**To: Members of the Maryland General Assembly**

**From: Members of the National Federation of the Blind of Maryland**

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**Subject: Codifying the recommendations from the Commission on Child Custody Decision-Making**

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THE PROBLEM

Blind persons who are competent parents have been denied child custody solely on the basis of blindness. The Maryland General Assembly attempted to remedy this problem in 2009. This law was a step in the right direction, but problems remain.

PROPOSED ACTION

The Maryland General Assembly should enact legislation incorporating the recommendations from the Commission on Child Custody Decision-Making.

BACKGROUND

Today, social service agencies are often asked to conduct investigations to ensure that children receive proper care and adequate protection and our courts are frequently called upon to settle child custody disputes. As members of the general public, blind persons have found themselves in the midst of child custody and other family disputes. Unfortunately, a parent’s or caregiver’s lack of vision often becomes the overriding factor used by the courts and social service agencies when making decisions about the care of children.

Since blindness is not well understood by court and agency officials, it becomes the primary factor in denying custody to blind parents and guardians. Through its commitment to the full integration of the blind into all aspects of community life, the National Federation of the Blind (NFB) has documented thousands of cases of blind people who are successfully raising children. The NFB has represented many blind persons in child custody cases and in other situations involving the care of children. Unfortunately, blatant discrimination still occurs in too many of these cases. Even when no other problems were uncovered, blind parents and blind caregivers were forced to demonstrate their child-rearing capabilities beyond that which was reasonably expected of sighted persons. The capabilities of blind individuals to care for children were brought into question even when they had been successfully caring for their children for many years.

The Maryland General Assembly demonstrated its understanding that disabled parents and caregivers should not be denied a role in raising their children merely on the basis of disability. In 2009, companion bills HB 689/ SB 613 were enacted into law. This law stated that “In any custody or visitation proceeding, a disability to a party is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child.” Although this law was a positive step, several problems remain unsolved.

As a result, custody advocates called for reform. The Commission on Child Custody Decision-Making was created by the enactment of Chapter 633 (HB 687) in 2013. The Commission was charged to study a wide variety of topics relating to the child custody decision-making process, and to report its findings and recommendations to the Maryland General Assembly. The Commission’s committee on Identifying and Eliminating Bias considered disability issues in custody decision-making. While all of the Commission’s recommendations may be worthy, the National Federation of the Blind of Maryland can only comment on those referring to visual disability. We strongly urge the Maryland General Assembly to enact legislation based on these recommendations for the following reasons:

**THE CURRENT STANDARD OF EVIDENCE IN THE CURRENT LAW MUST BE RAISED**

Currently, the law states that a parent’s disability may only be considered if it affects the best interest of the child. The law should be strengthened as recommended by the commission to read “In order to consider a parent’s disability, as a factor in deciding the best interest of the child, the court must find by preponderance of the evidence that the parent’s disability poses a substantial risk of harm to the health or safety of the child, and such determination must be reflected in the court’s record and in the findings of fact and conclusions of law.”

**CURRENT CUSTODY LAW IS TOO VAGUE**

When a custody dispute arises between blind and sighted spouses, the sighted spouse frequently makes unsubstantiated accusations about the incompetence of the blind spouse. In other legal proceedings, the defendant is deemed innocent until proven guilty. In custody cases, court officials assume a priori that the blind or disabled defendant is incompetent or guilty. Frequently this defendant has to prove that the accusations are false. For example, in 2007, a blind parent in Maryland who was involved in a custody dispute with his sighted spouse faced a tremendous emotional and financial burden to establish his innocence. He had to prove his competence. His legal fees amounted to $55,000. He endured a ten-day trial. However, the whole process took two years to complete. Many blind people lose child custody cases because they do not have the financial resources or the emotional stamina to bear such a burden. If the law is to eliminate such discrimination, it must clearly require that any party who makes accusations of neglect or incompetence must prove them beyond a reasonable doubt. The burden of proof must be on the accuser as it is in other legal procedures.

**THE DEFINITION OF “DISABILITY” IS OFFENSIVE TO DISABLED PERSONS AND INCONSISTENT WITH STATE AND FEDERAL LAW**

Maryland family law currently uses the following cumbersome definition of disability:

Disability means “a physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy; a mental impairment or deficiency; a record of having a physical or mental impairment as defined under this paragraph; or being regarded as having a physical or mental impairment as defined under this paragraph. Disability includes: any degree of paralysis or amputation; blindness or visual impairment; deafness or hearing impairment; muteness or speech impairment; physical reliance on a service animal or a wheelchair or other remedial appliance or device; and intellectual disability, as defined in 7-101 of the Health-General Article, and any other mental impairment or deficiency that may have necessitated remedial or special education and related services.”

By emphasizing the negative effects, this definition contributes to bias against parents with disabilities. Changing Maryland law by using the definition of disability from the Americans with Disabilities Act of 2008 will reduce prejudice and make family law consistent with state and federal law.

**THE RIGHT TO COUNSEL AND REASONABLE ACCOMODATIONS MUST BE GUARANTEED**

Blind and other disabled persons frequently live on fixed incomes. If a custody case arises they do not have the means to hire their own counsel. They are placed at a tremendous disadvantage, especially if the other party has counsel.

Blind persons are also at a disadvantage because they cannot read documents. They should not be denied access to records because of their disability. The law must instruct court officials to provide reasonable accommodations so that the disabled party has the same access to information as the nondisabled party.

**THE LAW MUST REQUIRE CONTINUAL TRAINING FOR JUDGES AND OTHER COURT OFFICIALS**

Myths and misconceptions about blindness are prevalent in society. The root cause of these myths and misconceptions is due to the sighted public’s innate fear of the lack of vision. Sighted people who suddenly find themselves in a dark room or who wake up in the dark think that they understand blindness. They do not appreciate that the problems of blindness can be mitigated through proper training in alternative skills. The real problem of blindness is not the lack of sight, but the attitudes about blindness held by the sighted public. All too often, the sighted public still views blind persons as helpless and dependent. To eliminate bias and discrimination, all family court professionals including judges should receive training on a regular basis concerning parents with disabilities and their children.

CONCLUSION

The Maryland General Assembly should adopt legislation that incorporates the recommendations concerning disability issued in the report of the Commission on Child Custody Decision-Making. Blind parents and caregivers should have the same rights as sighted parents and caregivers to raise their children. The care of children is a serious responsibility. Judges must consider many factors in order to make appropriate decisions concerning the welfare of children. Physical disability including blindness should not be equated with incapacity. Experience demonstrates that the protection under law is a very effective weapon against discrimination. Blind parents and blind caregivers can play a significant role in the lives of their children.