

4264

2015-2016 Regular Sessions

I N S E N A T E

March 11, 2015

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

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

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

LBD06111-01-5

1 alternative techniques, blind people are capable of living independent,
2 productive lives, which include providing safe and loving homes for
3 their children. For example, blind people put small tactile dots over
4 markers on stoves, washing machines, and other flat surfaces so that
5 they can independently operate those devices. Specific to raising chil-
6 dren, blind parents may have their young children wear a small bell on
7 their shoes so the child's location can be known to the parents. Blind
8 parents will also pull a stroller behind them rather than push the
9 stroller in front of them so their long white cane or guide dog will
10 find obstacles or enter an intersection before the child and stroller.

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

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

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

49 S 3. The domestic relations law is amended by adding a new section
50 75-m to read as follows:

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

1 WHOSE GUARDIANSHIP, CUSTODY OR VISITATION IS THE SUBJECT OF THE PETI-
2 TION.

3 2. 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 4. The domestic relations law is amended by adding a new section
8 111-d to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 2. THE DEPARTMENT SHALL NOT SEEK CUSTODY OR GUARDIANSHIP OF A CHILD
56 SOLELY BECAUSE THE CHILD'S PARENT, GUARDIAN OR CUSTODIAN IS BLIND. THE

1 BLINDNESS OF THE PARENT, GUARDIAN OR CUSTODIAN SHALL BE CONSIDERED RELE-
2 VANT ONLY TO THE EXTENT THAT THE BLINDNESS AFFECTS THE BEST INTERESTS OF
3 THE CHILD WHOSE GUARDIANSHIP, CUSTODY OR VISITATION IS THE SUBJECT OF
4 THE PETITION.

5 3. AS USED IN THIS SECTION, "BLIND" OR "BLINDNESS" MEANS:

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

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

9 S 8. The commissioner of social services is authorized and directed to
10 promulgate rules and regulations necessary for the implementation of the
11 provisions of this act on or before its effective date.

12 S 9. This act shall take effect on the ninetieth day after it shall
13 have become a law.