Where’s My Sister? Siblings Should Have A Statutory Right to be Placed Together in Foster Care
Where’s My Sister? Siblings Should Have A Statutory Right to be Placed Together in Foster Care

I. INTRODUCTION

“Hardly a week goes by that I’m not presented with a proposed parenting plan that separates siblings.”¹

When siblings are separated during instances of adoption, parental divorce, or death, there are times when they have no right to contact one another.² This can be heartbreaking because oftentimes, siblings have lived together for years.³ If siblings are separated early on in their lives, there may be instances where they have no chance or right to get to know one another or know of the other’s existence.⁴ Not only is it heartbreaking, but the separation of siblings can also be harmful to them.⁵ Unfortunately, the sibling relationship is a family tie that is legally neglected.⁶

This paper will argue that siblings should have a statutory right to be placed together in the foster care system. Legislatures and courts repeatedly focus on family ties such as marriage and parenthood but neglect other family ties, especially sibling relationships.⁷

¹ JILL ELAINE HASDAY, FAMILY LAW REIMAGINED 161(2014) quoting Judge Anne Kass.
² Id. at 165.
³ Id.
⁴ Id.
⁵ See infra Part II.A.
⁶ See Hasday, supra note 1, at 165.
⁷ Jill Elaine Hasday, Brotherly and Sisterly Love, SLATE (July 8, 2014, 2:52 PM), http://www.slate.com/articles/news_and_politics/jurisprudence/2014/07/family_law_should_protectSibling_relationships.html. “Childhood is the crucial period for forming and solidifying sibling bonds. Moreover, children are systemically more vulnerable than adults to both government and private action that harms them or simply ignores their interests, which makes the availability of legal protection for children’s relationships especially important.” See Hasday, supra note 1, at 168.
Some courts appear to impose no presumptions against split custody at divorce. They split the custody of siblings when that is “desirable,” “reasonable,” or “best,” or they treat the separation of siblings as just one factor among many for a court to take into account in determining custody. Some state statutes similarly include a child’s relationship with siblings as one factor for courts to consider when deciding custody.


The law needs to do more than what it is currently doing to protect sibling relationships when families fall apart. This paper will progress with three parts following this introduction. Part II of the paper will describe the background of this issue. It will first cover the importance of sibling relationships in the foster care system and why siblings should be able to be placed together and maintain contact with one another. It will then explain some principles of the foster care system. This will include some explanation on how children are placed in foster care homes. It will also explain what factors are associated with whether or not siblings are placed together in foster care. The background section will conclude with the legal background regarding how siblings are treated in accordance with the law. Part III will provide the discussion that siblings should have a statutory right to be placed with one another. It will also analyze various state statutes. Part III will then explain positive...
outcomes that will result if this statutory right is created.\textsuperscript{18} Lastly, it will lay out the limitations that could possibly arise out of creating a statutory right for siblings to be placed together in foster care.\textsuperscript{19} Part IV will conclude this paper.\textsuperscript{20}

\section*{II. BACKGROUND}

The sibling relationship is very important.\textsuperscript{21} Siblings are able to develop bonds early in life and when placed into the foster care system, various factors make it difficult for siblings to maintain those bonds.\textsuperscript{22}

\subsection*{A. The Importance of Sibling Relationships}

Sibling relationships are much more important than the law makes them out to be.\textsuperscript{23} Siblings often have a special bond with one another and “have the potential to be extraordinarily significant in each other’s lives, providing intimacy, support, love, joy, connectedness, care, and caretaking.”\textsuperscript{24} Siblings are able to develop strong bonds very early in life.\textsuperscript{25} When siblings grow up together, they have the opportunity to create many memories with one another, and the experiences they have with one another establishes a foundation for the relationship that they will have throughout their lifetimes.\textsuperscript{26} It is even more important to protect sibling relationships when families fall apart because then the siblings will have each

\begin{footnotesize}
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\item See infra Part III.B. 1.
\item See infra Part III.B. 2.
\item See infra Part IV.
\item See infra notes 24–38 and accompanying text.
\item See infra notes 39–63 and accompanying text.
\item See infra notes 24–38 and accompanying text.
\item See Hasday, supra note 1, at 165.
\item Id. at 166.
\item Id. “[C]ontinuity of relationships is essential in helping children to construct their identity and to develop a strong sense of belonging, both of which are crucial to their wellbeing.” Cathy Ashley, Siblings in Care Should be Kept Together, Social Care Network (June 11, 2014, 3:30 PM), http://www.theguardian.com/social-care-network/2014/jun/11/siblings-in-care-kept-together.
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other for support.\textsuperscript{27} The relationship between two siblings is often one of the longest relationships people will ever experience.\textsuperscript{28} In fact, “[e]lderly siblings who have not maintained affectionate relationships with their brothers and sisters often identify this absence as a source of tremendous regret and loss.”\textsuperscript{29}

Sibling relationships are particularly important when children are in foster care. As a Court Appointed Special Advocate\textsuperscript{30}, I have seen how siblings are able to rely on one another when they are moved into a new home. I was able to work with a sibling group consisting of a 10–year-old boy and an 8-year-old girl. The sibling group was removed from the care of their mother and over the course of several years placed with various different foster families. The sibling group has been moved around and placed in four different homes in the past year. Each and every time the group was moved, they were very upset and they missed the previous family they were staying with. However, they were always very thankful that they were able to remain together each time they moved.

Each time the children moved, the only stable person they had in their lives was their sibling. When they were moved, they were introduced to new schools, new foster parents, and new foster siblings. Even though everything else around them was new and they were in a new environment, they had each other, and that made it easier for them to deal with all of the transitions that they were facing. They had each other to rely on for support and for comfort when everything else around them was different. Foster care parents also feel the same way in

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\textsuperscript{27} Id. “Sibling relationships can be especially important when other family relationships falter, weaken, change, or end.” Id.
\textsuperscript{28} Id. at 166.
\textsuperscript{29} Jill Elaine Hasday, Siblings in Law, 65 VAND. L. REV. 897, 902 (2012).
\textsuperscript{30} A Court Appointed Special Advocate is an advocate who serves as “consistent adult presence” in a child’s life by monitoring the child’s well being and providing recommendations to the court. CASA OF BALTIMORE, http://www.casabalt.org (last visited Mar. 10, 2016).
\end{flushright}
that, “[a]pproximately 45 percent of foster parents believed that children placed with siblings were easier to foster because they felt more secure having their siblings with them.”\(^{31}\) Children as young as sixteen to eighteen months have the ability to comfort one another and empathize with one another.\(^{32}\) Children who are two and three years old are able to “recognize and discuss their siblings’ abilities, emotions, plans, and desires.”\(^{33}\)

There are several other benefits for children to remain together in foster care placements.\(^{34}\) When siblings are placed into foster care together they have more opportunities to strengthen their relationship.\(^{35}\) While in foster care, siblings can provide emotional support for one another and they are able to maintain the connection they have with one another.\(^{36}\) Additionally, they are able to go through the process of moving and adjust to new homes with one another.\(^{37}\) Lastly, they are able to be together when they visit their birth parents.\(^{38}\)

**B. Foster Care Placement Background**

Unfortunately, the number of families state agencies serve exceeds the capacity of the system.\(^{39}\) There has been some light shed on how children are placed into foster care.\(^{40}\) It is

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\(^{31}\) *Sibling Issues in Foster Care and Adoption*, Child Welfare Information Gateway, 8 (Jan. 2013). 

\(^{32}\) Hasday, *supra* note 29, at 900.

\(^{33}\) *Id.*

\(^{34}\) *See infra* notes 35–38 and accompanying text.


\(^{37}\) *Id.*

\(^{38}\) *Id.*

\(^{39}\) *See infra* notes 41–45 and accompany text.

\(^{40}\) *See infra* notes 41–45 and accompany text.
estimated that in 2009, 424,000 children were living in foster care in the United States.\textsuperscript{41} It is further estimated that “two-thirds of the children in out-of-home care have siblings, and of those, 30 percent entering foster care have four or more siblings.”\textsuperscript{42} A study in California revealed that with samples of 10,000 children, 23 to 46 percent of siblings were placed with all of their siblings.\textsuperscript{43} Furthermore, about two-thirds were placed with at least one sibling.\textsuperscript{44} There are several factors due to the capacity of the system that make it difficult for siblings to be placed with one another such as, each case worker’s workload, the need to find quick and safe placements for children, and an adequate number of foster families.\textsuperscript{45}

Studies have found siblings of the same sex are placed together more often than those who are not.\textsuperscript{46} Results from a study showed that a same gendered pair of siblings were 1.5 times more likely to be placed together than siblings of opposite genders.\textsuperscript{47} There are, however, several categories of siblings that are more likely to be separated from their siblings in foster care.\textsuperscript{48} The children most likely at risk “to be separated from their siblings are older, from larger sibling groups, have developmental disabilities, are placed in institutions, or are not all placed in foster care at the same time.”\textsuperscript{49}

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\textsuperscript{41} Rothschild et al., supra note 36, at 528. & \\
\textsuperscript{42} Id. & \\
\textsuperscript{43} Supra note 31, at 7. & \\
\textsuperscript{44} Id. & \\
\textsuperscript{45} Rothschild et al., supra note 36, at 529–530. & \\
\textsuperscript{46} Sylvie Drapeau et al., Siblings in Family Transitions, FAMILY RELATIONS, 3 (2000). & \\
\textsuperscript{47} Rothschild et al., supra note 36, at 551. & \\
\textsuperscript{48} Id. & \\
\textsuperscript{49} Drapeau et al., supra note 46, at 3. & \\
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siblings who enter into foster care within 30 days of each other have almost four times the odds of living together than those who enter into the foster care system at different times.51 A study in New York showed that with 168,000 foster youth over a 15-year period, “78 percent of those siblings entering care together were placed together, but those entering care longer than 6 months apart were at the highest risk of being separated.”52

There are various factors associated with how sibling groups are placed in the foster care system.53 The size of the sibling group plays a role into if siblings are placed with one another; the bigger the sibling group is, the less likely the sibling group is to stay together.54 Social workers often have a hard time finding a foster home that will take a large group of siblings.55 Caseworkers believe that “the presence of siblings [make] it harder to incorporate the child into the family.”56 A child from a group of five siblings has 3 times the odds of being placed with some siblings than a child with one sibling.57

Additionally, if there is an age gap between the siblings, the bigger the age gap is, the less likely the siblings are to stay together.58 Siblings where the age difference between the youngest and oldest is more than four years apart, have about half the odds of being placed in a

51 Rothschild et al., supra note 36, at 552.
52 Supra note 31, at 7.
53 See supra note 31, at 8.
54 Id.
55 Rothschild et al., supra note 36, at 552.
56 Supra note 31, at 8.
57 Id.
58 Id.
foster care placement together than siblings with an age span less than four years.\textsuperscript{59} The youngest sibling is often separated from the oldest sibling.\textsuperscript{60} If one of the siblings has any behavior problems, it can lead to that sibling being removed from the home, while the other sibling remains in the home.\textsuperscript{61} The type of placement children receive also plays a role in whether or not siblings are placed together.\textsuperscript{62} For an example, if siblings are placed with family, they are more likely to remain together rather than if siblings are placed in group homes, where they are less likely to be placed together.\textsuperscript{63}

\textit{C. Legal Background}

Siblings do not have a right to be placed in foster care with one another.\textsuperscript{64} However, states have begun to find sibling relationships important.\textsuperscript{65}

Unfortunately, “legal interest in sibling relationships is radically underdeveloped.”\textsuperscript{66} There are other family ties that courts consider such as married couples, ties between a child and a parent, and ties between grandparents and children. However, there is very little law that protects relationships siblings have with one other.\textsuperscript{67}

In 1985, in \textit{L. v. G.}, the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County held that a sibling relationship was a “significant and unique one from which a myriad of benefits and experiences may be derived.”\textsuperscript{68} The Court used “social science research

\textsuperscript{59} Rothschild et al., \textit{supra} note 36, at 551.
\textsuperscript{60} \textit{Id.}
\textsuperscript{61} \textit{Id.}
\textsuperscript{62} See \textit{id.}
\textsuperscript{63} \textit{Id.}
\textsuperscript{64} See \textit{infra} Part III.
\textsuperscript{65} See \textit{infra} Part III.
\textsuperscript{66} Hasday, \textit{supra} note 29, at 902.
\textsuperscript{67} \textit{Id.}
in making a determination that sibling visitation is in the best interest of children.”

The Court noted 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. Those of us who have been fortunate enough to experience a sibling relationship are aware of these basic human truths.


The Court also stated that, “the right to visit with one's own brother or sister is equal to, if not greater than the right to visit with one's grandchildren.” However, the Supreme Court of Pennsylvania declined to follow. In 1996, the Supreme Court of Pennsylvania held in Ken R. on Behalf of C.R. v. Arthur Z., that “children do not have standing to seek court-ordered visitation with siblings.”

In 2014, the Maryland Court of Appeals held in In Re Victoria C. that a child in need of assistance possessed third party status relative to her siblings, and was able to request visitation with her siblings. Victoria C. was born on August 25, 1993 and in 2010 Victoria C. was declared a child in need of assistance. Victoria C. wanted to visit her minor half siblings,

70 L. v. G., 497 A.2d at 221.
72 Id.
73 A child in need of assistance is a child that “has been abused or neglected, or has a developmental disability or mental disorder, and that the child’s parents, guardian, or custodian do not give proper care and attention to the child’s needs.” Children in Need of Assistance (CINA), The People’s Law Library, http://www.peoples-law.org/children-need-assistance-cina.
74 In Re Victoria C., 437 Md. 567 (2014).
75 Id. at 569.
Lance and Evan. The Circuit Court of Maryland for Carroll County granted Victoria C. visitation with Lance and Evan. The Court found supervised visitation was the most appropriate route to take. George C. appealed the decision to the Court of Special Appeals and the court reversed the decision of the Circuit Court. The Court held a “child was required to establish exceptional circumstances indicating that lack of sibling visitation had significant deleterious effect upon minor half-siblings.” The Court further held there was “no common-law presumption in favor of preserving sibling relationship applied to instant petition”, and Victoria C. “failed to establish deleterious effect amounting to exceptional circumstances warranting award of visitation over objection of half-siblings’ parents.” Essentially, the court held that Victoria C. did not prove to the court that there were exceptional circumstances.

Victoria C. then appealed to the Maryland Court of Appeals and the Court granted certiorari. The Maryland Court of Appeals ruled that Victoria C. did in fact have third party status and was therefore allowed to seek visitation with her siblings. The Court granted her visitation and ruled that in order for Victoria C. to have visitation with her siblings, she had “to make prima facie showing that lack of visitation had significant, deleterious effect upon children, not on herself.”

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76 Id.
77 Id.
78 In Re Victoria C., 208 Md.App. 87, 92(2012).
79 In Re Victoria C., 437 Md. at 567.
80 See Id.
81 In Re Victoria C., 208 Md.App. at 91.
82 Id.
83 In Re Victoria C., 437 Md. at 567.
84 Id.
85 Id. at 567.
86 Id. at 567.
III. DISCUSSION

Although it is not clear that siblings have a constitutional right to be placed together,87 siblings should have a statutory right to be placed together in the foster care system. There are some states that have given siblings this right; however, there are more that have yet to do the same.88

A. Statutory Language

It is not clear as to whether or not siblings have a constitutional right to be placed together and maintain contact with one another89; however, it must be a statutory right. A child’s sibling is most often times the only stable thing they have when they are placed into foster care.

Several states specify in their statutes that they need to make reasonable efforts to place siblings together.90 However, states do not specify what “reasonable” actually means, and they do not explain what steps have to be made for the efforts to be considered reasonable.91 This can be problematic because some agencies will have a different interpretation of what they can reasonably do to keep siblings together. The term may also alter outcomes based on the

88 See infra Part II.A.
89 See Jones, supra note 87.
90 See OKLA. STAT. ANN. TIT. 10A, § 1-4-204 (West 2015) (explaining that the state must make “diligent efforts”); see also Rothschild et al., supra note 36 at 534–535. “Federal law and the law of some states display some concern about placing siblings available for adoption together. For instance, federal law conditions some federal funding on a state’s agreement to make “reasonable efforts” to place siblings removed from their home in the same…. Adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings.” Hasday, supra note 29, at 906; Hasday, supra note 1, at 170.
91 Jill Elaine Hasday, Brotherly and Sisterly Love, SLATE (July 8, 2014, 2:52 PM).
capacity of the agencies and the resources each agency has to devote to placing children into foster care.

States provide that the state agency has to make “reasonable efforts” to place siblings together in foster care. This seems to do two things; (1) promote that siblings should remain together, but (2) also not put too many requirements on state agencies.\textsuperscript{92} Unfortunately, there is no case law that provides what “reasonable efforts” in this context actually means.

Reasonable efforts has, however, been looked at in the context of keeping families together.\textsuperscript{93} “Reasonable efforts is a legal term describing the services and assistance offered by a social service or child protection agency to a child and family members during the life of a child welfare case.”\textsuperscript{94} What is reasonable will depend on the “time, place, and circumstance.”\textsuperscript{95} Even though reasonable efforts are circumstantial, courts can look at a variety of different things when determining if the state made reasonable efforts.\textsuperscript{96} First, a court can look to see if there are any services being provided to the family that will help the child and/or family with any problems that led to the finding of abuse or neglect.\textsuperscript{97} Additionally, a court can look to see if there are any services being provided that ensures the child’s safety.\textsuperscript{98} Courts should also consider if the appropriate services and resources were offered and provided to the family and/or children in a timely manner.\textsuperscript{99} In determining if

\begin{footnotesize}
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  \item[92] Hasday, \textit{supra} note 29, at 920.
  \item[95] Id.
  \item[96] See \textit{supra} note 94, at 4.
  \item[97] Id.
  \item[98] Id.
  \item[99] Id.
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states used reasonable efforts, courts must also look to see if there are any barriers that exist with the family that made it difficult to provide services.\textsuperscript{100} Barriers can include, “transportation, child care, language skills, hearing impediments, disabilities and educational deficits.”\textsuperscript{101}

Before removing children from their home, the state must make reasonable efforts to keep the children in the home.\textsuperscript{102} Although there is no case law as to what reasonable efforts means in the context of keeping siblings placed together, we can infer what it means based on the case law interpreting what reasonable efforts means in the context of removing children from their home.\textsuperscript{103} The same goal that is used in using reasonable efforts to keep families together should also be used in placing siblings together, to give stability to the family. The state should provide whatever resources are necessary to foster families to ensure that siblings are able to be placed with one another and stay together. States should offer services to families who have sibling groups in a timely manner to ensure that it will be possible for siblings to remain with one another. While doing this, states need to make sure that the services they are offering are culturally competent and are mindful of the existing barriers with both the foster family and the sibling group that is being put into foster care.\textsuperscript{104}

Beyond states that direct state agencies to make reasonable efforts or attempts to place children together in placements, there are very few states that presume siblings should be placed together.\textsuperscript{105} Maryland law comes close to giving children this presumption but is not

\textsuperscript{100} Id.
\textsuperscript{101} Id.
\textsuperscript{103} See supra note 94, at 6.
\textsuperscript{104} See supra note 94, at 4.
\textsuperscript{105} See Rothschild et al., supra note 36, at 534–535.
The Maryland Code requires siblings to be placed together under certain circumstances. MD. CODE ANN. FAM. LAW § 5-525.2 states,

Shall place together siblings who are in an out of home placement under 5-252 of this subtitle if: (i) it is in the best interests of the siblings to be placed together; and (ii) placement of the siblings together does not conflict with a specific health or safety regulation.

MD. CODE ANN., FAM. LAW § 5-525.2 (West 2016).

The Maryland Code also suggests that siblings’ emotional ties to one another are very important. MD. CODE ANN. FAM. LAW § 5-525(ii), explains that one of the factors used in determining if the permanency plan is in the best interest of the foster child is “the child’s attachment and emotional ties to the child’s natural parents and siblings.”

However, MD. CODE ANN. FAM. LAW § 5-525 is not giving siblings a presumptive right. Instead of saying, “Shall place siblings together unless it is in the siblings’ best interest not to”, the code says, “shall place together siblings… if it is in the best interest of the siblings to be placed together.”

Arizona law has the same effect as Maryland and reads, “the department shall make reasonable efforts to place that child with the child's siblings or, if that is not possible, to maintain frequent visitation or other ongoing contact between the child and the child's siblings unless a court determines that either the placement or the visitation or contact would be contrary to the child's or a sibling's safety or well-being.”

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106 See MD. CODE ANN., FAM. LAW § 5-525.2 (West 2016).
107 Id. MD.
108 See MD. CODE ANN., FAM. LAW § 5-525 (West 2016).
109 Id.
110 See id.
111 See id.
112 ARIZ. REV. STAT. ANN. § 8-513(D)(Supp. 2010).
There are some states that even place requirements on the state agency if they are not going to place siblings together.\textsuperscript{113} Massachusetts’s law provides, “Siblings shall be placed in the same foster or adoptive home unless the licensee documents a written explanation in the children's record as to why such placement is not in the best interest of the children.”\textsuperscript{114} Massachusetts’s law does three things.\textsuperscript{115} First, it allows for children to have a presumed right to be placed with one another.\textsuperscript{116} Second, it allows for siblings to not be placed together if it is not in the child’s best interest.\textsuperscript{117} This can be important in certain circumstances.\textsuperscript{118} Lastly, it explicitly says what the state has to do if they are not going to place siblings together.\textsuperscript{119} This last aspect of the Massachusetts law is something that is quite often lost in many other state statutes. If other statutes were to put something in their statutes and give the state specific instructions on what they need to do, it would certainly clear up what reasonable efforts means. It could also give siblings more protection to stay with one another.

New York law also gives the state a clearer guideline when placing siblings together.\textsuperscript{120} New York law provides, “[p]lacement with siblings or half-siblings shall be presumptively in the child's best interests unless such placement would be contrary to the child's health, safety, or welfare. If such placement is not immediately available at the time of the removal of the child, such official shall provide or arrange for the provision of such placement within thirty days.”\textsuperscript{121} New York law explicitly states that there is a presumption in the child’s best interest

\begin{thebibliography}{99}
\bibitem{113} See infra notes 114–123 and accompanying text.
\bibitem{114} 102 MASS. CODE REGS. 5.08 (10)(1998).
\bibitem{115} See 102 MASS. CODE REGS. 5.08 (10)(1998).
\bibitem{116} See id.
\bibitem{117} See id.
\bibitem{118} See infra notes 137–143 and accompany text.
\bibitem{119} See 102 MASS. CODE REGS. 5.08 (10)(1998).
\bibitem{120} See N.Y. FAM. CT. ACT § 1027-a (McKinney 2016).
\bibitem{121} Id.
\end{thebibliography}
for the siblings to be placed together.\textsuperscript{122} Furthermore, if siblings are separated, New York requires that the agencies need to make diligent efforts to create visitation between the siblings on a regular basis.\textsuperscript{123} Each state must have a statute that provides that siblings must be placed together and it is presumed it is in the child’s best interest until proved otherwise because otherwise, it is harmful to the siblings.\textsuperscript{124}

B. \textit{Positives and Limitations}

Creating this statutory right for siblings can come with both positives and limitations.\textsuperscript{125} For this reason, state legislatures need to be very careful with the wording they use and the extent of information they include in their statutes.\textsuperscript{126}

1. Positives

It is important for siblings stay together for emotional reasons.\textsuperscript{127} When siblings are placed together in foster care, their bond cannot only be maintained, but can also grow.\textsuperscript{128}

The emotional importance of the siblings relationship can motivate even very small children to understand their sibling extremely well. Children as young as sixteen to eighteen months can comfort their siblings and empathize with them. Two and three years olds can recognize and discuss their siblings’ abilities, emotions, plans, and desires.


Keeping siblings together in their foster care placements can give children the stability they need when they are placed in a new home.\textsuperscript{129} Children in foster care often rely on their siblings for attachment.\textsuperscript{130}

\begin{footnotes}
\footnotetext{122}{See \textit{id}.}
\footnotetext{123}{Rothschild et al., \textit{supra} note 36, at 535.}
\footnotetext{124}{See \textit{supra} notes 24–38 and accompanying text.}
\footnotetext{125}{See \textit{infra} notes 127–149 and accompanying text.}
\footnotetext{126}{See \textit{infra} notes 127–149 and accompanying text.}
\footnotetext{127}{See \textit{supra} notes 24–38 and accompanying text.}
\footnotetext{128}{See \textit{supra} notes 24–38 and accompanying text.}
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“Not only is the support of siblings helpful in the immediate adjustment to the trauma of placement, but this contact continues to offer support to the child over the course of their time in care and into adulthood.”\textsuperscript{131} The behavior of children can also be affected depending upon whether or not sibling groups are placed together.\textsuperscript{132} “[C]hildren placed with siblings displayed fewer behavioral problems and had fewer previous placements.”\textsuperscript{133}

2. Limitations

It is possible if children have a statutory right to be placed together, placement opportunities could be sparse and limited.\textsuperscript{134} There may be families who are willing to take in only one or two children and no more than that, even if the children are siblings.\textsuperscript{135} This could be problematic for a large sibling group who want to stay together when there is nowhere that can accept them all.\textsuperscript{136} This could mean that they would stay in group homes or shelters longer, and might not get as much attention or help that would allow them to progress and move forward.

Additionally, it is possible for different reasons, that children may not want to be placed with one another.\textsuperscript{137} However, just because they may not want to be placed together does not mean they should be separated.\textsuperscript{138} Regardless of whether or not siblings want to be placed

\textsuperscript{129} See Jason B. Whiting et al., \textit{Voices from the System}, \textit{FAMILY RELATIONS}, 6(2003).
\textsuperscript{130} \textit{Id.} “Less attention has been paid to the child’s relationship with siblings, although we know that young children sometimes rely on siblings as secondary attachment figures when mothers are not available.” Poehlmann, \textit{supra} note 35, at 3.
\textsuperscript{131} \textit{Supra} note 31 at 6.
\textsuperscript{132} See Drapeau et. al., \textit{supra} note 46, at 3.
\textsuperscript{133} \textit{Id.}
\textsuperscript{134} See supra notes 53–57 and accompanying text.
\textsuperscript{135} See supra notes 53–57 and accompanying text.
\textsuperscript{136} See supra notes 53–57 and accompanying text.
\textsuperscript{137} See Rothschild et al., \textit{supra} note 36, at 551. “Teenagers in foster care expressed the wish to be separated from siblings more often than younger children.” \textit{Id.}
\textsuperscript{138} See supra notes 53–57 and accompanying text.
together, it might be in their best interest to stay with one another.\textsuperscript{139} However, it is also possible that there may be times when it is not in the best interest of the children to keep all of the siblings together.\textsuperscript{140}

In my experience as a Court Appointed Special Advocate,\textsuperscript{141} I have seen instances where siblings should not be placed together. One particular instance was when one sibling was a bad influence on their other siblings and so much so, it was a good thing that they were not all placed together. In this particular case, a fifteen-year-old boy was not a good influence on his ten-year-old brother and eight-year-old sister. The older brother did not live with the two younger siblings, but they did have regular visitation with one another. The younger brother looked up to his older brother very much, and unfortunately, the older brother set an example that allowed the younger brother to have several behavioral problems.

Every time the ten-year-old boy came home from visitation with his brother, he would act out for the next two days on a whole different level than he normally would. He was also getting into more trouble at school in those two days after visitation with his brother and he would fight and argue more with his sister. Additionally, he would act out more often toward his foster parents and any authority around him. This was troubling for the social worker because the ten-year old boy was always discussing how much he wanted to see his older brother and how much he missed his older brother. There were often times where he would tell me that he wanted to have more visitation with his older brother than he currently had. However, everyone was aware when he was able to see his older brother, his behavior was not how it needed to be.

\textsuperscript{139} See supra notes 53–57 and accompanying text.
\textsuperscript{140} See infra notes 141–149 accompanying text.
\textsuperscript{141} See supra note 30.
Another instance when it is not in the best interests of siblings to be placed together is when one of the siblings is abusive.\textsuperscript{142} This could mean sexual abuse or physical abuse.\textsuperscript{143}

In some cases of separated siblings, foster parents may want to adopt only the sibling placed with them. Workers are put in the untenable position of choosing the lesser of two evils—allowing the child to be adopted without his or her siblings or keeping the child in foster care until a family can be found who will adopt all of the siblings. To reduce the likelihood of this situation, foster parents should always be told at the time of placement that reuniting siblings is a top priority of the agency. Whatever decision is made, there should be provisions for maintaining connections with both the foster parents and siblings.

Sibling Issues in Foster Care and Adoption, CHILD WELFARE INFORMATION GATEWAY, 8 (Jan. 2013)

It can also be upsetting to siblings when they are separated.\textsuperscript{144} One child who was interviewed about their experience said, “I don’t get to see my brothers and we’re all split up . . . yeah, . . . [I] wish I knew where they were.”\textsuperscript{145} Another child named Arlene who is 16 years of age said, “[When they] moved us and placed us all in different homes I felt as if God was punishing me for something. It broke my heart.”\textsuperscript{146} One sister said when she was able to see her brother again it “filled a hole in [her] heart.”\textsuperscript{147}

\begin{footnotesize}
\textsuperscript{142} See supra note 31, at 11.
\textsuperscript{143} See id.
\textsuperscript{144} See infra notes 145–146 accompanying text. “Themes of suffering together as siblings ran through many of the stories. As predicted from past literature, many children were dismayed about being separated from their siblings.” Whiting et al., supra note 130, at 8. “When siblings placed in different households have had the change to write or speak publicly about their experiences, they have emphasized the pain, sadness, and complete shock that separation can inflict.” Jill Elaine Hasday, Brotherly and Sisterly Love, SLATE (July 8, 2014, 2:52 PM).
\textsuperscript{145} Whiting et al., supra note 130, at 6.
\textsuperscript{146} See supra note 32, at 5.
\textsuperscript{147} Hasday, supra note 29, at 905.
\end{footnotesize}
Placement of siblings may become even more complicated when there are substantial age gaps in between siblings.¹⁴⁸ When there are multiple siblings it is possible that it is harder to find a placement for the sibling group.¹⁴⁹

When there is a group of half siblings and it is the parent in common whom the children are taken away from, it might not be in the children’s best interest for the children to remain together. For an example, if there are a group of siblings who share one parent, live with that parent, and are then taken from that parent, it would make more sense for the children to be placed with their other parent (the parent they do not have in common) instead of being placed in a foster care home. In this instance, it would make more sense to separate the children so they can be with family members or their other parent to take care of them.

More, explicitly, courts refusing to create presumptions against splitting half-siblings prioritize fairness between parents over the promotion of sibling relationships. These courts note that a presumption against separating half-siblings would favor the custody claims of the half-siblings’ common parent and insist that this “ironclad advantage” “would be blatantly unfair to” the other parent or parents involved in a custody dispute.

JILL ELAINE HASDAY, FAMILY LAW REIMAGINED 180 (2014).

C. Recommendations

There are various ways where states can advance the rights of siblings and promote for siblings to stay with one another in foster care.¹⁵⁰ State agencies can provide incentives for

¹⁴⁸ See supra notes 58–60 and accompanying text.
¹⁴⁹ See supra notes 58–60 and accompanying text.
families to take siblings, provide additional resources that families may need when they take in sibling groups, and recruit families with the specific need in mind to take in sibling groups. State agencies can also train social workers and foster parents on how important it is for siblings to be placed together, list the children as a group when they take a picture of the children to go on a website, instead of listing every child separately, and provide all siblings with the same caseworker.\footnote{151} Agencies can work to designate certain foster care homes specifically for large sibling groups and provide those willing to take in large sibling groups with extra incentives to make sure the children are properly cared for.\footnote{152}

State agencies can also make plans for reunification for siblings who have to be separated in an emergency placement.\footnote{153} They can ensure that even if siblings are separated, they will try their best to make it possible for siblings to be placed together quickly.\footnote{154} Social workers can make it a part of their regular reviews to discuss sibling issues and revisit sibling groups who are not placed with one another.\footnote{155} It could also be helpful if each state had a system in place where they could track the location and status of all siblings.\footnote{156} This would be useful whether or not the siblings are in the same placement or are in separate placements. This is because there may be times where a couple of siblings in a sibling group are placed together, and an additional sibling is in a different placement.

\footnote{150} See supra note 31, at 10.\footnote{151} Id. at 10.\footnote{152} Id.\footnote{153} Id.\footnote{154} See id.\footnote{155} Id.\footnote{156} Id.
State agencies can also expand their reach by looking outside of the state and in neighboring states.\textsuperscript{157} States could require agencies to look out of state and into neighboring states when trying to meet reasonable efforts.\textsuperscript{158} Although an idea like this may take longer, or be more expensive, it may open up a whole new pool of potential families.\textsuperscript{159}

Furthermore, state legislators can create legislation that will allow state agencies to be held accountable and require state agencies to meet certain requirements before separating siblings in foster care placements.\textsuperscript{160} States can require that state agencies call a foster parent who has one sibling in a sibling group, when a second sibling goes into foster care in hopes that the foster parent will take the second sibling as well.\textsuperscript{161} Ultimately, all states need to give siblings a statutory right to be placed together and states need to define what exactly a state is supposed to do in order to keep siblings together.

IV. CONCLUSION

Siblings should have a statutory right to be placed together in the foster care system.\textsuperscript{162} It is important for siblings to be together because at the moment when they enter into foster care, their sibling is the one person who can provide them with some stability in their life.\textsuperscript{163} Although, this may mean more work for the states, it is worth it for every child who goes into the foster care system.

\textsuperscript{157} Hasday, \textit{supra} note 29, at 921.  
\textsuperscript{158} \textit{Id.}  
\textsuperscript{159} \textit{Id.}  
\textsuperscript{160} See 102 MASS. CODE REGS. 5.08 (10)(1998).  
\textsuperscript{161} Hasday, \textit{supra} note 29, at 922.  
\textsuperscript{162} See \textit{supra} part III.  
\textsuperscript{163} See \textit{supra} Part II.A.