

Youth Law News

Journal of the National Center for Youth Law



Vol. XXVI No. 4

OCT-DEC
2005

Keeping Siblings Together Past, Present, and Future

“The relationships people share with siblings are often the longest-lasting they will ever have. Siblings are there from the beginning, and they are often still around after parents, and even spouses and children, are gone.”¹

By Emily Kernan

Many children report experiencing a great deal of pain, anxiety, guilt, grief, and “lost identity” when they enter the foster care system. Uprooted from their homes and families, a sense of detachment from their community, culture, and identity is common among these children. All too often, children in the child welfare system are also separated from their siblings. Many sibling groups are separated upon entry into the foster care system; less frequently, siblings are placed together in out-of-home care initially and later separated. Some siblings are adopted by different families. Sadly, many of these separated brothers and sisters lose contact with one another.

Sibling relationships help children achieve developmental milestones as well as provide emotional support, companionship, and comfort in times of change. When children are separated from their siblings, the research indicates that a number of children feel “they have lost a part of them-

selves,” which compounds the anxiety and pain they feel over separation from their parents and transition to a new home.² Siblings placed together use their relationships to understand who they are.³ Not only do siblings help children to adapt to such new and frightening situations, but also they remain important figures throughout their lives.⁴

For many years, the sibling relationship was largely ignored in social science research and child welfare laws. In recent decades, however, both research scientists and policymakers have come to acknowledge the importance of the sibling bond, leading to a flurry of research, policymaking, litigation, and development of innovative programs directing attention to these relationships.

While there is little national data on siblings in foster care, estimates indicate that well over half of children in foster care nationwide have one or more siblings also in care.⁵ Some sources state that as many as 75 percent of these foster children are placed apart from one or more of their siblings.⁶ Some

of the most recent and detailed data comes from California, among the most progressive states in recognizing the importance of the sibling bond. In October 2004, 67 percent of the child welfare population had at least one sibling in out-of-home care, and 34 percent of these children were placed apart from all of their siblings.⁷ In New York City, of the approximately 70 percent of children with siblings in care, close to half were placed apart from one or more of them.⁸ Finally, in Illinois, more than half of children in foster care had placements away from all of their siblings in 1998.⁹ As these data come from the three states leading the country in the development of policies that mandate attention to sibling relationships, it is likely that the figures from other states are even more troubling.

The Sibling Bond and Placement Outcomes

Systematic and comprehensive research on sibling relationships of children both inside and outside of the child welfare system began relatively recently. As a result, there is limited research solely investigating siblings in care.¹⁰ Some

¹ Linda Glover, *Overcoming Barriers to Keeping Siblings Together*, Connections, Spring 1997, reprinted at <http://www.nysccc.org/Siblings/overcomingbarriers.htm> (quoting American Demographics and Consumer Trends).

² Mary Anne Herrick & Wendy Piccus, *Sibling Connections: The Importance of Nurturing Sibling Bonds in the Foster Care System*, 27 *Children and Youth Services Review* 845, 849 (2005).

³ *Id.*

⁴ Rebecca L. Hegar, *Sibling Placement in Foster Care and Adoption: An Overview of International Research*, 27 *Children and Youth Services Review* 717, 719 (2005).

⁵ See Rebecca L. Hegar, *Sibling Placement in Foster Care and Adoption: An Overview of International Research*, 27 *Children and Youth Services Review* 717, 718 (2005). See also University of Minnesota, Center for Advanced Studies in Child Welfare (CASCW), *Siblings in Foster Care: Maintaining the Ties that Bind*, Practice Notes, No. 9, Fall 2000, http://ssw.che.umn.edu/img/assets/11860/practice_notes9.pdf

⁶ See, e.g., CASCW, *supra* n. 2. See also Christopher Phillips, *Foster-care System Struggles to Keep Siblings Living Together*, 29 *APA Monitor* (1998), <http://www.apa.org/monitor/jan98/sibs.html>.

⁷ Center for Social Services Research, University of California, Berkeley, *Child Welfare Services Reports, Siblings Tables*, March 2005, at <http://cssr.berkeley.edu/cwscmsreports/pointintime/fostercare/childwel/siblings.asp>.

⁸ Casey Family Programs National Center for Resource Family Support (NCRFS), *Siblings in Out of Home Care: An Overview*, http://www.hunter.cuny.edu/socwork/nrcfcp/downloads/sibling_overview.pdf.

⁹ Sonya J. Leathers, *Separation from Siblings: Association with Placement Adaptation and Outcomes among Adolescents in Long-Term Foster Care*, 27 *Children and Youth Services Review* 793, 794 (2005).

¹⁰ Fred Wulczyn & Emily Zimmerman, *Sibling Placement in Longitudinal Perspective*, 27 *Children and Youth Services Review* 741, 742 (2005).

of the gaps stem from the nature of the research itself—merely defining “siblings” and what constitutes placement “together” creates difficulties for researchers.¹¹ However, the research that is available overwhelmingly indicates that maintenance of the sibling bond is crucial to child development and adjustment, especially for children who are separated from the only homes and parents they have ever known and are placed in unfamiliar settings with strangers.

Brothers and sisters provide emotional support, comfort, and a sense of stability, belonging, and continuity. They may serve as allies, confidants, companions, and sources of love.¹² Siblings also play a crucial role in the development of one’s identity and self-esteem. According to leading researchers on the sibling bond: “[S]ibling relationships validate the child’s fundamental worth as a human being [and] produce hope and motivation.”¹³ Many interviews with youth who are in or who have experienced the foster care system indicate that children usually want to be placed with their siblings, and when separated, to maintain frequent visits and to receive information about their siblings.¹⁴

One of the most common positive outcomes cited as associated with joint placement is greater placement stability, meaning that children who are placed with their siblings tend to experience fewer disruptions in their placements.¹⁵ In her study, Sonya J.

Leathers found that siblings placed together were less likely to experience premature placement disruption than siblings who were separated. Leathers views the ability to adapt to foster care as the mediating variable explaining this correlation.¹⁶ Researchers Ilene Staff and Edith Fein found that “[p]airs placed together were significantly more likely to both stay in the initial placement than pairs who were initially placed separately.”¹⁷ Leathers also found that joint placement was positively associated with adoption.¹⁸ Furthermore, siblings who are separated at any point during their time in the foster care system are more likely to exhibit problematic behavior than those who are not separated.¹⁹ Also, siblings placed together frequently score higher than siblings placed apart on a variety of CBCL (Child Behavior Checklist) measures.²⁰ They also often show more positive dealings with peers, fewer emotional and behavioral problems, and better functioning at school.²¹ Joint placement has also been found to increase the likelihood of family reunification.²²

It is critical to note that consistent joint placement with some siblings appears to be more important than the total number of siblings placed together in terms of achieving positive outcomes.²³ Thus, children who are placed with some of their siblings may still obtain the advantages of placement with all of their siblings (sometimes referred to as an “intact” placement).

Obstacles to Joint Placement

Despite consistent findings that the sibling bond is crucial to child development and adjustment, there are significant obstacles to keeping siblings together once they enter the child welfare system. Researchers note that recognizing and addressing these obstacles “is an essential first step toward adequate service planning.”²⁴ One of the most common reasons given for separation is that children in sibling groups often have diverse needs.²⁵ Many children entering care have special needs, which often require one-on-one attention. Many caseworkers assume that such focused attention would not be possible for foster parents taking in sibling groups.²⁶ Another significant obstacle is that it is often difficult to find foster and adoptive parents willing to take in sibling groups.²⁷ Challenges associated with caring for them are often compounded by the children’s emotional and behavioral problems or contention within the group.²⁸ Moreover, the additional time and effort to find and maintain placements for sibling groups are often not met by agencies with excessive case loads and limited resources.²⁹ Difficulty maintaining sibling ties also results from the fact that siblings frequently enter care at different times (often referred to as “serial entry”).³⁰ Sometimes children even enter care through different agencies, possibly in different jurisdictions, and some children may never have shared a home prior to placement. In these cases,

11 *Id.* at 742.

12 Herrick & Piccus, *supra* n. 9, at 851.

13 *Id.*

14 *Id.*

15 See, e.g., Leathers, *supra* n. 6, at 795.

16 *Id.* at 812-13 (“[T]he degree to which youth were integrated within their foster homes appeared to play a role in the increased risk for placement disruption these youth... [C]aseworkers reported that youth placed with a consistent number of siblings throughout their stay had a stronger sense of integration and belonging in their foster homes than those who were either separated from all of their siblings while in foster care or placed with siblings inconsistently over time.”)

17 *Id.* at 795 (citing Ilene Staff & Edith Fein, *Together or Separate: A Study of Siblings in Foster Care*, 71 *Child Welfare* 257 (1992)).

18 *Id.* at 813 (“Children placed with the same number of siblings consistently throughout their stay in foster care had significantly higher chances for adoption or subsidized guardianship than children placed alone,” even after controlling for foster home integration.)

19 *Id.* at 796.

20 Hegar, *supra* n. 11, at 731.

21 Herrick & Piccus, *supra* n. 9, at 846.

22 Daniel Webster, Aron Shlonsky, Terry Shaw & M. Alan Brookhart, *The Ties that Bind II: Reunification for Siblings in Out-of-Home Care Using a Statistical Technique for Examining Non-Independent Observations*, 27 *Children and Youth Services Review* 765, 773-74 (2005) (“Siblings initially placed in the same home had an increased likelihood of reunification. Those placed initially into the same setting with all their siblings had almost twice the odds of reunifying, and those with at least one other sibling had almost one-third greater odds of an increased likelihood of reunifying than children not placed with their siblings. The model suggested an increased likelihood of reunification for children who entered foster care within 1 month of all of their siblings.”) *But see* Leathers, *supra* n. 6, at 813 (finding no correlation between placement type and likelihood of reunification).

23 Leathers, *supra* n. 6, at 814.

24 *Id.* at 795.

25 See, e.g., *Id.* at 794.

26 National Adoption Information Clearinghouse, *The Sibling Bond: Its Importance in Foster Care and Adoptive Placement* (1992), http://naic.acf.hhs.gov/pubs/f_sibling.cfm.

27 Wulczyn & Zimmerman, *supra* n. 7, at 742. Herrick & Piccus, *supra* n. 9, at 853.

28 See Leathers, *supra* n. 6, at 794-95.

29 Herrick & Piccus, *supra* n. 9, at 853. Diane Riggs, *Sibling Ties Are Worth Preserving*, *Adoptalk*, spring 1999, reprinted, at <http://www.nysccc.org/Siblings/sibties.htm>.

30 Wulczyn & Zimmerman, *supra* n. 7, at 742. See Hegar, *supra* n. 11, at 723.

there may be no record of their relationship.³¹

Some child welfare workers think it is important to separate siblings who take on the role of parent to their younger siblings,³² and to separate siblings who exhibit contentious relationships.³³ Some also worry that siblings may band together to undermine the efforts of their foster/adoptive parents.³⁴

However, many child welfare experts reject these reasons and others as “myths.” For example, Casey Family Programs National Center for Resource Family Support (NCRFS) argues that “informed practice tells us that separating [a child who has taken on the role of parent] from younger siblings” hurts all of the children involved.³⁵ The younger children not only lose their parents, but also the older sibling with whom they have developed a strong bond. The older child may experience guilt and anxiety upon separation because he/she feels responsible for the younger siblings.³⁶ Also, NCRFS points out that sibling rivalry is common and that separating siblings who experience it “both increases the trauma of removal and denies children the opportunity to learn to iron out their differences in a safe and supportive environment.”³⁷ The Center also worries that separating a child with special needs may actually focus too much attention on that child, “distorting [his/her] sense of place in the family and possibly overwhelming him or her,” while maintaining and developing “normal relationships” with siblings and new family members could help the child.³⁸

Determining why children are placed apart from their siblings is crucial to designing policy initiatives and programs to address the problem of sibling separation. Studies show that size and age of the sibling group, the diversity of needs presented by individual children in the group, and serial entry into care are all directly correlated with likelihood of separation.³⁹ However, while increasing sibling group size decreases the likelihood that a child will be placed with all of his/her siblings, it increases the likelihood that the child will be placed with at least one sibling.⁴⁰

Large age gaps in the sibling group often result in separation.⁴¹ In their longitudinal study, Researchers Fred Wulczyn and Emily Zimmerman found that less than half of sibling groups enter the foster care system on the same day, but that those siblings who do enter care together have a much greater likelihood of being placed together.⁴² Placing children with relatives often results in keeping siblings together.⁴³ Furthermore, initial placement status is extremely important to maintaining sibling ties. Brothers and sisters who are placed together upon entry into care are more likely to be placed together later, while siblings who are placed apart initially are unlikely to be reunified later.⁴⁴

Policymaking

Legislation or oversight mechanisms to increase attention to the importance of the sibling bond are scarce at the federal level. The Adoption and Safe Families Act of 1997 (ASFA), emphasizes expedited permanency planning,

termination of parental rights, and adoption over family reunification and placement with relatives. William Patton and Amy Pellman, experts in sibling rights, argue that “the dictates of the ASFA are antagonistic to siblings’ rights to association, with policies of expedited permanency and adoptive preference that often unreasonably split strongly bonded siblings.”⁴⁵ On the other hand, children in sibling groups are often recognized as “hard to place” and thus receive some federal subsidies.⁴⁶ Also, the federal Child and Family Services Reviews (CFSR) include placement with siblings and visiting siblings in care as two indicators to be evaluated under Permanency Outcome 2, which deals with the maintenance of family bonds.⁴⁷

Despite the dearth of national guidance in the area, all states have made some progress in directing attention to sibling relationships in the child welfare system.⁴⁸ Statutory mandates and guidelines, sibling registries, and regulations for child welfare agencies established across the country indicate a widespread recognition of the importance of maintaining sibling bonds. Statutes in more than half of the states directly refer to siblings’ needs, most commonly dealing with placement, permanency planning, and visitation.

Placement and Permanency Planning

Some states include consideration of the sibling bond when determining what is in the child’s best interests regarding placement and “permanency.”⁴⁹ Some mandate that caseworkers make “reasonable efforts” to place sib-

31 See Hegar, *supra* n. 11, at 723. Riggs, *supra* n. 29. Bridgette Lery, Terry V. Shaw & Joseph Magruder, *Using Administrative Child Welfare Data to Identify Sibling Groups*, 27 Children and Youth Services Review 783, 784 (2005) (pointing to the problem of identifying sibling groups).

32 Herrick & Piccus, *supra* n. 9, at 850. Riggs, *supra* n. 29. National Adoption Information Clearinghouse, *supra* n. 26.

33 National Adoption Information Clearinghouse, *supra* n. 26.

34 *Id.*

35 NCRFS, *supra* n. 5.

36 *Id.*

37 *Id.* However, most find abusive relationships among siblings to be a legitimate reason for separation. See, e.g., Leathers, *supra* n. 6, at 795. See also National Adoption Information Clearinghouse, *supra* n. 26.

38 NCRFS, *supra* n. 5.

39 Hegar, *supra* n. 11, at 731. Wulczyn & Zimmerman, *supra* n. 7, at 761-62.

40 Webster et al., *supra* n. 22, at 778.

41 Wulczyn & Zimmerman, *supra* n. 7, at 762.

42 *Id.*

43 *Id.*

44 *Id.* In fact, “three-quarters of children initially placed apart from their siblings were still separated after a year in foster care.”

45 William Wesley Patton & Amy M. Pellman, *The Reality of Concurrent Planning: Juggling Multiple Family Plans Expeditiously without Sufficient Resources*, 9 U.C. Davis J. of Law & Policy 171, 192 (2005).

46 See William Wesley Patton & Sara Latz, *Severing Hansel from Gretel: An Analysis of Siblings’ Association Rights*, 48 U. Miami L. Rev. 745, 746 (1994).

47 U.S. Department of Health & Human Services, Administration for Children & Families, *General Findings from the Federal Child and Family Services Review*, <http://www.acf.hhs.gov/programs/cb/cwrp/results/statefindings/genfindings04/ch1.htm>.

48 See CASCW, *supra* n. 2.

49 See, e.g., 705 Illinois Compiled Statutes (ICLS) 405/1-3(4.05). Aron Shlonsky, Jennifer Bellamy, Jennifer Elkins & Caryn J. Ashare, *The Other Kin: Setting the Course for Research, Policy, and Practice with Siblings in Foster Care*, 27 Children and Youth Services Review 697, 702-03 (2005).

lings together (e.g., Hawaii).⁵⁰ Many states have laws establishing a preference for placing siblings together, while others take it one step further to establish a rebuttable presumption that it is in children's best interests to stay with their siblings (e.g., California, Ohio, Massachusetts, New York, Minnesota, and Alabama⁵¹).⁵² Some states are initiating recruitment efforts to attract foster families willing to take sibling groups (e.g., New Jersey, Kentucky, Illinois).⁵³ Many states also include sibling groups in a "special needs" category that enables them to qualify for adoption assistance (e.g., Minnesota).⁵⁴ States may also include a sibling group exception in foster licensing requirements concerning the number of children foster families are allowed to take (e.g., Minnesota and California).⁵⁵

Visitation

Only a few states have established a "right" to sibling visitation (e.g., Connecticut, Kansas, Louisiana, Massachusetts, and Maryland).⁵⁶ States more commonly establish the sibling relationship as one factor in determining children's best interests when making placement decisions.⁵⁷ Some states, such as New York, establish a statutory presumption supporting sibling relationships after child removal.⁵⁸ New York law requires the state to include a sibling visitation plan in the permanency petition, but the state is not required to aid in the visitation process.⁵⁹ In the last decade, several states have passed statutes that grant siblings standing to request visitation with one another after separation (e.g., Maryland and Massachusetts).⁶⁰ However, researchers have noted that this right to standing may be "illusory absent a requirement that the sibling be notified of the right to visit and/or

the right to have counsel represent the sibling in court."⁶¹

The law concerning post-adoption sibling visitation has changed dramatically in the last decade. Rather than balancing the rights of the adoptive parents with the rights of the siblings, most states require a best interests analysis to determine if siblings should have post-adoption contact (e.g., Florida). Some states go one step further to ensure sibling contact after separation into different adoptive placements by requiring state agencies to find adoptive parents who will allow sibling visitation and communication (e.g., Illinois and West Virginia).⁶² Illinois, with some of the most comprehensive legislation regarding sibling visitation, requires bimonthly visits among separated siblings (unless certain extenuating circumstances arise) and mandates that foster parents, children, and caseworkers work together to create a "sibling visitation plan" detailing how long visits will last, how often they will be, and possibly where they will be and what supervision is necessary.⁶³ Visitation goals are incorporated into case plans and are reviewed periodically. DCFS also helps to facilitate visitation and communication by urging foster parents to promote such contact and offering to pay for contact by mail.⁶⁴

While the trend is toward recognizing sibling relationships at every stage of the dependency process, no state "has a body of legislation that holistically addresses sibling relationships."⁶⁵ It is unfortunate that "although most jurisdictions recognize the strength and value of the sibling bond in their statutory schemes, unless a statute mandates that the children be kept together absent the showing of harm to the children, siblings are often placed in separate foster or adoptive

homes. The less urgent language of most statutes permits the state greater flexibility in disrupting sibling groups."⁶⁶

California's Progressive Policymaking

California is at the forefront of progressive policymaking in the area of sibling rights. The newest amendment to the California Welfare and Institutions Code (January 2002) created a sibling exception to the provisions regarding termination of parental rights: If the court finds by clear and convincing evidence that a child is likely to be adopted, it will terminate parental rights, unless it finds a compelling reason for determining that termination would be detrimental to the child due to...substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.⁶⁷

California law also mandates that child welfare workers attempt to "identify siblings of children who enter the child welfare system" and to make joint placements unless it is "not in the best interests of one or more siblings." This applies to siblings removed at the same time as well as to those removed consecutively.⁶⁸ When joint placement is not feasible, they must create opportunities for regular contact.⁶⁹ The law requires "clear and convincing evidence that sibling interaction is detrimental"

⁵⁰ William Wesley Patton, *The Status of Siblings' Rights: A View into the New Millennium*, 51 DePaul L. Rev. 1, 23 (2001).

⁵¹ Sharon G. Elstein, *Making Decisions about Siblings in the Child Welfare System*, 18 Practice: Helping Lawyers Help Kids 97, 104 (1999).

⁵² Ellen Marrus, *Fostering Family Ties: The State as Maker and Breaker of Kinship Relationships*, 2004 U. Chi. Legal F. 319, 333 (2004).

⁵³ Elstein, *supra* n. 51, at 104.

⁵⁴ See, e.g., Minnesota Rule 9560.0081. CACSW, *supra* n. 2.

⁵⁵ See, e.g., Minnesota Rule 9545.0040. CACSW, *supra* n. 2.

⁵⁶ Patton, *supra* n. 50, at 20-23.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Shlonsky et al., *supra* n. 49, at 703.

⁶⁰ Patton, *supra* n. 50, at 20.

⁶¹ *Id.*

⁶² *Id.* at 22-24.

⁶³ Elstein, *supra* n. 51, at 105. Riggs, *supra* n. 29.

⁶⁴ Riggs, *supra* n. 9.

⁶⁵ Herrick & Piccus, *supra* n. 9, at 856

⁶⁶ Marrus, *supra* n. 52, at 333.

⁶⁷ Cal. Welf. & Inst. Code, S366.26(c)(1)(E) (West 2002).

⁶⁸ Cal. Welf. & Inst. Code, S 16002. Shlonsky et al., *supra* n. 49, at 702.

⁶⁹ See Lery et al., *supra* n. 31, at 784.

if the state wishes to terminate contact.⁷⁰ NCRFS notes that California law also requires that child welfare workers and courts take sibling relationships into account “at every stage of the placement process,” including specific “steps that courts and agencies must take and requirements for documentation.”⁷¹ In addition, a 1999 amendment sought to generate post-adoption interaction by requiring the inclusion of a sibling visitation plan in the child’s adoption case plan and by allowing courts to include provisions regarding sibling contact in the adoption order (assuming the adoptive parents consent).⁷²

Litigation has provided another vehicle through which the sibling bond has gained greater recognition.

Challenges Brought under California’s Sibling Exception

The addition of the sibling exception (section 366.26(c)(1)(E)) to California’s Welfare and Institutions Code in 2002 has spawned a number of cases. Typically, parents have used the exception to challenge the termination of their parental rights (TPR). Courts have been largely unsympathetic to these claims.⁷³ For example, in *In re Celine R.*, a case receiving a great deal of attention, the court rejected claims that TPR would upset an older half sister placed in long-term foster care after her two younger sisters were released for adoption by their paternal uncle. The court held that the sibling exception deals only with the effects of TPR on the children freed for adoption and that the statutory language reveals a presumption that TPR serves the child’s best interest upon a finding that the child is likely to be adopted.⁷⁴

In *In re L.Y.L.*, another important case in which a mother challenged the termination of her parental rights under the sibling exception, the court established a two-pronged test to assess claims made under section 366.26(c)(1)(E).⁷⁵ First the court must assess the nature and extent of the sibling relationship to ascertain whether TPR would substantially interfere with it. Second, if it would interfere, the court must “weigh the child’s best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption.”⁷⁶ In this case, the court of appeals found that separating the siblings would not be detrimental to the child and that the advantages of permanent placement through adoption were greater than the benefits of staying with her sibling.⁷⁷ The appellate court in *In re Megan S.* made a similar finding.⁷⁸

Consent Decrees

A number of consent decrees arising out of lawsuits against state agencies due to the treatment of children in the child welfare system have included provisions requiring the state to consider sibling relationships in their policies and practices. For example, as a result of the consent decree in *Jesse E. v. New York City Department of Social Services*, the Child Welfare Administration reformed its foster care system to increase the number of joint sibling placements.⁷⁹ New York City mandates joint placement unless it would jeopardize the health, safety, or welfare of one or more siblings.⁸⁰

In Utah, the *David C. v. Leavitt* settlement agreement requires that the recruitment plans implemented by the Division “take into account the importance of placing siblings together.”⁸¹

Finally, in Alabama, the *R.C. v. Hornsby* consent decree includes a provision stating: “Siblings shall be placed together.”⁸² The Final Report in that case indicates that the consent decree has affected policy and practice in the state: “Sibling groups are placed together in about 50 to 65 percent of families. When the monitor has reviewed sibling groups not placed together, in most of the situations, the separation was justified. When children are placed apart, it is much more likely that an effective plan of visitation will be put into place.”⁸³

Claiming a Constitutional Right to Sibling Association

Although there has been an increased recognition in statutes and lawsuits of the importance of the sibling relationship, leading researchers in the area note that “sibling association often becomes the first thing to fall by the wayside as courts and caseworkers attempt to balance competing factors in making best interests determinations for children in state care.”⁸⁴ These researchers conclude that “[i]f sibling association is to be truly protected and promoted it must be recognized as a fundamental right, protected by the Constitution.”⁸⁵

Supreme Court’s precedents governing (1) the constitutional right to family privacy and integrity⁸⁶ and (2) the right to intimate association, under both the First and Fourteenth Amendments, provide two separate bases for a federal constitutional right to sibling association.⁸⁷ However, “the extent of legal protection accorded to the sibling relationships of children has not been resolved and involves complex legal questions.”⁸⁸ To date, the Supreme Court has “refused to

⁷⁰ Cal. Welf. & Inst. Code, § 16002(b). Shlonsky et al., *supra* n. 49, at 702.

⁷¹ NCRFS, *supra* n. 5.

⁷² Riggs, *supra* n. 29.

⁷³ See, e.g., *In re Celine R.*, 102 Cal. App. 4th 717 (2002). *But see Abraham L. v. Superior Court of Los Angeles County*, 112 Cal. App. 4th 9 (2003) (overturning the juvenile court’s order terminating reunification and holding that under the amended California Welfare and Institutions Code, the court must hold a hearing to consider and report on certain factors related to the sibling bond).

⁷⁴ Center for Families, Children, & the Courts (CFCC), *Dependency Case Law: In re Celine R.*, <http://www.courtinfo.ca.gov/programs/cfcc/resources/caselaw/depend/225.htm>.

⁷⁵ Center for Families, Children, & the Courts (CFCC), *Dependency Case Law: In re L.Y.L.*, <http://www.courtinfo.ca.gov/programs/cfcc/resources/caselaw/depend/216.htm>.

⁷⁶ *Id.* (quoting *In re L.Y.L.*, 101 Cal. App. 4th 942 (2002)). See also *In re Jacob S.*, 104 Cal. App. 4th 1011 (2002).

⁷⁷ CFCC, *supra* n. 78.

⁷⁸ Center for Families, Children, & the Courts (CFCC), *Dependency Case Law: In re Megan S.*, <http://www.courtinfo.ca.gov/programs/cfcc/resources/caselaw/depend/242.htm>. See also *In re Erik P.*, 104 Cal. App. 4th 395 (2002).

⁷⁹ Riggs, *supra* n. 29.

⁸⁰ NCRFS, *supra* n. 5.

⁸¹ *David C. v. Leavitt*, Settlement Agreement.

⁸² *R.C. v. Hornsby*, Consent Decree.

⁸³ *R.C. v. Hornsby*, Final Report.

⁸⁴ Shlonsky et al., *supra* n. 49, at 702.

⁸⁵ *Id.*

⁸⁶ See, e.g., *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

⁸⁷ See, e.g., *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984).

⁸⁸ Shlonsky et al., *supra* n. 49, at 701.

decide whether a right to sibling association exists.”⁸⁹

Supreme Court case law focusing on the right to intimate association provides one potential avenue to secure a right to sibling association. In *Roberts v. United States Jaycees*, the Supreme Court stated that “because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State.”⁹⁰ The Court went on to recognize that “individuals draw much of their emotional enrichment from close ties with others. Protecting these relationships from unwarranted state interference therefore safeguards the ability independently to define one’s identity that is central to any concept of liberty.”⁹¹ The Court further stated that “[t]he personal affiliations that exemplify these considerations, and that therefore suggest some relevant limitations on the relationships that might be entitled to this sort of constitutional protection” include “cohabitation with one’s relatives . . . Family relationships, by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs, but also distinctively personal aspects on one’s life.”⁹²

A few lower courts have found a constitutional right to maintain the sibling relationship. The leading case is *Aristotle P. v. Johnson*, in which seven children in foster care sued the Illinois Department of Child and Family Services for violating their constitutional rights under the First and Fourteenth Amendments by separating them from one another and failing to provide visits on a reason-

able basis.⁹³ In ruling on defendants’ motion to dismiss, the district court found that plaintiffs had stated a § 1983 claim for violation of their First Amendment and substantive due process rights.⁹⁴ Subsequently, the parties entered into a consent decree, providing for placement of siblings together when possible, visitation and other contacts among siblings placed apart, training of caseworkers, and monitoring and data collection over a three-year period. While *Aristotle P.* does indicate that some courts may find a fundamental liberty interest in sibling association, the decision may be limited to siblings with a powerful and well-established relationship, which seemed to lie at the heart of the decision.⁹⁵

In *L. v. G.*, adult emancipated children brought an action to obtain visitation with their minor siblings at a location away from the minor siblings’ residence with their parents due to animosity between the adult children and their parents.⁹⁶ The New Jersey Superior Court Children’s Division held that “siblings possess the natural, inherent and inalienable right to visit with each other . . . subject to the requirement that such visitation be in the best interest of a minor child.”⁹⁷ Notably, the Court stated that “[a] sibling relationship can be an independent emotionally supportive factor for children in ways quite distinctive from other relationships, and there are benefits and experiences that a child reaps from a relationship with his or her brother(s) or sister(s) which truly cannot be derived from any other.”⁹⁸ The court ultimately found, however, that visitation was not in the best interests of the minor children at issue.⁹⁹

Finally, in *Rivera v. Marcus*, the adult half-sister of two children served as their “surrogate mother,” but when

their biological mother was institutionalized, legal custody was given to the State Welfare Department. The adult half-sister challenged the decision under the Fourteenth Amendment, and the Court of Appeals for the Second Circuit held that “[t]he Ross children surely possess a liberty interest in maintaining, free from arbitrary interference, the family environment they have known since birth.”¹⁰⁰

Rather than finding a constitutional right to associate, courts often make a best interests determination, comparing “the effects of separating the siblings from one another versus separating the siblings from their different foster parents.”¹⁰¹ For example, in the *Interests of David A.*, the Connecticut Superior Court did not consider whether the siblings at issue had a constitutional right to association or even to a presumption in favor of joint placement, and instead relied on a best interests standard.¹⁰² Patton remarks that “*David A.* substantially undervalues the sibling bond and right to association by reducing sibling association to a mere variable in a best interest decision.”¹⁰³

Many had high hopes that the Supreme Court would review the 1998 case *Adoption of Hugo*, in which the Supreme Judicial Court of Massachusetts rejected the claim of a constitutional right to sibling association and even refused to “give presumptive weight to the sibling relationship.”¹⁰⁴ The Massachusetts court held instead that the sibling bond should only be considered as one factor when making custody decisions. The court concluded that the best interests standard mandated by state law is “a flexible one, and the weight to be accorded its several considerations, including the importance of sibling relations, will vary with the circumstances.”¹⁰⁵ The Supreme

89 *Id.*

90 Shlonsky et al., *supra* n. 49, at 701 n.3 (quoting *Roberts v. United States Jaycees*, 468 U.S. at 618).

91 *Id.* (quoting *Roberts*, 468 U.S. at 619 (1984)). Although this *Roberts* concerned whether or not the Jaycees were required to admit women in its local chapters in Minnesota, the case is significant for its analysis of the right to association.

92 *Roberts*, 468 U.S. at 619.

93 *Aristotle P. v. Johnson*, 721 F. Supp. 1002 (ND Ill. 1989).

94 *Id.* at 1006-07, 1009-10.

95 Shlonsky et al., *supra* n. 49, at 705.

96 *L. v. G.*, 497 A.2d 215, 217 (1985).

97 *Id.* at 220-22.

98 *Id.* at 220-21.

99 *Id.* at 223.

100 National Legal Research Group, Inc., *Sibling Visitation Rights* (1997), <http://divorceource.com/research/dl/visitation/97may85.shtml> (quoting *Rivera v. Marcus*, 696 F.2d 1016, 1026 (2d Cir. 1982)).

101 Patton, *supra* n. 50 at 11.

102 *Id.* at 10-11.

103 *Id.* at 11.

104 Hegar, *supra* n. 2, at 731; *Adoption of Hugo*, 700 N.E.2d 516, 524 (1998).

105 *Adoption of Hugo*, 700 N.E.2d at 524.

Court, however, denied certiorari.¹⁰⁶

Overall, courts appear to be a long way from finding a fundamental liberty interest in sibling association. This hesitance may be due partly to fear of the consequences of placing that right on an equal plane with the right to parental autonomy over children.¹⁰⁷ Some predict that if the Supreme Court does grant a constitutional right to sibling association, it will only extend to biological siblings who have strong existing bonds.¹⁰⁸ Nonetheless, more and more courts are recognizing the importance of the sibling relationship when making custody decisions.

Innovative Initiatives Help Fill Gaps

Despite the absence of a constitutional right to sibling association and a comprehensive and consistent set of laws regarding siblings in the child welfare system, a number of innovative programs aimed at facilitating sibling contact have sprung up around the country to meet the needs of foster children. One of the first such programs was Neighbor-to-Neighbor, the brainchild of Gordon Johnson, president and CEO of the Jane Addams Hull House Association in Chicago. His earlier work directing the Illinois Department of Children and Families led him to conclude that “[s]plitting up siblings is the most serious problem in our child welfare system today” and, in 1994, to create a unique program that recruits foster parents to care for large sibling groups.¹⁰⁹ Through Neighbor-to-Neighbor, the Hull House hires foster parents as full-time employees, paying them salaries and benefits.¹¹⁰ Neighbor-to-Neighbor takes in about 100 children at a time and places each group in a different home. It keeps siblings in their home communities in order to facilitate communication and supportive relationships between

the foster parents and the biological parents.¹¹¹ The concept was “to keep children together with one family,” with the assistance of a professional caregiver, while also working with the biological parent to help them with parenting skills.¹¹² The program also facilitates permanency planning because ascertaining which permanency goal is in the best interests of the children often depends on the parenting practices and abilities of the biological parents and the interactions they have with their children while separated. When siblings are placed together through Neighbor-to-Neighbor, assessments of the biological parents are made within the foster home (rather than by a caseworker) by the foster parents, who have received training from caseworkers. Johnson also remarks on the benefit of the program for the foster parents themselves, who receive support and assistance. Neighbor-to-Neighbor has been extremely successful in making joint placements.¹¹³

After his success in Chicago, Johnson brought the Neighbor-to-Neighbor model to Florida, where it took on the name Neighbor-to-Family. The goals of the program include providing sibling groups with safe foster family homes within their home community; offering a variety of services to these children to help them achieve healthy emotional, physical, social, and academic growth; and enhancing the bonds among siblings and other family members.¹¹⁴

Using a similar community-based and family-centered approach, the Annie E. Casey Foundation designed Family-to-Family, which offers resources and technical aid to child welfare agencies working to create neighborhood-based systems for placing children in care. The program was

founded in 1992, and since that time has been field tested and established in several states and Los Angeles County. The program aims to enhance community-based foster family networks so that children removed from their homes may remain in their communities and maintain relationships with their siblings.¹¹⁵

Camp to Belong is another innovative program that seeks to reunite separated siblings in a weeklong summer camp setting. The program was designed by two sisters who had been separated while in the foster care system. It is funded through donations and grants and has provided opportunities for hundreds of children to form strong bonds with their siblings.¹¹⁶ A similar program was started in New Jersey by the Division of Youth and Family Services.¹¹⁷ Project Visitation, which facilitates visits between separated siblings in foster care, was established by the Na Keiki Law Center, the Family Court of the First Circuit, the Hawaii State Department of Human Services, Friends of Foster Kids, and the Hawaii Foster Parents Association.¹¹⁸

Other efforts are occurring on a smaller scale around the country. A program was initiated in New York City in 1997 to provide rent-free housing and extra benefits for foster parents who care for sibling groups. Similarly, in Kentucky, foster parents willing to take in sibling groups receive financial rewards. Kansas included provisions relating to joint placement of siblings in its contracts when it privatized its child welfare system (e.g., 65 percent of children with siblings in out-of-home care must be placed with at least one sibling). Furthermore, requests to

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 38.

¹⁰⁸ See, e.g., Shlonsky et al., *supra* n. 49, at 705.

¹⁰⁹ Cheryl Lawrence & Vanessa Lankford, *Sibling Loss: The Hidden Tragedy of the Child Welfare System*, Adoptive Families, December 1997, <http://www.nysccc.org/Siblings/hiddentragedy.htm> (quoting Gordon Johnson).

¹¹⁰ Phillips, *supra* n. 3.

¹¹¹ Lawrence & Lankford, *supra* n. 102.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ <http://www.ounce.org/FosterEval.html>.

¹¹⁵ <http://www.aecf.org/initiatives/familytofamily/overview.htm>.

separate siblings into different adoptive homes must be examined by the program director, who allows such separation only in cases with “extenuating circumstances.” Finally, in its Internet photo listing, every child’s profile page includes a list of their siblings, links to each of their profile pages, and a conspicuous note that the siblings should be placed together.¹¹⁹

From Research to Policy

The recent findings on the benefits of sibling bonds, the characteristics of separated sibling groups, the reasons for separation, and the positive outcomes of joint placement have sparked recommendations for addressing the problem of sibling separation. Key recommendations of social scientists and child welfare experts to improve casework practices include:

- Everyone associated with the child welfare system should become familiar with the research, as such awareness should lead to increased resources and attention directed at the problem.¹²⁰
- Siblings should be placed together in every case, especially from the point of entry into the system, unless it would harm one or more of the siblings.¹²¹ Even in cases where siblings may have contentious relationships, caseworkers should try counseling and other services before separating the group on that basis.¹²²
- More resources should be provided for foster parents willing to care for sibling groups.¹²³
- Caseworkers and foster parents should receive training in the importance of the sibling bond, as well as specialized training in caring for sibling groups.¹²⁴
- Caseworkers should reserve foster parents who are willing to take in sibling groups for such groups rather than giving them the first child who needs placement.¹²⁵
- Children in foster care should be involved in the decisions made in their interest and permitted to express their desires regarding placement and contact with their siblings.¹²⁶
- Photographs of sibling groups, as well as descriptions of the siblings’ relationships and statements that the siblings must be placed together, should be used when recruiting foster families.¹²⁷
- States should adopt policies that require visitation among separated siblings and assistance from caseworkers, foster parents, and adoptive parents in efforts to maintain sibling contact.¹²⁸
- For siblings who have been separated, phone calls, letters, emails, and videoconferencing, as well as uniting siblings at larger events, may help to maintain sibling ties. Siblings could also visit the same therapist and foster families of separated siblings could employ the same respite care provider.¹²⁹
- The structure of foster care programs that are designed to care for individual children with specific needs should be changed so that they are instead designed to care for sibling groups with diverse needs.¹³⁰

Conclusion

Social science research demonstrates the importance of maintaining sibling ties so that fewer children are forced to experience the trauma of separation. Legislators and the courts have begun responding, but far too many children continue to be further traumatized by the loss of their brothers and sisters.

“When we split up foster children from their brothers and sisters, we are taking away the only connection they still have to the people they love. The pain literally drives children crazy,” said Gordon Johnson of the Jane Addams Hull House Association.¹³¹

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¹¹⁶ Elstein, *supra* n. 51, at 105.

¹¹⁷ Leslie Brody, *Siblings Split Up by Foster Care Commune at Camp*, *The Record*, August 23, 2001, reprinted at <http://www.nysccc.org/Siblings/siblingcamp.htm>.

¹¹⁸ <http://vlsh.org/01/services/nakeiki.htm>.

¹¹⁹ Riggs, *supra* n. 29.

¹²⁰ See, e.g., Webster et al., *supra* n. 22, at 777.

¹²¹ See, e.g., Herrick & Piccus, *supra* n. 9, at 847. See also Wulczyn & Zimmerman, *supra* n. 7, at 762.

¹²² See, e.g., Herrick & Piccus, *supra* n. 9, at 854.

¹²³ See, e.g., Wulczyn & Zimmerman, *supra* n. 7, at 762.

¹²⁴ Leathers, *supra* n. 6, at 816. Wulczyn & Zimmerman, *supra* n. 7, at 762-63.

¹²⁵ Leathers, *supra* n. 6, at 816.

¹²⁶ *Id.* at 847 (“[W]orkers in the field should involve foster youth in the decisions they make whenever possible, and ensure that social work practice, policy, and research reflects the needs and concerns voiced by the foster youths themselves.”)

¹²⁷ See, e.g., Riggs, *supra* n. 29.

¹²⁸ See, e.g., Riggs, *supra* n. 29.

¹²⁹ See, e.g., Riggs, *supra* n. 29.

¹³⁰ Leathers, *supra* n. 6, at 816.

¹³¹ Phillips, *supra* n. 3 (quoting Gordon Johnson).