

9371

I N A S S E M B L Y

April 23, 2014

Introduced by M. of A. MILLMAN -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law and the family court act, in relation to prohibiting the making of decisions concerning guardianship, custody or visitation or adoption petitions solely on the basis of a parent's, guardian's or custodian's blindness; and to amend the social services law, in relation to prohibiting the department of social services from denying, deciding or opposing a petition or request for guardianship, custody or visitation solely because the petitioner is blind and to prohibiting a local social services agency from taking actions solely because a parent, custodian or guardian is blind

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "blind
2 persons right to parent act".
3 S 2. Legislative intent. The legislature finds the following:
4 a. All blind Americans have the right to found a family, to freely and
5 responsibly decide on the number and spacing of their children, and to
6 retain the custody of their offspring on an equal basis with others.
7 This right to parent is rooted in the due process clause of the Four-
8 teenth Amendment; however, blind people are often stripped of these
9 constitutional rights when state statutes, judicial decisions, and child
10 welfare practices are based on the presumption that blindness automat-
11 ically means parental incompetence.
12 b. The presumption that blindness automatically means parental incom-
13 petence is a misconception. Given the proper tools and education, blind-
14 ness can be reduced to a physical nuisance. Because many sighted people
15 do not understand the techniques that blind people use to accomplish
16 everyday tasks, sighted judges, social workers, and state official
17 assume that those tasks cannot be completed by a blind person. Using
18 alternative techniques, blind people are capable of living independent,
19 productive lives, which include providing safe and loving homes for
20 their children. For example, blind people put small tactile dots over

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 markers on stoves, washing machines, and other flat surfaces so that
2 they can independently operate those devices. Specific to raising chil-
3 dren, blind parents may have their young children wear a small bell on
4 their shoes so the child's location can be known to the parents. Blind
5 parents will also pull a stroller behind them rather than push the
6 stroller in front of them so their long white cane or guide dog will
7 find obstacles or enter an intersection before the child and stroller.

8 c. When sighted parents are involved in a guardianship, custody or
9 visitation proceeding, their parental capabilities and how those capa-
10 bilities affect the best interest of the child are thoroughly evaluated
11 through a careful review of evidence. Too often, however, judges summar-
12 ily dismiss a blind parent's capabilities under the misconception that
13 blind people are incapable of most anything, despite evidence on record
14 proving otherwise. Blind parents involved in these proceedings must
15 first overcome any bias or low expectations of the judge, and then also
16 provide evidence negating those misconceptions above and beyond the
17 normal burden placed on sighted parents.

18 d. Widespread misconceptions about blindness often trigger a state
19 agency to act, unsolicited, against the wishes of a blind parent. One of
20 many countless, devastating reports of discrimination occurred in 2010,
21 when the state of Missouri wrongfully deemed a blind couple unable to
22 care for their 2-day old daughter, who remained in protective custody
23 until the family was reunited after a 57-day battle. These parents had
24 done nothing to demonstrate parental incompetence other than happening
25 to have had a child and been blind, and yet the agency solely considered
26 their blindness and decided to take action. In fact, the Missouri case
27 and many others, the parents had voluntarily contacted social service
28 officials themselves in order to seek advice and assistance and to
29 ensure that all of their child's needs were being met, but instead found
30 themselves stripped of custody. Thus, hasty actions on the part of state
31 social welfare officials can discourage blind parents from seeking
32 services and assistance for which they and their children are eligible.

33 e. During custody proceedings in cases of divorce, where one parent is
34 blind and the other is sighted, the sighted parent will often try to use
35 the other parent's blindness as a tool to deny the blind parent custo-
36 dial rights. Because custody proceedings related to a divorce are often
37 hostile, the court should demand that each party demonstrate evidence of
38 the other party's incompetence. However, courts often assume that the
39 sighted party is accurate in portraying the blind parent as incompetent,
40 and make custody and visitation decisions based solely on the fact that
41 one parent is blind. These decisions can range from limiting or denying
42 visitation unless a sighted person is present at all times to simply
43 denying the blind parent all custodial rights. This is not only discri-
44 minatory; it denies the blind parent a fair chance at custody and opens
45 courts to manipulation.

46 S 3. The domestic relations law is amended by adding a new section
47 75-m to read as follows:

48 S 75-M. CONSIDERATION OF BLINDNESS DURING GUARDIANSHIP, CUSTODY OR
49 VISITATION PROCEEDINGS. 1. THE COURT MAY NOT DENY OR DECIDE A PETITION
50 FOR GUARDIANSHIP, CUSTODY OR VISITATION SOLELY ON THE BASIS THAT THE
51 PETITIONER IS BLIND. THE BLINDNESS OF THE PETITIONER SHALL BE CONSIDERED
52 RELEVANT ONLY TO THE EXTENT THAT THE COURT FINDS, BASED ON EVIDENCE IN
53 THE RECORD, THAT THE BLINDNESS AFFECTS THE BEST INTERESTS OF THE CHILD
54 WHOSE GUARDIANSHIP, CUSTODY OR VISITATION IS THE SUBJECT OF THE PETI-
55 TION.

56 2. AS USED IN THIS SECTION, "BLIND" OR "BLINDNESS" MEANS:

1 A. VISION THAT IS 20/200 OR LESS IN THE BEST CORRECTED EYE; OR
2 B. VISION THAT SUBTENDS AN ANGLE OF NOT GREATER THAN TWENTY DEGREES IN
3 THE BEST CORRECTED EYE.

4 S 4. The domestic relations law is amended by adding a new section
5 111-d to read as follows:

6 S 111-D. CONSIDERATION OF BLINDNESS DURING ADOPTION PROCEEDINGS. 1.
7 THE COURT MAY NOT DENY OR DECIDE A PETITION FOR ADOPTION SOLELY ON THE
8 BASIS THAT THE PETITIONER IS BLIND. THE BLINDNESS OF THE PETITIONER
9 SHALL BE CONSIDERED RELEVANT ONLY TO THE EXTENT THAT THE COURT FINDS,
10 BASED ON EVIDENCE IN THE RECORD, THAT THE BLINDNESS AFFECTS THE BEST
11 INTERESTS OF THE CHILD WHOSE ADOPTION IS THE SUBJECT OF THE PETITION.

12 2. AS USED IN THIS SECTION, "BLIND" OR "BLINDNESS" MEANS:

13 A. VISION THAT IS 20/200 OR LESS IN THE BEST CORRECTED EYE; OR

14 B. VISION THAT SUBTENDS AN ANGLE OF NOT GREATER THAN TWENTY DEGREES IN
15 THE BEST CORRECTED EYE.

16 S 5. The family court act is amended by adding a new section 643 to
17 read as follows:

18 S 643. CONSIDERATION OF BLINDNESS DURING ADOPTION PROCEEDINGS. 1. THE
19 COURT MAY NOT DENY OR DECIDE A PETITION FOR ADOPTION SOLELY ON THE BASIS
20 THAT THE PETITIONER IS BLIND. THE BLINDNESS OF THE PETITIONER SHALL BE
21 CONSIDERED RELEVANT ONLY TO THE EXTENT THAT THE COURT FINDS, BASED ON
22 EVIDENCE IN THE RECORD, THAT THE BLINDNESS AFFECTS THE BEST INTERESTS OF
23 THE CHILD WHOSE ADOPTION IS THE SUBJECT OF THE PETITION.

24 2. AS USED IN THIS SECTION, "BLIND" OR "BLINDNESS" MEANS:

25 A. VISION THAT IS 20/200 OR LESS IN THE BEST CORRECTED EYE; OR

26 B. VISION THAT SUBTENDS AN ANGLE OF NOT GREATER THAN TWENTY DEGREES IN
27 THE BEST CORRECTED EYE.

28 S 6. The family court act is amended by adding a new section 658 to
29 read as follows:

30 S 658. CONSIDERATION OF BLINDNESS DURING GUARDIANSHIP, CUSTODY OR
31 VISITATION PROCEEDINGS. 1. THE COURT MAY NOT DENY OR DECIDE A PETITION
32 FOR CUSTODY OR VISITATION UNDER THIS PART OR GUARDIANSHIP UNDER PART
33 FOUR OF THIS ARTICLE SOLELY ON THE BASIS THAT THE PETITIONER IS BLIND.
34 THE BLINDNESS OF THE PETITIONER SHALL BE CONSIDERED RELEVANT ONLY TO THE
35 EXTENT THAT THE COURT FINDS, BASED ON EVIDENCE IN THE RECORD, THAT THE
36 BLINDNESS AFFECTS THE BEST INTERESTS OF THE CHILD WHOSE GUARDIANSHIP,
37 CUSTODY OR VISITATION IS THE SUBJECT OF THE PETITION.

38 2. AS USED IN THIS SECTION, "BLIND" OR "BLINDNESS" MEANS:

39 A. VISION THAT IS 20/200 OR LESS IN THE BEST CORRECTED EYE; OR

40 B. VISION THAT SUBTENDS AN ANGLE OF NOT GREATER THAN TWENTY DEGREES IN
41 THE BEST CORRECTED EYE.

42 S 7. The social services law is amended by adding a new section 393 to
43 read as follows:

44 S 393. CONSIDERATION OF BLINDNESS DURING GUARDIANSHIP, CUSTODY OR
45 ADOPTION PROCEEDINGS. 1. THE DEPARTMENT MAY NOT DENY, DECIDE OR OPPOSE A
46 PETITION OR REQUEST FOR GUARDIANSHIP, CUSTODY OR VISITATION UNDER THIS
47 ARTICLE SOLELY ON THE BASIS THAT THE PETITIONER, PARENT, GUARDIAN OR
48 CUSTODIAN IS BLIND. THE BLINDNESS OF THE PETITIONER, PARENT, GUARDIAN OR
49 CUSTODIAN SHALL BE CONSIDERED RELEVANT ONLY TO THE EXTENT THAT THE
50 BLINDNESS AFFECTS THE BEST INTERESTS OF THE CHILD WHOSE GUARDIANSHIP,
51 CUSTODY OR VISITATION IS THE SUBJECT OF THE PETITION.

52 2. THE DEPARTMENT SHALL NOT SEEK CUSTODY OR GUARDIANSHIP OF A CHILD
53 SOLELY BECAUSE THE CHILD'S PARENT, GUARDIAN OR CUSTODIAN IS BLIND. THE
54 BLINDNESS OF THE PARENT, GUARDIAN OR CUSTODIAN SHALL BE CONSIDERED RELE-
55 VANT ONLY TO THE EXTENT THAT THE BLINDNESS AFFECTS THE BEST INTERESTS OF

1 THE CHILD WHOSE GUARDIANSHIP, CUSTODY OR VISITATION IS THE SUBJECT OF
2 THE PETITION.
3 3. AS USED IN THIS SECTION, "BLIND" OR "BLINDNESS" MEANS:
4 A. VISION THAT IS 20/200 OR LESS IN THE BEST CORRECTED EYE; OR
5 B. VISION THAT SUBTENDS AN ANGLE OF NOT GREATER THAN TWENTY DEGREES IN
6 THE BEST CORRECTED EYE.
7 S 8. The commissioner of social services is authorized and directed to
8 promulgate rules and regulations necessary for the implementation of the
9 provisions of this act on or before its effective date.
10 S 9. This act shall take effect on the ninetieth day after it shall
11 have become a law.