

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

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

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**Subject: Protecting the right of blind persons to parent children**

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**THE PROBLEM**

Blind persons who are competent parents have been denied the opportunity for adoption, or have lost child custody on the basis of blindness. The Maryland General Assembly attempted to remedy this problem in 2009. While this law was a step in the right direction, problems still remain.

**PROPOSED ACTION**

The Maryland General Assembly should amend the Family Law Article of the Annotated Code of Maryland to eliminate the bias and discrimination that blind persons face in court decisions regarding custody, visitation, foster care, guardianship, or adoption. To achieve this goal, the proposed legislation would prohibit any legal presumption that a blind parent is unfit to carry out parental or caregiving responsibilities. A party raising blindness as an issue would have the burden of proving by clear and convincing evidence that blindness impacts the best interest of the child. If the burden is met, the blind parent or prospective parent will be given the opportunity to demonstrate how the implementation of supportive parenting services can alleviate any concerns which have been raised. If a court determines that a blind parent’s right to custody, visitation, foster care, guardianship, or adoption should be denied or limited in any manner, the court must set forth specific written findings stating the basis for such a determination and explaining why the provision of supportive parenting services is not a reasonable accommodation that must be made to prevent such denial or limitation.

**BACKGROUND**

Today, social service agencies are often asked to conduct investigations to ensure that children receive proper care and adequate protection. Our courts are then 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, as well as, 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 indicated both by a study conducted by the National Council on Disability and by the 2014 report of the Maryland Commission on Child Custody Decision-Making.

In September 2012, the National Council on Disability issued a report entitled *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children*. This report states that parents with disabilities, “are the only distinct community of Americans who must struggle to retain custody of their children.” The report goes on to say “In families where the parental disability is physical, 13 percent have reported discriminatory treatment in custody cases. Parents who are deaf or blind report extremely high rates of child removal and loss of parental rights. Parents with disabilities are more likely to lose custody of their children after divorce, have more difficulty in accessing reproductive health care, and face significant barriers to adopting children.”

**THE STANDARD OF EVIDENCE 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. This language is too weak. The proposed language in the legislation will force the judge to be more specific about the reasons for his decision. The proposed language reads: “If a court determines that a blind parent’s right to custody, visitation, foster care, guardianship, or adoption should be denied or limited in any manner, the court must set forth specific written findings stating the basis for such a determination and explaining why the provision of supportive parenting services is not a reasonable accommodation that must be made to prevent such denial or limitation.”

**THE CURRENT LAW IS UNFAIR**

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 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 proceedings.

**THE RIGHT TO REASONABLE ACCOMODATION MUST BE GUARANTEED**

As a reasonable accommodation, the law should be changed to offer a blind parent the opportunity to demonstrate his abilities or to learn about supportive parenting services before limiting or denying custody rights. Our proposed legislation defines supportive parenting services as “…services that may assist a blind parent or prospective blind parent in the effective use of nonvisual techniques and other alternative methods to enable the parent or prospective parent to discharge parental responsibilities as successfully as a parent who is not blind”. Supportive parenting services may be accomplished by having the blind person work with other blind parents. They may learn that, for example, putting bells on an infant’s or toddler’s shoes will help the blind parent keep track of the child’s location. Another example of supportive parenting services may be the provision of training to help the blind parent improve her independent living and mobility skills. By providing supportive parenting services, the court will not only be abiding by the Americans with Disabilities Act, but also will avoid the unnecessary destruction of family bonds between a blind parent or caregiver and their children.

**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 awaken in the dark, think that they understand blindness. Yet, from these simple, scary moments, they could not possibly know that the problems of blindness can be mitigated through proper training in the alternative skills of blindness. 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 such 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 sets a proper legal standard of proof, shifts the burden to the party making the assertion, and provides supportive parenting services to blind parents or caregivers who need these services. 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. Blindness should not be equated with incapacity. Experience demonstrates that protection under the law is a very effective weapon against discrimination. Blind parents and blind caregivers can play a significant role in the lives of their children.