STATE OF OKLAHOMA

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

3 SENATE BILL 813

By: Anderson

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5  
6 AS INTRODUCED

7 An Act relating to parenting preference testimony;  
8 amending 43 O.S. 2001, Section 113, as amended by  
9 Section 1, Chapter 373, O.S.L. 2002 (43 O.S. Supp.  
10 2010, Section 113), which relates to preference of  
11 child; modifying procedures for determining child  
12 preference in certain proceedings; and providing an  
13 effective date.

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

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

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

22 B. 1. The court shall determine whether the best interest of  
23 the child will be served by the child's expression of preference as  
24 to which parent should have custody or limits of or period of

1 visitation rights of either parent. If the court so finds, the  
2 child may express such preference or give other testimony.

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

15 3. There shall be a rebuttable presumption that a child who is  
16 twelve (12) years of age or older is of a sufficient age to form an  
17 intelligent preference.

18 C. If the child expresses a preference or gives testimony, such  
19 preference or testimony ~~may~~ shall be taken by the court in chambers  
20 without the parents, attorneys or other parties present. If  
21 ~~attorneys are not allowed to be present, the court shall state, for~~  
22 ~~the record, the reasons for their exclusion~~ the court has appointed  
23 a guardian ad litem for the child, such guardian may be present with  
24 the child in chambers. A parent, attorney or other party may

1 provide the court with questions or topics for the court to consider  
2 in its interview of the child that the court may use at its  
3 discretion.

4 D. At the request of either party, a record shall be made of  
5 any such proceeding in chambers. If the proceeding is transcribed,  
6 the parties may only have access to the transcript if a parent  
7 appeals the custody or visitation determination. Any transcript of  
8 an in camera interview of a minor child shall be sealed.

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

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