

[Note: This model motion is intended to help you convince your trial judge to order the child protective agency to conduct/facilitate visits and other contact for siblings who are separated in foster care. While the model focuses on foster placements, with some edits it can be used to obtain an order for sibling visitation when some siblings are in a guardianship or other custodial arrangement. We have a different model motion seeking an order for joint placement of siblings, and you may wish to combine the two motions. The moving parties in this model are the separated siblings themselves, who are seeking visits. You can file a motion for sibling visits even if you only represent one sibling, but, ideally, all siblings would be joint movants or otherwise clearly support the motion. In some states, you may be able to file a motion like this if you represent the parent.]

You must fill in your own facts, which should ideally show that the siblings had lived together prior to placement, have a close relationship, ask to see each other, and exhibit some signs that the lack of sibling contact has harmed them. But don't worry if you don't have all of these "good" facts. While this model motion has content regarding federal law and clinical studies showing that separated siblings are best served by regular and frequent visits, the most important part of this motion requires you to fill in the governing state statutes, case law, and/or agency regulations on sibling visitation. That is, regardless of what the literature here says, trial judges will usually do what they think they have to do under the governing state law and regulations.

This model motion is provided for your information only and should not be considered legal advice.]

IMPOUNDED

[State trial court, county, etc.]

Docket No. _____

)
In Re:)
[Care and Protection/Matter] of)
Smith Children)
_____)

**MOTION TO ORDER [STATE AGENCY] TO CONDUCT, FACILITATE, AND ALLOW
SIBLING VISITS AND OTHER CONTACT**

Sarah Smith and John Smith, the children in this matter ("Children"), are in [state agency's] legal custody, are placed in separate foster homes, and currently only see each other [_____]. The Children move that this Court order [state agency] to conduct, facilitate, and allow regular and frequent sibling visitation and other forms of contact with each other. The Children

[lived together before placement] and constantly tell [the foster parents/the undersigned counsel] that they wish to see each other more often. They should not have to suffer the deterioration of their relationship merely because [state agency] filed the underlying petition and cannot or will not place them together. As required by [governing state statute/case law/regulation], the facts of this case show that regular and frequent visitation and other contact serve the Children's best interests. Further, the most current clinical studies about children in foster care clearly show that siblings' best interests are served, and the trauma of removal from home is mediated, by regular and frequent sibling contact when the siblings cannot live together.

Background

[Insert your succinct procedural history and facts here. Include facts that show (to the extent possible) that the siblings lived together pre-removal, have a relationship, ask for each other, and enjoy/benefit from contact with each other, and that the agency has ignored your requests or refuses to facilitate more visits or other contact.]

Discussion

I. The Children should have regular and frequent sibling visits under [state statute/regulation/case] because sibling visits serve their best interests.

[Insert your governing state statutes/cases/regulations on sibling visitation here. Explain why sibling visits serve all of the siblings' best interests.]

II. Federal statutes require efforts to maintain sibling connections in foster care.

The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351 ("Foster Connections Act"), § 206, mandates that states make "reasonable efforts" to maintain sibling connections in order to receive federal funding. The Fostering Connections Act specifically states that, if the agency cannot place the siblings together, it "must make reasonable efforts to provide frequent visitation or other ongoing interaction between the siblings, unless

this interaction would be contrary to a sibling’s safety or wellbeing.” There is no evidence in this case that sibling visits would harm any child’s safety or wellbeing.

Similarly, the Family First Prevention Services Act of 2018, Public Law 115-123 (“Family First Act”), shows the Legislature’s intent to prioritize sibling relationships in care. The Family First Act allows the number of foster children in one home to exceed the usual numerical limitation in order to allow siblings to remain together. *Id.* Accordingly, under federal law and public policy, siblings separated in care are entitled to preservation of their relationship. If they cannot be placed together, they must have regular and frequent visits and other contact.

III. Clinical studies show that the best interests of siblings separated in foster care are served by ensuring that they have regular and frequent visits and other contact.

Sibling visitation is governed by the children’s best interests, and this Court’s best interests determination should be guided by the relevant clinical literature. Studies show that regular and frequent sibling visitation reduces foster children’s trauma after removal from home, improves children’s mental health, and improves other outcomes.

A. Maintaining sibling connections in foster care reduces trauma and benefits children’s mental health.

Separating siblings is, itself, a traumatic victimization of foster children. *See* Adam McCormick, *Siblings in Foster Care: An Overview of Research, Policy, and Practice*, 4 J. of Pub. Child Welfare 198, 207 (2010) (“Separating siblings who have been removed from their parents only seems to intensify the pain, grief, and trauma that they have already experienced when they were initially removed from their parents.”); Deborah Silverstein & Susan Livingston Smith, *Siblings in Adoption and Foster Care: Traumatic Separations and Honored Connections*, 20 (2008) (noting that foster youth describe separation from siblings as being “like an extra punishment, a separate loss, and another pain that is not needed.”); William Patton & Sara Latz,

Severing Hansel from Gretel: An Analysis of Siblings' Association Rights, 48 U. Miami L. Rev. 744 (1994) (“Siblings provide a family subsystem which lasts a lifetime, often for 60 to 80 years, and grieving over a lost sibling may be lifelong.”).

To mediate this trauma, the state must ensure that separated siblings have frequent contact. See Mass. Dep’t of Child. & Fam., *Sibling Bill of Rights* (2012) (“[S]ibling separation is a significant and distinct loss that must be repaired by frequent and regular contact.”); Family Futures Practice Paper Series, *Assessing Sibling Placements* (2019) (when sibling separation in foster care cannot be avoided, “maintaining reasonable levels of contact is essential for the future mental health and wellbeing of the child.”). While sibling joint placement is almost always preferable, visitation that allows for the opportunity “to connect in a meaningful way . . . ha[s] many of the same benefits of sibling placement together: less trauma and loss, greater feelings of belonging, and shared history.” National Center for Child Welfare Excellence (NCCWE), Practice Component No. 6, *Sibling Visits and Contacts*.

Visits for siblings separated in care are essential for their mental health. See Armeda Wojciak, et al., *Sibling Relationship in Foster Care: Foster Parent Perspective*. 39(9) J. of Family Issues 2590 (2018) (finding that foster parents overwhelmingly urged greater sibling contact because anxiety and negative behaviors arose when sibling relationships were not maintained). Maintaining sibling connections in care improves children’s sense of self-esteem and self-identity. See Mary A. Herrick & Wendy Piccus, *Sibling Connections: The Importance of Nurturing Sibling Bonds in the Foster Care System*, 27 Child. & Youth Svcs. Rev. 845, 852 (2005”).

Not surprisingly, siblings separated in care yearn for contact. See Randi Mandelbaum, *Delicate Balances: Assessing the Needs and Rights of Siblings in Foster Care to Maintain Their*

Relationships Post-Adoption, 41 N.M. L. Rev. 1, 8 (2011); Christine M. Helfrich et al., *Sibling Relationships and Internalizing Symptoms of Youth in Foster Care*, 35 Child. & Youth Svcs. Rev. 1071 (2013) (in study of 152 adolescents in foster care separated from their sibling, 75.0% reported wanting more contact than they currently have with their siblings). This yearning leads to searching behaviors in later childhood and adulthood. See Patton & Latz, at 780 (noting that, after leaving the foster care system, siblings deprived of frequent visitation more often search for their biological siblings than for their biological parents).

These Children should not have to yearn for each other's company or search for each other later in life; they should have regular and frequent contact *now* and throughout their stay in care.

B. Maintaining sibling connections in foster care has other long-term benefits for children.

The benefits of ongoing sibling contact during care extend beyond childhood. See Christine M. Helfrich et al., *Sibling Relationships and Internalizing Symptoms of Youth in Foster Care*, 35 Child. & Youth Svcs. Rev. 1071 (2013) (finding that maintenance of sibling relationships may offset some of the negative outcomes for youth who age out of care, including housing instability). Greater access to siblings while in care results in higher levels of social support, self-esteem, and income as adults. See Child Welfare Information Gateway, *Sibling Issues in Foster Care and Adoption* (2019), U.S. Dep't of Health & Human Services, Admin. for Child. & Fam., Children's Bureau, at 2 (finding that benefits of sibling support can extend past the time children exit the foster care system and can include "emotional and spiritual support, guidance about college or other opportunities, assistance required due to physical and developmental disabilities, and information about health concerns or history.").

[*If relevant to your case.*] Finally – and significantly – the maintenance of sibling relationships may be even more important for children within marginalized communities where such relationships provide racial, ethnic, and cultural connections. *See* Jonathan Caspi, *Sibling Development: Implications for Mental Health Practitioners* 322 (Springer Pub. 2011) (after removal from parents, “[s]ibling relations may be of special importance to children from minority populations in preserving their ethnic identity, particularly children placed in families or communities that differ considerably from their own heritage.”). Maintaining a strong sibling relationship is vital in ensuring that the Children here maintain connections to their community.

Conclusion

The Children in this case should have regular and frequent visitation and other contact because it is in their best interests and therefore required under state law, federal law, and current social science/best practices. If [*state agency*] is allowed to erode the Children’s sibling relationship by refusing to conduct, facilitate, or allow [*regular/weekly/monthly*] visits, the Children will unnecessarily suffer additional trauma and long-term adverse mental health consequences, as well as other poor outcomes as they reach adulthood.

WHEREFORE, the Children request that this Court order:

- (a) that [*state agency*] conduct, facilitate, and/or allow visits between the Children [*at the frequency desired*], and allow for other forms of contact, such as phone calls, texts, and social media messaging;
- (b) Such other and further relief as is just and proper.

Dated: July __, 2023

Sarah and John Smith (the Children)
By their counsel,

[Attorney information]