

# “THERE IS NO PERFECT SOLUTION HERE”: AN ANALYSIS OF SIBLING PLACEMENT DECISIONS IN THE CALIFORNIA DEPENDENCY SYSTEM

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As it was, my social worker couldn't place me with my sisters. There were just too many of us and no one would take six children in their home all at once . . . . [T]here were many problems in my new life [after my sisters and I were separated], the first of which was the lack of meaning that I felt. Who was I and what was I doing? Why did I continue to excel in school and for whom? Why was I moving forward when I only wanted to go back to the time when I could brush my sisters' hair and make their breakfasts? Furthermore, what gave me the right to succeed and be happy when my little sisters were scattered all over? How could I ever consider myself a success when I had failed at the only truly important responsibility charged to me?

Wendy, a minor separated from her sisters in foster care.  
Mary Anne Herrick & Wendy Piccus, *Sibling connections: The importance of nurturing sibling bonds in the foster care system*

## I. INTRODUCTION

Wendy's experience of being separated from her siblings in foster care, quoted above, is a devastating reality for many children in the foster care system.<sup>1</sup> Across the last decade, from October 2011 to October 2021, almost three-quarters of children in California's child welfare supervised foster care have had siblings.<sup>2</sup> On average, almost half of those sibling groups are

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<sup>1</sup> Mary Anne Herrick & Wendy Piccus, *Sibling Connections: The Importance of Nurturing Sibling Bonds in the Foster Care System*, 27 CHILD. & YOUTH SERVS. REV. 845, 850 (2005).

<sup>2</sup> CCWIP Report, *Siblings in Child Welfare Supervised Foster Care, Percent All or Some Siblings*, CAL. CHILD WELFARE INDICATORS PROJECT, <https://ccwip.berkeley.edu/childwelfare/reports/Siblings/MTMG/r/fcp/s> [https://perma.cc/Z8K9-H8VP] (last visited Feb. 26, 2022).

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put in placements without one or more of their siblings.<sup>3</sup> About one-quarter of children are completely severed from *all* of their siblings in placement.<sup>4</sup>

The California child welfare system fails to devote sufficient attention to the sibling relationship, one of the most important familial bonds a child has, even though sibling groups commonly enter foster care simultaneously.<sup>5</sup> This is harmful because many siblings view their sibling bond as essential to their own purpose and identity.<sup>6</sup>

This paper shifts more attention towards these sibling relationships by presenting a comprehensive analysis of sibling placement decisions from multiple perspectives. The paper begins by explaining the different types of sibling relationships experienced by child victims of abuse and neglect. Then, it traces the historical context of California’s preeminent joint sibling placement statute passed to increase the number of joint placement decisions. Afterwards, it provides an overview of California’s dependency statutory scheme with an emphasis on the points at which sibling relationships must be considered. It then presents a factual background and analysis of four sibling placement dependency cases. The paper concludes by recommending factors that should be considered in making sibling placement decisions and emphasizing the importance of further research into issues related to sibling placement.

## II. TYPES OF SIBLING BONDS IN CHILD WELFARE CASES

Many child welfare professionals believe that siblings should only be placed separately if siblings are significant threats to the safety or well-being of the others.<sup>7</sup> Most of these child welfare professionals presume sibling relationships are beneficial but acknowledge exceptions for sibling relationships that have unhealthy characteristics.<sup>8</sup> Some child welfare

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<sup>3</sup> CCWIP Reports, *Siblings in Child Welfare Supervised Foster Care, Percent with All Siblings*, CAL. CHILD WELFARE INDICATORS PROJECT, <https://ccwip.berkeley.edu/childwelfare/reports/Siblings/MTMG/r/fcp/s> [https://perma.cc/8SBA-XZMP] (last visited Feb. 26, 2022).

<sup>4</sup> CCWIP Report, *supra* note 3.

<sup>5</sup> Sonya J. Leathers, *Separation from Siblings: Associations with Placement Adaptation and Outcomes Among Adolescents in Long-Term Foster Care*, 27 CHILD. & YOUTH SERVS. REV. 793, 794 (2005).

<sup>6</sup> See Herrick & Piccus, *supra* note 1, at 850 (“Some children who are separated from their siblings may also grieve the loss of a caregiving role they had assumed with their siblings before separation . . . [as] a child’s self-identity is in part determined by what [they see as their] role in the world.”).

<sup>7</sup> Karen Rothschild & Daniel Pollack, *Revisiting the Presumption of Jointly Placing Siblings in Foster Care*, 12 SEATTLE J. SOC. JUST. 527, 532–33 (2013).

<sup>8</sup> *Id.*

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professionals go even further, arguing that threats amongst siblings are not sufficient reason to separately place them and that the siblings should be required to work through their problems.<sup>9</sup> These professionals presume all sibling relationships are inherently beneficial, even those that have unhealthy characteristics, and that sibling bonds should be preserved at all costs.<sup>10</sup>

Sibling relationships are unique, multifaceted, and incredibly impactful on a person's quality of life.<sup>11</sup> Siblings may see each other as teammates, confidants, friends, opponents, or a special combination of them all.<sup>12</sup> Interactions with siblings can provide comfort, stability, friction, turmoil, and everything in between.<sup>13</sup> Though each sibling bond can have varied levels of all of these characteristics, general patterns can be used to describe the kinds of sibling dynamics most commonly encountered in child welfare cases.<sup>14</sup>

Sibling dynamics, specifically in the context of child abuse, often fall into two primary categories.<sup>15</sup> The first and most common category is a protective sibling relationship.<sup>16</sup> In these relationships, "siblings appeared to have formed an alliance that enabled their physical and emotional survival in a reality in which their lives were in daily danger."<sup>17</sup> Protective siblings become a united group and take on various roles so the group can pursue survival to the best of its ability.<sup>18</sup> In these groups, older siblings commonly self-sacrifice to protect the physical and emotional well-being of their younger siblings.<sup>19</sup> This role is at the heart of the self-sacrificing older siblings' personal identity.<sup>20</sup> For example, all of the older siblings who were interviewed in a study of the protective dynamic emphasized that it is their younger siblings who are the victims in their family, seeing themselves as

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See Carmit Katz & Dafna Tener, *My Brother's Keeper? The Sibling Subsystem in the Context of Physical and Sexual Child Abuse*, 60 FAM. PROCESS 186, 187 (2021) (explaining that sibling warmth and conflict can reflect aspects of relationships through factors such as affection, support, companionship, closeness, aggression, hostility, and coercion).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 190.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 191.

<sup>20</sup> *Id.*

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the protector.<sup>21</sup> The younger siblings acknowledged their older sibling as their protectors and were able to explain the specific ways in which their older sibling protected them.<sup>22</sup>

The second, less common category is a sibling relationship plagued by the “spillover” of the abuse they were subject to at the hands of their caregivers.<sup>23</sup> The siblings in this category experience two primary negative spillover effects as a result.<sup>24</sup> The first spillover effect is feeling jealous and envious of the other siblings.<sup>25</sup> This occurs when a sibling feels that their other siblings are experiencing a different level of abuse than they are.<sup>26</sup> These envious feelings can manifest in situations when the abusive parent does not abuse the other siblings at all, or when the parent abuses the other siblings less often.<sup>27</sup> The second spillover effect is that siblings may become afflicted by abuse between siblings in addition to the preexisting caregiver abuse.<sup>28</sup> A sibling may adopt the abusive behaviors they see exhibited by their caregiver and direct that abuse towards their brothers or sisters.<sup>29</sup> In some cases, the sibling victimized by their other sibling can even become even more afraid of the sibling abuse than the caregiver abuse.<sup>30</sup> Thus, within this second category, “instead of unifying the siblings, the [child abuse] divided them, or worse.”<sup>31</sup>

It is important to identify which category a sibling relationship falls into when making sibling placement decisions.<sup>32</sup> The sibling dynamic not only affects how siblings talk to and treat each other, but the way each sibling perceives the role of their siblings and their own perception of self.<sup>33</sup> Therefore, allowing separate placements for siblings who had been part of a supportive and protective sibling group could have potentially devastating

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<sup>21</sup> *Id.* at 192.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 194.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 193.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 196.

<sup>33</sup> *See id.* (explaining that studies on the sibling subsystem should “consider the relationship between siblings and the meaning they have for each other”).

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consequences on their own well-being.<sup>34</sup> On the other hand, placing siblings together whose relationships are plagued by envy and sibling abuse could harm the siblings because it makes potentially devastating assumptions about their sibling relationship without adequate consideration of their lived experience.<sup>35</sup>

Sometimes, sibling relationships could be harmful to one of more of the siblings and separate placements would better serve each sibling's best interest.<sup>36</sup> For instance, when sibling relationships have histories of abuse between the siblings and a shared placement is not able to counteract those histories of abuse, it may be in each child's best interest to be placed separately.<sup>37</sup> Separate sibling placement may also be beneficial when there is sibling rivalry, a large age gap between siblings, or when a sibling has special needs.<sup>38</sup> In these cases, separate placements may allow each placement to better meet the needs of each sibling individually.<sup>39</sup> Separate placements may even facilitate stronger sibling bonds through visitation than would have been possible if they were placed together because visitation can decrease the likelihood of conflict and increase the likelihood of positive interactions.<sup>40</sup> However, it is important to emphasize that some child welfare professionals believe that all sibling relationships are inherently beneficial and worth preserving, regardless of the negative characteristics that plague them.<sup>41</sup>

As further explained below, the primary law guiding decisions of sibling placement has developed into a general presumption towards joint sibling placement.<sup>42</sup> Further, the law has an ambiguous exception that allows even beneficial sibling bonds to be broken.<sup>43</sup> In light of the multifaceted nature of sibling relationships in abusive systems, I argue that the legal approach to sibling placement decisions should be adjusted to decrease the harm sibling groups face within the dependency system. First, the child interviewing techniques employed to ascertain a minor's wish

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<sup>34</sup> *Id.*

<sup>35</sup> *See id.* (“The sibling subsystem can also be harmful and abusive in its own right . . .”).

<sup>36</sup> David J. Whelan, *Using Attachment Theory When Placing Siblings in Foster Care*, 20 *CHILD & ADOLESCENT SOC. WORK J.* 21, 22 (2003).

<sup>37</sup> *Id.* at 30.

<sup>38</sup> Rothschild & Pollack, *supra* note 7, at 531.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 532-33.

<sup>42</sup> CAL. WELF. & INST. CODE § 16002(a) (Deering 2022).

<sup>43</sup> *Id.* § 16002(a)(1) (emphasis added).

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about sibling placement should be improved by using more targeted questions designed to extract detailed information on the sibling bond. Sibling relationships should also be prioritized in placement determinations over any other familial relationship if the children want to remain with their siblings. Finally, if siblings absolutely must be placed separately, the siblings should be given agency to determine their visitation and communication plan.

### III. HISTORY OF SIBLING PLACEMENT IN DEPENDENCY

Prior to 1992, California juvenile courts did not have to take sibling relationships into account when making placement decisions.<sup>44</sup> While all courts were tasked with protecting the best interests of the children, the consideration of sibling relationships in evaluating their best interests was not formalized.<sup>45</sup>

Gradually, the California Legislature amended the Welfare and Institutions Code by slowly adding in factors for the courts to consider in the evaluation and maintenance of sibling relationships.<sup>46</sup> In 1992, the Legislature amended Welfare and Institutions Code 16501.1(a)(6) (hereinafter, all references to statutes are to the same code unless noted otherwise), which required the consideration of unsupervised visitation for sibling groups, but still did not provide any specific factors to use in considering whether such visitation was appropriate.<sup>47</sup>

Then, in 1993, the Legislature enacted section 16002, which remains the quintessential sibling placement law in the Welfare and Institutions Code to this day.<sup>48</sup> The heart of section 16002 was an explicit provision expressing the legislature’s intent to maintain, preserve, and strengthen a minor’s family ties by targeting sibling bonds.<sup>49</sup> When the law was first passed, it required siblings in foster care to be placed together if possible. It also called for a study of the barriers that limited joint sibling placement in practice as well as research on potential solutions to joint placement or appropriate alternatives.<sup>50</sup>

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<sup>44</sup> Jennifer M. M. Schwartz, *Siblings Torn Apart No More*, 32 MCGEORGE L. REV. 704, 705 (2001).

<sup>45</sup> *Id.* at 706.

<sup>46</sup> *See id.*

<sup>47</sup> *Id.* at 706.

<sup>48</sup> *Id.* at 706.

<sup>49</sup> CAL. WELF. & INST. CODE § 16002(a) (Deering 2022).

<sup>50</sup> CAL. WELF. & INST. CODE § 16002(a-b) (Deering 1993).

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The law has undergone several important changes since its original passing. The original version stated siblings should be placed together unless it is “not in the *best interest* of one or more siblings,”<sup>51</sup> but in 2010, it was amended to instead state that siblings should be placed together unless it is “*contrary to the safety or well-being* of any sibling.”<sup>52</sup> This language about safety and well-being in placement remains in the statute today.<sup>53</sup>

The legislature also pushed beyond this presumption of joint sibling placement and developed provisions that would provide guidance for cases in which joint placement was not the result.<sup>54</sup> It added sections expressly giving the court authority to develop visitation plans for siblings in separate placements.<sup>55</sup> It also added a requirement that the local agency make a “diligent effort” to place siblings together and make a case plan for sibling interaction when shared placement does not occur.<sup>56</sup> A provision was also added to allow petitions asserting a sibling relationship with the dependent child to be filed.<sup>57</sup> For instance, children who may have lived in the same foster home as the dependent child, but who share no biological or legal connection to that child, can request to be considered in future placement or visitation plans.<sup>58</sup> The current version also requires the county adoption agency to facilitate ongoing sibling contact when parental rights are terminated and a child is placed for adoption.<sup>59</sup>

Therefore, as it stands today, the portion of Cal. Welf. & Inst. Code § 16002 most pertinent to placement decisions states that:

[i]t is the intent of the Legislature to maintain the continuity of the family unit, and ensure the preservation and strengthening of the child’s family ties by ensuring that when siblings have been removed from their home . . . the siblings will be placed together, unless it has been determined that placement together is contrary to the safety or well-being of any sibling.

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<sup>51</sup> *Id.* § 16002(a) (emphasis added).

<sup>52</sup> CAL. WELF. & INST. CODE § 16002(a)(1) (Deering 2010) (emphasis added).

<sup>53</sup> CAL. WELF. & INST. CODE § 16002(a) (Deering 2022).

<sup>54</sup> *See id.*

<sup>55</sup> *Id.* § 16002(a)(2).

<sup>56</sup> *Id.* § 16002(b).

<sup>57</sup> *Id.* § 16002(d).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* § 16002(e).

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It also states that “[t]he responsible local agency shall make a diligent effort in all out-of-home placements of dependent children . . . to place siblings together in the same placement, and to develop and maintain sibling relationships.”<sup>60</sup>

This statute is the foundation upon which sibling placement decisions are decided.<sup>61</sup> It expresses the Legislature’s valuation of sibling relationships for children in child welfare cases and expresses the intention to place siblings together, absent certain circumstances.<sup>62</sup> Despite this objective, almost half of all siblings in California’s child welfare supervised foster care are put in placements without one or more of their siblings.<sup>63</sup> With such a strong expression from the Legislature, how do almost half of siblings end up separated in placement? The next section will detail the laws and procedures that dictate a child with siblings’ experience in their child welfare case leading up to the actual placement decision.

#### IV. SIBLING GROUPS IN THE CALIFORNIA DEPENDENCY SYSTEM

The dependency system dictates the laws and procedures related to child welfare in California.<sup>64</sup> These laws and procedures can be understood as four primary stages: (1) the referral of abuse or neglect, (2) the detention hearing, (3) the jurisdictional and dispositional hearings, and (4) the post-dispositional hearing.<sup>65</sup> Understanding these stages is critical to understanding decisions about sibling placement in foster care because these stages reveal the many points at which siblinghood is analyzed and evaluated by the law.<sup>66</sup> This section describes each stage in detail for readers who have no familiarity with the dependency system, as this context is necessary for later arguments.

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<sup>60</sup> *Id.* § 16002(b).

<sup>61</sup> *See id.* § 16002(a)(1).

<sup>62</sup> *Id.* § 16002(a)(1).

<sup>63</sup> CCWIP Report, *supra* note 3.

<sup>64</sup> *See* CAL. WELF. & INST. CODE § 303 (Deering 2022) (“The court may terminate its dependency, delinquency, or transition jurisdiction over the nonminor. . .”).

<sup>65</sup> *See generally* California Juvenile Dependency Practice (CEB), LexisNexis (from March 2021 through current) (providing the essentials of dependency law, including the stages of a case and information specific to the representation of children, parents of children, de facto parents and counties).

<sup>66</sup> *See id.*

## A. REFERRAL

If someone suspects that a child is being abused or neglected, they can report their concern to their county's child welfare agency to investigate.<sup>67</sup> A social worker will investigate the child's circumstances and determine whether the child is described by the California Welfare & Institutions Code § 300, which lists different forms of abuse and neglect.<sup>68</sup>

In California, from October 2020 to September 2021, there were 401,099 total allegations of child maltreatment.<sup>69</sup> In this count, a child is counted only once in the category of highest severity.<sup>70</sup> This number includes *all* allegations made, whether substantiated, inconclusive, unfounded, or not yet determined.<sup>71</sup> Of the total allegations that year, the most frequent allegation by far was that of general neglect, which made up 193,964 allegations, or 48.4%.<sup>72</sup> The next most frequent allegation was of physical abuse, which made up 63,121 allegations, or 15.7%.<sup>73</sup> The other types of allegations each made up about ten percent or less of the total allegations.<sup>74</sup> These allegations, in order of most substantial to least substantial, include emotional abuse, sexual abuse, at risk due to sibling abuse, severe neglect, caretaker absence/incapacity, and exploitation.<sup>75</sup>

When the court is determining whether jurisdiction should be established over a dependent minor at the outset of a case, the court can consider the abuse or neglect of that dependent minor's sibling in its evaluation.<sup>76</sup> The court can determine whether the sibling has suffered (or there has been a substantial risk that the sibling could have suffered) serious and non-accidental physical harm,<sup>77</sup> neglect that has resulted in serious physical harm or illness,<sup>78</sup> sexual abuse,<sup>79</sup> severe physical abuse while the

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<sup>67</sup> *Id.* at § 2.2.

<sup>68</sup> CAL. WELF. & INST. CODE § 300 (Deering 2022).

<sup>69</sup> CCWIP Report, *supra* note 2.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> See *id.*

<sup>75</sup> *Id.*

<sup>76</sup> CAL. WELF. & INST. CODE § 300(j) (Deering 2022).

<sup>77</sup> *Id.* § 300(a).

<sup>78</sup> *Id.* § 300(b).

<sup>79</sup> *Id.* § 300(d).

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sibling was under five years of age,<sup>80</sup> or any acts of cruelty.<sup>81</sup> If the sibling can be defined under any of these categories, the statute requires the court to further consider any probative factors used to evaluate the risk to the dependent child at issue, including the sibling’s age and gender, the parent or guardian’s mental state, the circumstances surrounding the act of abuse or neglect, and the nature of that abuse or neglect.<sup>82</sup> It is up to the discretion of the court to determine whether the abuse or neglect of the sibling warrants jurisdiction of the minor at issue.<sup>83</sup>

Even though using the abuse or neglect of a sibling to establish jurisdiction is not directly related to sibling placement decisions in later stages of a case, it does suggest that sibling groups may be more likely to be pulled into the system than non-sibling groups because sibling groups have this additional reason available.<sup>84</sup> Of the 401,099 child maltreatment allegations made in California from October 2020 to September 2021, allegations about a child being at risk due to sibling abuse totaled to 41,023, thus making up 10.2% of all child maltreatment allegations.<sup>85</sup>

Counsel is appointed by the court to function as an advocate of the minor’s interests, including their “protection, safety, and physical and emotional well-being.”<sup>86</sup> For sibling groups, one attorney is typically appointed to represent the interests of all siblings at the outset until an actual conflict exists among the siblings or it becomes apparent that an actual conflict among the siblings is likely to arise.<sup>87</sup> In other words, the “theoretical potential conflict of interest” which exists amongst all sibling groups is not sufficient to require separate counsel for each sibling within a sibling group.<sup>88</sup>

## B. DETENTION HEARING

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<sup>80</sup> *Id.* § 300(e).

<sup>81</sup> *Id.* § 300(i).

<sup>82</sup> *Id.* § 300(j).

<sup>83</sup> *Id.* § 300 (stating “[a] child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court”).

<sup>84</sup> *See generally id.* § 361.2 (“This section does not permit a child’s caregiver to permit the child to engage in day-to-day activities that carry an unreasonable risk of harm, or subject the child to abuse or neglect.”).

<sup>85</sup> *See* CCWIP Report, *supra* note 2 (percentage rounded to the nearest tenth decimal).

<sup>86</sup> CAL. WELF. & INST. CODE § 317(c)(2) (Deering 2022).

<sup>87</sup> *In re Celine R.*, 71 P.3d 787, 791 (2003).

<sup>88</sup> *Id.* at 796.

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After a child is found by the social worker to be described under section 300, the social worker will file a section 300 petition to request the court to establish jurisdiction over the child.<sup>89</sup> If the child is described by section 300 but does not need immediate care, the child will remain in the home<sup>90</sup> and a detention hearing must be held within fifteen days.<sup>91</sup> If the child is described by section 300 and does need immediate care, the child may be detained and placed under the temporary custody of the child welfare agency.<sup>92</sup> In this case, the detention hearing must be held by the end of the following day.<sup>93</sup>

At the detention hearing, the court must order the release of the child from custody unless there is sufficient evidence to support a finding of the following three factors.<sup>94</sup> First, there must be a prima facie showing that the child can be described under the different forms of abuse and neglect described in section 300.<sup>95</sup> Second, the court must find that the child's placement with their parent or guardian is contrary to the child's welfare.<sup>96</sup> Third, the court must find that there is substantial danger to the child if the child is returned and that removal is the only available form of protection from that danger, that the parent or guardian is likely to flee the jurisdiction of the court, that the child has fled a placement previously ordered by the court, or that the child is unwilling to return to a home because someone who abused them resides there.<sup>97</sup>

### C. JURISDICTIONAL AND DISPOSITIONAL HEARINGS

At the jurisdictional hearing, the court will take jurisdiction over the child if the court finds, by a preponderance of the evidence, that the child is in fact described by section 300.<sup>98</sup> At the dispositional hearing, the "family's future is charted."<sup>99</sup> The court will either order the child to remain home (or to be moved home, if the child had been detained) with family maintenance

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<sup>89</sup> CAL. WELF. & INST. CODE § 328 (Deering 2022).

<sup>90</sup> California Juvenile Dependency Practice (CEB), *supra* note 65, §2.15.

<sup>91</sup> Cal. Rules of Court, Rule 5.670(a).

<sup>92</sup> CAL. WELF. & INST. CODE § 305 (Deering 2022).

<sup>93</sup> *Id.* § 315.

<sup>94</sup> *Id.* § 319(c).

<sup>95</sup> *Id.* § 319(c).

<sup>96</sup> *Id.* § 319(c).

<sup>97</sup> *Id.* § 319(c)(1–4).

<sup>98</sup> CAL. & WELF. INST. CODE § 355(a) (Deering 2022).

<sup>99</sup> California Juvenile Dependency Practice (CEB), *supra* note 65, §5.1.

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services,<sup>100</sup> or to be placed (or to remain placed, if the child had been detained) in an out-of-home placement with family reunification services.<sup>101</sup>

If the child is ordered to be placed in an out-of-home placement, the court must then determine which out-of-home placement is most appropriate.<sup>102</sup> The court prioritizes parents who request placement and were not living with the child at the time of the abuse or neglect.<sup>103</sup> If the court determines placement with that parent would be detrimental to the child, the court will then give preferential consideration to relatives.<sup>104</sup> To determine the appropriateness of placement with a relative, the social worker and court must consider the following: the best interest of the child, the wishes of the parties involved, the proximity of the relative to the parent, the placement of other siblings in the same home, the good moral character of the adults in the home, the relationship between the relative and the child, and the relative’s ability to provide safe and appropriate care.<sup>105</sup> If it is determined that no relatives are appropriate for placement based on those factors, the child may be placed in foster care with an approved resource family.<sup>106</sup>

The court heavily relies on information in social studies in making these determinations, especially when a case involves the placement of siblings.<sup>107</sup> Every time the court requires a social study to be received into evidence, that social study must include an evaluation of the dependent’s siblings if those siblings are under the court’s jurisdiction.<sup>108</sup> If they are, the social study must explore the nature of the relationship between the siblings,<sup>109</sup> guided by whether they were raised in the same home, shared common experiences, have existing strong bonds, expressed desire to live together, and the emotional effect of ongoing contact.<sup>110</sup> The social study must also explore the “appropriateness of developing or maintaining the sibling relationships.”<sup>111</sup> Finally, the social study must explain the reasoning

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<sup>100</sup> *Id.*

<sup>101</sup> Family reunification services include counseling or other treatments that the court orders the parent to participate in. *Id.*

<sup>102</sup> CAL. WELF. & INST. CODE § 361.2 (Deering 2022).

<sup>103</sup> *Id.* § 361.2(a).

<sup>104</sup> *Id.* § 361.3(a).

<sup>105</sup> *Id.* § 361.3(a)(1–8).

<sup>106</sup> *Id.* § 361.2(e)(4).

<sup>107</sup> *Id.* § 358(b)(1).

<sup>108</sup> *Id.* § 358.1(d)(1).

<sup>109</sup> *Id.* § 358.1(d)(1)(A).

<sup>110</sup> *Id.* § 358.1(d)(2).

<sup>111</sup> *Id.* § 358.1(d)(1)(A-B).

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behind any placement and visitation decision.<sup>112</sup> When siblings have not been placed together, the social study must explain why that decision was made and what efforts are being made to reunite the siblings, if appropriate.<sup>113</sup> It must also explore the frequency and nature of sibling visitation, the reason those visits are supervised or unsupervised, and any intention to increase the frequency of those visits.<sup>114</sup> However, it does not expressly mention any level of *required* sibling visitation or maintenance after separate placements have been deemed appropriate.<sup>115</sup> The court must consider all of these factors related to sibling relationships periodically, beginning with the dispositional hearing and ending with the permanency hearing.<sup>116</sup>

## D. POST-DISPOSITIONAL HEARINGS

Periodic status review hearings must be held at least once every six-months.<sup>117</sup> The goals and timelines of these hearings differ depending on whether family maintenance or family reunification services were ordered.<sup>118</sup>

In cases of family maintenance, the first status review hearing must be held no later than six months from the date of the dispositional hearing.<sup>119</sup> Based on supplemental reports from the social worker and any additional evidence from the other parties, the court will determine if, by the preponderance of the evidence, supervision of the minor must be continued.<sup>120</sup> If supervision must be continued, the next status review hearing must be scheduled no later than six months from that date.<sup>121</sup> Family maintenance services can be provided, and status review hearings will be continually scheduled, until the child is twenty-one years-old, so long as the conditions that warranted jurisdiction still exist, or are likely to exist if supervision ends.<sup>122</sup> If the court finds at any point that the removal from the

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<sup>112</sup> *Id.* § 358.1(d)(1)(C-D).

<sup>113</sup> *Id.* § 358.1(d)(1)(C).

<sup>114</sup> *Id.* § 358.1(d)(1)(D)(i-iv).

<sup>115</sup> Herrick & Piccus, *supra* note 1, at 856.

<sup>116</sup> CAL. WELF. & INST. CODE § 366(1) (Deering 2022).

<sup>117</sup> *Id.* § 364(a).

<sup>118</sup> *See* California Juvenile Dependency Practice (CEB), *supra* note 65, § 6.1.

<sup>119</sup> CAL. WELF. & INST. CODE § 364(a) (Deering 2022).

<sup>120</sup> *Id.* § 364(b-c).

<sup>121</sup> *Id.* § 364(d).

<sup>122</sup> California Juvenile Dependency Practice (CEB), *supra* note 65, §6.1; CAL. WELF. & INST. CODE § 364(c) (Deering 2022).

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parent is warranted, family reunification services will be initiated.<sup>123</sup> However, if the conditions no longer warrant supervision, the case will close and jurisdiction will be terminated.<sup>124</sup>

In cases of family reunification, the first status review hearing must be held no less than every six months from the date of the dispositional hearing.<sup>125</sup> At each status review hearing, the court will assess the child’s safety in their placement, the continuing need and appropriateness of the placement, the parent’s compliance with the case plan, the need for any limitations on parental rights, the child’s relationship with their siblings, and the child’s educational and health needs.<sup>126</sup> Family reunification services can be limited to six months or extended up to eighteen months depending on the circumstances.<sup>127</sup> If at any point the court determines the child would be appropriately placed with their parent, family reunification services will end and family maintenance services will begin.<sup>128</sup> However, if family reunification services expire, the court will proceed by holding a permanency hearing.<sup>129</sup> At the permanency hearing, the court will determine whether parental rights will be terminated, whether the child will be adopted or placed under a legal guardianship, or whether the child will remain in foster care.<sup>130</sup>

## V. SIBLING PLACEMENT CASE LAW

The sibling placement statutory scheme creates a compulsory obligation to place siblings together.<sup>131</sup> However, exceptions to this obligation, based on concerns related “to the safety or well-being”<sup>132</sup> of each sibling, often become relevant when faced with the real-life implications of placement.<sup>133</sup> The case summaries below reveal what factors courts consider in determining whether siblings should be placed together, despite the lack of guiding factors within the code. The case analyses that follow draw attention to the three factors most commonly utilized in those

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<sup>123</sup> CAL. WELF. & INST. CODE § 364(e) (Deering 2022).

<sup>124</sup> *Id.* § 364(c).

<sup>125</sup> *Id.* § 366(a)(1).

<sup>126</sup> *Id.* § 366(a)(1)(A-G).

<sup>127</sup> California Juvenile Dependency Practice (CEB), *supra* note 65, § 6.1.

<sup>128</sup> CAL. WELF. & INST. CODE § 366.21(c) (Deering 2022).

<sup>129</sup> *Id.* § 366.26(b)(1-7).

<sup>130</sup> *Id.* § 366.26(b)(1-7).

<sup>131</sup> *Id.* § 16002(a).

<sup>132</sup> *Id.* § 16002(a).

<sup>133</sup> Rothschild & Pollack, *supra* note 7, at 529–30.

determinations, including: (1) the sibling’s own wishes, (2) the potential for mitigation of negative effects if separated, and (3) a highly subjective judgment of the sibling bond’s significance by the judge.

#### A. CASE SUMMARIES

Below are summaries of four California cases in which the court determines whether a sibling set should be placed together or separately. In the first case, the court found that the siblings should remain together for placement purposes, while the other courts in the other three cases found that the sibling group did not need to remain together for placement purposes. These cases serve as examples of common factual backgrounds in sibling placement cases and bring to light the difficult, and often competing, considerations at issue in these cases.

##### 1. *In re Luke M.*

[T]he children’s life experiences had “forced them to bond together in a manner that’s far more significant than a normal sibling bond, and I think it’s a bond of survival.”

*In re Luke M.*

In *In re Luke M.* (hereinafter “*Luke M.*”), the appellate court affirmed the trial court’s order that four siblings could not be separated for placement because the separation would be detrimental to the children.<sup>134</sup> The four siblings, who were fifteen, ten, eight and six years old, were born and raised in California and removed from their mother.<sup>135</sup> The trial court ordered that the siblings be placed with paternal aunt and uncle in California instead of with non-offending, non-custodial father in Ohio.<sup>136</sup>

The trial court considered the siblings’ wishes in making its determination, advanced by the social worker and the siblings’ own testimony.<sup>137</sup> The siblings’ social worker emphasized that the siblings had consistently asked not to be separated throughout the case and that they would sob and become depressed when the possibility of being separated was brought up.<sup>138</sup> Testimony from one of the children was “critical to its

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<sup>134</sup> *In re Luke M.*, 132 Cal. Rptr. 2d 907, 919 (Ct. App. 2003).

<sup>135</sup> *See id.* at 910.

<sup>136</sup> *Id.* at 912.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

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determination”<sup>139</sup> as the court was able to observe “the raw emotions and true sense of fear”<sup>140</sup> related to separation. Though the father argued that the negative impact of separation could be mitigated by telephone calls, occasional visits, and therapy, the social worker maintained that the children needed to remain together, which the trial court took into consideration.<sup>141</sup> Ultimately, the judge concluded that “the children’s life experiences had “forced them to bond together in a manner that’s far more significant than a normal sibling bond, and I think it’s a bond of survival.”<sup>142</sup>

The appellate court found that substantial evidence supported the trial court’s order to place the children together as a sibling set and affirmed the decision.<sup>143</sup>

## 2. *In re A.S.*

There is no perfect solution here.  
*In re A.S.*

In *In re A.S.* (hereinafter “A.S.”), the appellate court affirmed the juvenile court’s order to rescind the requirement that two siblings had to be placed together as a sibling unit because the sibling bond did not outweigh the negative impact the requirement had on their placement options.<sup>144</sup> The two siblings, ten and seven years old, had been removed from their parents and had been in the dependency system for over four years by the time of the appeal.<sup>145</sup> The juvenile court had ordered long-term foster care to be their permanent plan.<sup>146</sup> However, no foster home was willing to care for both siblings, so they were ultimately placed in a facility designed as a short-term emergency shelter for more than eight months.<sup>147</sup> At a periodic review hearing, the trial court rescinded its earlier order to prohibit the separation of the siblings.<sup>148</sup>

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<sup>139</sup> *Id.* at 912.

<sup>140</sup> *Id.* at 916.

<sup>141</sup> *Id.* at 918.

<sup>142</sup> *Id.* at 912–13.

<sup>143</sup> *Id.* at 919.

<sup>144</sup> *In re A.S.*, 141 Cal. Rptr. 3d 255, 264 (Ct. App. 2012).

<sup>145</sup> *Id.* at 258–59.

<sup>146</sup> *Id.* at 259.

<sup>147</sup> *Id.* at 262.

<sup>148</sup> *Id.* at 262–63.

The trial court acknowledged that the siblings had a good bond, enjoyed being together, and had initially refused separation.<sup>149</sup> However, in light of the siblings’ lack of placement options, the trial court placed substantial weight on the fact that each child would have an increased chance at permanent placement if they were separated.<sup>150</sup> This decision was reached during a meeting between the siblings’ social workers, the social workers’ supervisors, supervisors from their current placement, a supervisor from Court Appointed Special Advocates, a court psychologist, and a sibling’s behavior specialist.<sup>151</sup> After the collective decided to inquire into separate placements, they found a foster home willing to take in the ten-year-old within one day.<sup>152</sup> The trial court also considered that though the siblings themselves initially opposed separation, the siblings eventually conceded that separate placements might be necessary.<sup>153</sup> The ten-year-old said she was “ok” with separation,<sup>154</sup> while the eight-year-old “agreed and understood that it might be appropriate for [his sister] to have a different placement.”<sup>155</sup> Ultimately, the trial court rescinded the order that the siblings had to be placed together.<sup>156</sup>

The appellate court affirmed the trial court’s decision but emphasized that it “[did] not intend to minimize the potential negative effects of their separation.”<sup>157</sup> The appellate court said this was a case where “[t]he need to protect the sibling bond between [the siblings] by keeping them placed together directly conflicts with the need to find permanent homes for them.”<sup>158</sup> The appellate court concluded that when the sibling bond and lack of placement options are taken into account, “[t]here is no perfect solution here.”<sup>159</sup>

### 3. *In re C.M.*

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<sup>149</sup> *Id.* at 260.

<sup>150</sup> *Id.* at 264.

<sup>151</sup> *Id.* at 262.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* at 260.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 263.

<sup>157</sup> *Id.* at 264.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

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[T]here was no evidence that the bond between [the siblings] was any greater than the normal sibling bond . . .

*In re C.M.*

In *In re C.M.* (hereinafter “*C.M.*”), the appellate court reversed the juvenile court’s finding of detriment that supported the placement of both siblings with their maternal grandmother, instead of separating the siblings and placing one sibling with her father, because the appellate court did not find sufficient evidence that separating the siblings would detrimentally affect them.<sup>160</sup> The siblings, who were fourteen and nine years old at the time, were detained from their mother and placed together with their maternal grandparents.<sup>161</sup> The fourteen-year-old’s father requested she be placed with him.<sup>162</sup> The juvenile court denied his request because it found placement with the father to be detrimental under section 361.2, since (among other reasons) the fourteen-year-old did not want to be separated from her younger sister.<sup>163</sup> The father appealed.<sup>164</sup>

The appellate court noted that the juvenile court was proper in considering both the child’s wish to not be separated from her younger sister and the nature of their bond.<sup>165</sup> However, when the sibling bond at issue was compared to the sibling bond in *Luke M.*, which did lead to a detriment finding, the appellate court could not find sufficient evidence to support a detriment finding here.<sup>166</sup> The court pointed to the fact that the fourteen-year-old here would not be moving “halfway across the country” and that there was no evidence that the fourteen-year-old’s father would not “foster an ongoing relationship between siblings,” unlike *Luke M.*<sup>167</sup> Additionally, the court observed that in this case, “there was no evidence that the bond between [the siblings] was any greater than the normal sibling bond,” which the court believed paled in comparison to the “unusually strong bond” the siblings in *Luke M.* shared.<sup>168</sup> Thus, the appellate court reversed the

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<sup>160</sup> *In re C.M.*, 182 Cal. Rptr. 3d 206, 215 (Ct. App. 2014).

<sup>161</sup> *Id.* at 209.

<sup>162</sup> *Id.* at 211.

<sup>163</sup> *Id.* at 211–12.

<sup>164</sup> *Id.* at 212.

<sup>165</sup> *Id.* at 213.

<sup>166</sup> *Id.* at 215.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

detriment finding, reasoning that the impact of separating the siblings would not be sufficient to cause detriment under section 361.2.<sup>169</sup>

4. *In re Isayah C.*

The evidence of detriment in the present case, however, was nowhere near as strong as it was in *Luke M.*  
*In re Isayah C.*

In *In re Isayah C.* (hereinafter “*Isayah C.*”), the appellate court reversed and remanded the case after it did not find sufficient evidence to support a finding of detriment under section 361(c) based on the separate placements of half siblings.<sup>170</sup> All three children shared the same mother, but each had a different father.<sup>171</sup> The half siblings at issue were seventeen years old, seven years old, and two years old, and all lived with their mother prior to their removals.<sup>172</sup> The seventeen-year-old had been removed from the mother years prior and was already living in the foster home when her younger siblings were removed.<sup>173</sup> When the younger siblings were removed from their mother, the seven-year-old was placed with his father and the two-year-old was placed in foster care.<sup>174</sup> However, the seven-year-old’s father was arrested weeks later, so the seven-year-old was moved to his two-year-old sibling’s foster home.<sup>175</sup> The juvenile court denied father’s request that the two-year-old be placed with his paternal aunt who lived four hours away. The court reasoned that the move “[would] make it almost impossible . . . for these children to maintain their sibling relationship,” and thus, amongst other reasons, made a detriment finding.<sup>176</sup> Instead, the juvenile court ordered both children be placed with maternal aunt.<sup>177</sup>

The appellate court reversed and remanded the juvenile court’s dispositional order because there was insufficient evidence to support a finding of detriment caused by the separation of the siblings.<sup>178</sup> In evaluating the juvenile court’s decision, the appellate court directly compared the facts

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<sup>169</sup> *Id.* at 214–15.

<sup>170</sup> *In re Isayah C.*, 13 Cal. Rptr. 3d 198, at 201, 211-12 (Ct. App. 2004).

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* at 201–02.

<sup>173</sup> *Id.* at 202.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 203.

<sup>176</sup> *Id.* at 205–06.

<sup>177</sup> *Id.* at 206.

<sup>178</sup> *Id.* at 213.

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of this case to those found in *Luke M.*<sup>179</sup> First, the court pointed out that in this case, the two-year-old was of a young age and had already lived away from his older brother for eighteen months, unlike the children in *Luke M.*, who were five and ten years-old and had spent their entire lives living together.<sup>180</sup> Second, the court pointed out that in this case, the two-year-old’s placement would be four hours away from his younger brother, whereas in *Luke M.*, the children would have been placed much farther away in different states.<sup>181</sup> Finally, the court pointed out that the out-of-town paternal aunt was willing to set up sibling visits to a “far greater degree than the ‘telephone calls and occasional visits’” offered in *Luke M.*<sup>182</sup> Based on these factors, the court concluded that “[t]he evidence of detriment . . . was nowhere near as strong as it was in *Luke M.*”<sup>183</sup>

## B. CASE ANALYSIS

There are statutory guidelines with specific factors for exploring sibling relationships in making placement decisions.<sup>184</sup> However, the exception that allows separate placement when placement together would be “contrary to the safety or well-being of any sibling” is less precise.<sup>185</sup> As seen in the case analyses above, the evaluation of sibling relationships in making placement decisions is heavily fact-dependent, leaving much up to the judge and social worker’s own interpretation. Ultimately, the factors that have appeared to be the most influential in case decisions have been the siblings’ own wishes, the potential for mitigation of negative effects if the siblings were to be separated, and a highly subjective judgement of the significance of the sibling bond by the judge.

### 1. Sibling’s Own Wish

A sibling’s own wish is commonly considered by the court in making placement decisions, but it is not outcome determinative. For instance, the trial and appellate judges in *A.S.* both acknowledged that the siblings at issue had initially opposed separation and only later surrendered to the fact

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<sup>179</sup> *Id.* at 212.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> CAL. WELF. & INST. Code § 358.1(d) (Deering 2022).

<sup>185</sup> *Id.* § 16002(a)(1).

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that their wish would likely not be possible in their circumstances.<sup>186</sup> Both judges held that the siblings could be separated for placement purposes after acknowledging their sentiment.<sup>187</sup> In *C.M.*, the appellate court judge also noted that the juvenile court was proper in considering a sibling’s wish to not be separated from her younger sisters.<sup>188</sup> Still, that court found no detriment would occur if separated for placement.<sup>189</sup> The decision most impacted by a sibling group’s own wish to not be separated was the one made in *Luke M.*, in which the court cited the children’s testimony as “critical” to its determination to keep the siblings together in placement.<sup>190</sup> Therefore, courts do seem to consider the wishes of the siblings, but those wishes are often outweighed by other factors.

## 2. Potential for the Mitigation of Negative Effects if Separated

The potential for the mitigation of negative effects on the siblings if separated is another common consideration made by the court. In considering this factor, the court will consider how willing each sibling’s potential caregiver is to facilitate a relationship between the siblings if placed separately. The court also considers the distance between the placements, and if the distance is far, whether the sibling relationship could be adequately maintained through telephone calls and occasional sibling visits.

For instance, the trial court in *Luke M.* considered the father’s argument that phone calls, occasional visits, and therapy would help the children in their transition to separate placements, while the social worker argued that those strategies would not be sufficient.<sup>191</sup> In *C.M.*, the court partly relied on the fact that if the child moved away from his siblings to live with his father out of town, there was no evidence to suggest the father would not maintain an ongoing relationship between the siblings, in making its decision to separate the siblings.<sup>192</sup> Additionally, in *Isayah C.*, the court pointed out that the aunt’s willingness to foster an ongoing relationship

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<sup>186</sup> *In re A.S.*, 141 Cal. Rptr. 3d 255, 260 (Ct. App. 2012).

<sup>187</sup> *Id.* at 263–64.

<sup>188</sup> *In re C.M.*, 182 Cal. Rptr. 3d 206, 213 (Ct. App. 2014).

<sup>189</sup> *Id.* at 214–15.

<sup>190</sup> *In re Luke M.*, 132 Cal. Rptr. 2d 907, 912 (Ct. App. 2003).

<sup>191</sup> *Id.* at 918.

<sup>192</sup> *In re C.M.*, 182 Cal. Rptr. 3d at 215 (Ct. App. 2014).

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between the siblings beyond phone calls and occasional visits supported its decision to separate the siblings.<sup>193</sup>

The court is given the power to create a visitation plan for siblings *after* it has been determined that placing siblings together would be contrary to the safety or well-being of any sibling.<sup>194</sup> However, the statute does *not* explicitly direct the court to consider the potential ameliorating effect post-separation visitation could have on the siblings in making that initial determination.<sup>195</sup> Instead, the statute simply directs the court to place them together unless contrary to the safety or well-being of any sibling.<sup>196</sup>

### 3. Judge’s Subjective Judgement of the Sibling Bond

The court often appears to make a highly subjective judgment of the sibling bond based on the judge’s personal thoughts and feelings. While it is commonly expected that judges have some agency to use their own judgment in making decisions, the lack of specific guiding factors in this area of the law results in judges having significant control.

For instance, the trial court judge in *Luke M.* stated that the sibling bond at issue was “far more significant than a normal sibling bond, and I think it’s a bond of survival.”<sup>197</sup> On the other hand, the appellate court judge in *C.M.* compared the significance of that sibling bond to the bond described by the trial court judge in *Luke M.*, expressing that the sibling bond at issue was merely a “normal” sibling bond that “paled in comparison” to the other.<sup>198</sup> Both of these examples reveal how truly subjective these decisions can be. In *Luke M.*, the judge forms a subjective belief about the sibling bond which the judge in *C.M.* uses as the foundation to their own subjective belief about a completely different set of siblings. Thus, the judges in these cases, “who ha[ve] not seen or ha[ve] hardly seen the children interact and know[] nothing else but the words that have been spoken to them from the parties about the situation,” have the ultimate say when it comes to the quality and importance of the sibling bond.<sup>199</sup>

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<sup>193</sup> *In re Isayah C.*, 13 Cal. Rptr. 3d 198, 212 (Ct. App. 2004).

<sup>194</sup> CAL. WELF. & INST. CODE § 16002(a)(2) (Deering 2022).

<sup>195</sup> *Id.* § 1600(a)(1).

<sup>196</sup> *Id.*

<sup>197</sup> *In re Luke M.*, 132 Cal. Rptr. 2d 907, 912–13 (Ct. App. 2003).

<sup>198</sup> *In re C.M.*, 182 Cal. Rptr. 3d 206, 215 (Ct. App. 2014).

<sup>199</sup> Vincent Sorrentino, *The True Detriment of Sibling Separation Lies in the Law*, 9 BARRY L. CHILD & FAM. L. J. 77, 87 (2021).

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With the law as it currently stands, judges are given great discretion in analyzing the strength of the sibling bond and the potential consequences separation could have on the siblings at issue. However, judges come to court with their own personal experiences of siblinghood. They may have had strong bonds with their siblings, may have had strenuous or limited relationships with their siblings, or may not have had siblings at all. While the judge is supposed to decide based on the objective facts presented in the case, it is irrefutable that a judge’s own biases can inform the way they interpret facts and formulate opinions via experiential bias.<sup>200</sup>

## VI. REFINING THE STATUTORY GUIDELINE

As exemplified in the case summaries and analyses above, the court often takes several factors into account when determining sibling placement issues, but the consideration of these factors by judges are inconsistent and often insufficient. With the court working off such an ambiguous statutory guideline (that siblings should be placed together “unless contrary to the safety or well-being of any sibling”<sup>201</sup>), the court predictably could overlook other important factors for determining placement.

The court should have a clear guideline to use when determining what is contrary to the safety or well-being of siblings if separated for placement purposes to “introduce consistency and accountability into the decision to place siblings together or apart.”<sup>202</sup> The guideline should be grounded in several key factors that are either missing or undervalued in the current statute. First, the child interviewing techniques employed to ascertain a minor’s wish about sibling placement should be improved. Second, sibling relationships should be prioritized in placement determinations over any other familial relationship if the children want to remain with their siblings. Third, in cases where siblings absolutely cannot be placed together and must be placed separately, the siblings should be given agency to determine their visitation and communication plan so their bond can be maintained.

## A. MINOR’S WISHES

In making decisions that directly affect the life of a minor, the minor’s own wishes should always be listened to and considered. Developmental

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<sup>200</sup> *Id.*

<sup>201</sup> CAL. WELF. & INST. CODE § 16002(a)(1) (Deering 2022).

<sup>202</sup> Anna DiGiovanni & Sarah A. Font, *Revisiting Conventional Wisdom: What Do We Know from 30 Years of Research on Sibling Placement in Foster Care?*, 126 CHILD. & YOUTH SERVS. REV. 1, 16 (2021).

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science research suggests that the time minors turn sixteen years old, their ability to make mature decisions mirrors that of adults “[w]hen it comes to decisions that permit more deliberative, reasoned decision making, where emotional and social influences on judgment are minimized or can be mitigated, and where there are consultants who can provide objective information about the costs and benefits of alternative courses of action.”<sup>203</sup> Decisions about sibling placement fall into this category.<sup>204</sup> Minors can rely on their attorney to explain the available placement options and consequences of any placement decision they are considering because the attorney’s primary responsibility is to “advocate for the protection, safety, and physical and emotional well-being” of the minor.<sup>205</sup> In these deliberations, minors would be able to think through the possibilities without being subject to immediate peer pressure or social coercion that would undermine their ability to make a mature, well-reasoned decision.<sup>206</sup> In these cases, the minor’s wish should be given near-determinative weight in the court’s ultimate decision about sibling placement. If all siblings expressly wish to be placed together, this should create a presumption for joint placement.

However, prioritizing a sibling’s own wishes can have negative consequences in this context if several underlying issues are not considered. First, the siblings may have difficulty in expressing their feelings towards their siblings in a way that appears significant to the court.<sup>207</sup> For example, in *Luke M.*, the only case noted above in which the court required joint sibling placement, the judge noted that the siblings’ “raw emotions and true sense of fear”<sup>208</sup> related to separation revealed in their testimony was critical to the court’s decision. However, a child may not be able to formulate or express this level of pure emotion in ways that accurately portray their true feelings.<sup>209</sup> For instance, minors may not have the “language or

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<sup>203</sup> Laurence Steinberg et al., *Are Adolescents Less Mature Than Adults?*, 64 AM. PSYCH. 583, 592 (2009).

<sup>204</sup> *Id.*

<sup>205</sup> See CAL. WELF. & INST. CODE § 317 (c), (e) (Deering 2022) “If the child is four years of age or older, counsel shall interview the child to determine the child’s wishes and the child’s well-being, and shall advise the court of the child’s wishes. Counsel shall not advocate for the return of the child if, to the best of his or her knowledge, return of the child conflicts with the protection and safety of the child.” *Id.* at §317(e).

<sup>206</sup> *Id.*

<sup>207</sup> Herrick & Piccus, *supra* note 1, at 855.

<sup>208</sup> *Id.* at 916.

<sup>209</sup> *Id.*

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developmental capacity to do so.”<sup>210</sup> Minors who have been subject to abuse and neglect are also more likely to develop emotion regulation.<sup>211</sup> Emotion regulation is caused when a child’s past emotional expression has been reprimanded, ignored, or overlooked by adults.<sup>212</sup> This causes that child to suppress or avoid their future emotional expression.<sup>213</sup> As applied here, the sibling groups who come before the judge in placement cases may experience emotion regulation in ways that prevents them from expressing their feelings of being separated from their siblings in the form judges expect and value. Siblings who have come to suppress or avoid their emotions may have immense difficulty in revealing their feelings of fear or anxiety at the thought of separation to the lawyers or judge. If judges, in considering a minor’s own wish, primarily rely on a minor’s emotion expression when asked about separate placements, the judge may place less value on the sibling bond than truly warranted.

Second, the sibling’s expressed wish may already be imbued with the pressures and limitations of their circumstances, so that the court’s consideration of their wish may give those pressures extra weight. For instance, some children may feel that their wish to be with their sibling is impractical in their circumstances.<sup>214</sup> Children, especially as they age, are able to sense the instability of their situation and may feel obligated to tell the court the answer they assume the court wants to hear, which is being satisfied with separation.<sup>215</sup> This may have been at play in *A.S.*, since both siblings initially opposed separation.<sup>216</sup> However, after being placed in the facility designed as a short-term emergency shelter for more than eight-months,<sup>217</sup> one sibling said she was “ok” with separation,<sup>218</sup> while the other “agreed and understood that it might be appropriate for [his sister] to have a different placement.”<sup>219</sup> It is reasonable to assume that the siblings initially opposed separation because they truly wanted to remain together but

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<sup>210</sup> *Id.*

<sup>211</sup> Stephanie Gyuri Kim et al., *Child Abuse and Automatic Emotion Regulation in Children and Adolescents*, DEV. & PSYCHOPATHOLOGY 1, 2 (2021).

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> See *In re A.S.*, 141 Cal. Rptr. 3d 255, 262–63 (Ct. App. 2012) (“ . . . [A child] had told [their] therapist it ‘might be appropriate for [their sibling] to have a different placement.’”).

<sup>215</sup> See Herrick & Piccus, *supra* note 1, at 855 (“ . . . [S]ome children will answer questions with what they presume the adult wants to hear.”).

<sup>216</sup> *In re A.S.*, 141 Cal. Rptr. 3d at 262–63 (Ct. App. 2012).

<sup>217</sup> *Id.* at 262.

<sup>218</sup> *Id.* at 260.

<sup>219</sup> *Id.*

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eventually changed their answer because of the dire circumstances they were in. This would be an example of the sibling’s wish already incorporating their own balancing. In their situation, both siblings’ updated opinion about separation isn’t a true reflection of what they want, but instead, what they believe they can achieve under the limitations that exist in their circumstances. If a child believes their wish for joint placement is not a possibility or could jeopardize the well-being of themselves or their siblings, their stated wish may not reflect their actual wish.

Additionally, a child may push away their own feelings of attachment when they are faced with the possibility of separate placements to protect themselves emotionally.<sup>220</sup> If the court takes the child’s stated wish for separate placements at face-value, it could result in the child’s true wish being misunderstood. Thus, the issue of *who is* doing the balancing and *who should be* doing the balancing becomes convoluted and the decision to allow separate placements may improperly be attributed to the siblings themselves. If the court believes the child’s wish is based on the child’s ideal situation, but the child’s wish is actually based on their experience in their non-ideal circumstance, the evidence weighing towards separate placements is improperly given extra weight. For all of these reasons, it can be misleading to use a sibling’s wish to guide a placement decision without taking a comprehensive and holistic look at that child’s awareness of their circumstances.

Third, siblings may not be able to fully comprehend the importance of their sibling relationships in their lives until they are older. When children are young, they may not fully understand the impact their siblings have on their well-being, especially when the siblings have lived in the same home throughout their upbringing. Asking a child to consider the potential impact separation would have on their well-being when that separation is only a mere hypothetical probably does not result in the most accurate predictions. It may be difficult for a child to visualize what their daily life would be like without their sibling by their side because loss of a sibling in the home does not directly result in the loss of meaningful activities children partake in. For instance, siblings who grew up in the same household often enjoy playing together. When faced with potential separation, a sibling may be told that even if they are being separated from their sibling for placement, each sibling would still be able play in their new homes respectively. What the sibling may not be able to understand, however, is how the loss of their sibling would impact *their own* experience of play since they would no longer be able to play *with* their sibling. In this sense, separate placement of

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<sup>220</sup> Armeda Stevenson Wojciak, ‘It’s Complicated.’ *Exploring the Meaning of Sibling Relationships of Youth in Foster Care*, 22 CHILD & FAM. SOC. WORK 1283, 1288 (2017).

siblings is an abstract concept that may not fully understood by younger children. While younger children may be able to understand the loss of tangibles, they may not be able to understand their separation from their siblings, which is an intangible.

Besides children not being able to fully appreciate the importance of their sibling's presence in their lives, they are probably even less likely to be able to anticipate the importance siblings could have in their lives in the future. Studies show that siblings remain important to one another in adulthood when significant life events occur, like the birth of a child, death of a parent, and divorce.<sup>221</sup> Even siblings who had not previously been very close are pulled together when events like these occur.<sup>222</sup> As siblings age into senior citizens, sibling relationships remain important.<sup>223</sup> The sibling bond is even likely to improve over time as some of the interpersonal challenges young siblings face are reduced with age.<sup>224</sup> Elderly siblings increase each other's overall well-being and provide both comfort and understanding.<sup>225</sup> Elderly sibling relationships also serve as a unique opportunity for the elderly to reminisce about their shared childhood and upbringing.<sup>226</sup> Overall, a child may have enough difficulty analyzing their preexisting relationship with their sibling, without even considering the potential future losses they could experience as adults and senior citizens.

There are many important considerations when soliciting a child's wish. Therefore, the way in which siblings are asked about their placement preference should be improved. A guideline that better balances the several challenges that come along with discovering a minor's wish would create better outcomes for siblings, especially considering how much their preferences are weighed by the judge. This would give siblings a stronger voice in the decision about their placement while also working to minimize the degree of subjectivity employed by judges in their interpretation of the sibling bond.

Questions that focus on the child's feelings when with their siblings should be asked often. Siblings should be asked if they feel safe around their sibling and if they ever feel scared around their sibling.<sup>227</sup> Questions that

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<sup>221</sup> Craig Fowler, *Motives for Sibling Communication Across the Lifespan*, 57 *COMM'N Q.* 51, 52 (2009).

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> Herrick & Piccus, *supra* note 1, at 856.

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focus on the nature of the sibling dynamic should be asked frequently as well. Siblings should be asked how their sibling shows them that they love them and how they show their sibling that they love them too. With all of these questions, siblings should be asked if they have any examples. Questions about past separation should also be asked. Siblings should be asked if they remember spending time apart, whether for just a night or for an extended period of time, and how they felt when that happened. If they did spend time apart, they should also be asked about how they felt when their sibling arrived back home. The answers to these questions will help the court determine whether the child has experienced separation and what the expected effects of separate placements could be. It would also reveal whether the possibility of sibling separation is a purely hypothetical one, which should be considered when evaluating a minor’s expressed wish. The purpose of all of these questions would be to uncover what makes the sibling relationship meaningful to the siblings involved in a way that is practical and non-speculative.

While valuing the minor’s wishes should always be at the forefront of every analysis related to their placement, the court should be aware of the unique challenges and limitations children face in formulating and expressing their preferences in this context to better protect their true wishes. Once the courts are able to address these concerns in discerning the wishes of the siblings, the court should assume that siblings should be placed together if the siblings request to be placed together explicitly.

#### B. PRIORITY OF SIBLINGS OVER ALL OTHER FAMILIAL RELATIONSHIPS

Siblings’ own placement preferences should be prioritized as the most important factor when evaluating potential placement with a relative.

Under the law as it currently stands, preferential consideration is afforded to relatives who request that a child who has been removed from their home be placed with them.<sup>228</sup> To determine whether placing the child with that relative would be appropriate (and in determining which of multiple relatives requesting placement is most appropriate), the court must consider the following: the best interest of the child, the wishes of the parties involved, the proximity of the relative to the parent, *the placement of other siblings in the same home unless contrary to any siblings’ safety or well-being*, the good moral character of the adults in the home, the relationship

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<sup>228</sup> CAL. WELF. & INST. CODE § 361.3(a) (Deering 2022).

between the relative and the child, and the relative’s ability to provide safe and appropriate care.<sup>229</sup>

If the court is evaluating the appropriateness of a relative requesting placement, the fact that a relative is willing and able to accept an entire sibling group should be given the most weight. Siblings are much more likely to be placed together initially when placed with a relative, and relative placements have proven to be one of the most stable placement options for children removed from the home.<sup>230</sup> This suggests that the likelihood that sibling groups would be separated due to a change in placement is less likely over time.

### C. LONG-TERM VS. SHORT-TERM PLANNING

While many decisions about whether to separate siblings for placement are made in the context of short-term planning, it is also important to consider the impact separation will have on the minor’s long-term outcomes. Though it is easy for the court to prioritize short-term considerations because of the urgency that comes with placement decisions, courts should attach greater value to long-term considerations because of the tremendous impact that placement decisions have on the siblings after their case is closed.

In terms of short-term planning, common considerations include the caseworker’s lack of time and resources in comprehensively evaluating the sibling dynamic and available resources, the actual lack of placements willing to take in an entire sibling group, and the need for urgent placement for sibling groups in unstable situations.<sup>231</sup> In many situations, the court decides to place siblings separately to ensure they are in a safe, stable placement rather than prolong the instability in hopes that a placement willing to preserve the sibling set becomes available in the future.<sup>232</sup> This is the reasoning employed by the court in *A.S.* when it pointed out that “[t]he need to protect the sibling bond between [the siblings] by keeping them placed together directly conflict[ed] with the need to find permanent homes for them.”<sup>233</sup> In that case, the sibling pair had already been in a facility designed as a short-term emergency shelter for more than eight months

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<sup>229</sup> *Id.* § 361.3(a)(1–8) (emphasis added).

<sup>230</sup> Aron Shlonsky et al., *The Ties That Bind: A Cross-Sectional Analysis of Siblings in Foster Care*, 29 J. SOC. SERV. RSCH. 27, 46 (2003).

<sup>231</sup> Rothschild & Pollack, *supra* note 7, at 529–30.

<sup>232</sup> *Id.* at 530.

<sup>233</sup> *In re A.S.*, 141 Cal. Rptr. 3d 255, 264 (Ct. App. 2012).

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because no placement was willing or able to take them both in together.<sup>234</sup> A case like this exemplifies the difficult decisions faced by the court when there is a lack of adequate placement options that could meet the needs of the sibling group as a whole. It appears that courts characterize such situations as contrary to the safety or well-being of the siblings to defeat the presumption of joint placement. Thus, the decision to allow siblings to be placed separately in such a case can be attributed more to a lack of resources in the community than to a lack in the actual law.

The preservation of sibling relationships can provide long-term emotional benefits.<sup>235</sup> Sibling relationships are especially important when parents do not have a strong presence in the siblings’ lives.<sup>236</sup> Siblings who have been placed together also generally help ameliorate the negative impact of losing a parent and experience fewer psychological and emotional issues.<sup>237</sup> Sibling relationships can provide a sense of comfort and unconditional love essential to a child’s development.<sup>238</sup>

There are also significant material long-term impacts. Placing siblings together in the same placement is most consistently associated with more permanent and stable placements over the long-term.<sup>239</sup> While the exact reasons underlying the increased permanency and stability of joint sibling placements are unclear, it appears that at least in some circumstances, preserving sibling groups in placement can result in improved outcomes in reunification, guardianship, and adoption.<sup>240</sup> Additionally, siblings who are placed together as a group in out-of-home placement appear less likely to self-report delinquent and criminal offending behaviors.<sup>241</sup> As a result, they are less likely to experience typical consequences of engaging in those behaviors, like dual involvement in the dependency and juvenile justice

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<sup>234</sup> *Id.* at 262.

<sup>235</sup> Herrick & Piccus, *supra* note 1, at 851.

<sup>236</sup> Joel V. Williams, Comment, *Sibling Rights to Visitation: A Relationship Too Valuable to Be Denied*, 27 U. TOL. L. REV. 259, 282 (1995).

<sup>237</sup> *See id.*

<sup>238</sup> Herrick & Piccus, *supra* note 1, at 851.

<sup>239</sup> Carolyn E. Seale & Gissele Damiani-Taraba, *Always Together? Predictors and Outcomes of Sibling Co-Placement in Foster Care*, 95 CHILD WELFARE 1, 20 (2017).

<sup>240</sup> Jeffrey Waid, *Sibling Foster Care, Placement Stability, and Well-Being: A Theoretical and Conceptual Framework*, 17 J. FAM. SOC. WORK 283, 286 (2014).

<sup>241</sup> Abigail Novak & Kristen Benedini, *Sibling Separation and Self-Reported Offending: An Examination of the Association Between Sibling Placement and Offending Behavior*, 111 CHILD. & YOUTH SERVS. REV. 1, 7 (2020).

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systems, lower educational outcomes, and lower socioeconomic outcomes.<sup>242</sup>

The lack of resources in the community can be addressed by the increased development of townhomes specifically designed for placement of sibling groups in foster care.<sup>243</sup> The first of these developments in California is being built in Palmdale, a city plagued by poverty, child abuse, and neglect.<sup>244</sup> Each townhome in the development will house up to six siblings.<sup>245</sup> That sibling group will live under the care of a specially trained caregiver.<sup>246</sup> It will allow sibling groups to remain together in a stable environment while their parent works towards reunification.<sup>247</sup>

In cases where siblings cannot be placed together, there should be an express requirement that the sibling’s own preferences for the type and frequency of sibling visitation be honored. Under current law, when the court determines siblings must be placed separately, it is the “court [that] has the authority to develop a visitation plan for the siblings.”<sup>248</sup> The responsible local agency must also make a “diligent effort” to provide for “ongoing and frequent interaction among siblings” until family reunification or the termination of parental rights occurs.<sup>249</sup> After the court’s authorization of the sibling visitation and/or contact plan, the plan must be provided to the child’s caretaker so that sibling visitation and/or contact can begin as quickly as possible.<sup>250</sup> The only explicit mention of the minor’s agency in this process is that “[i]f the case plan for the child has provisions for sibling interaction, the child . . . shall have the right to *comment* on these provisions.”<sup>251</sup> Because “the amount of contact siblings have has been associated with how they view sibling relationship quality,” it would be important to ask siblings what level of visitation would be adequate to maintain their bond and then honor those requests.<sup>252</sup> This would also be an

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<sup>242</sup> *Id.*

<sup>243</sup> Nancy Marie Spears, *New Homes in Southern California Will Keep Siblings in Foster Care Together*, THE IMPRINT (Jul. 20, 2022, 12:39 PM), <https://imprintnews.org/child-welfare-2/homes-in-california-will-keep-siblings-in-foster-care-together/66575> [<https://perma.cc/9BLY-VJHU>].

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> CAL. WELF. & INST. CODE § 16002(a)(2) (Deering 2022).

<sup>249</sup> *Id.* § 16002(b).

<sup>250</sup> *Id.* § 16002(f).

<sup>251</sup> *Id.* § 16002(d) (emphasis added).

<sup>252</sup> Wojciak, *supra* note 220, at 1290.

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opportunity to give some (albeit, relatively minor) agency back to the siblings if they must be separately placed.<sup>253</sup>

However, it is important to keep in mind that even if mitigation techniques like visitation could be utilized by the separated siblings’ caregivers, the sibling bond may not be adequately maintained. In the development of sibling bonds, it is the regular, day-to-day interactions that greatly inform each siblings’ perception of their role in relation to their siblings. While occasional telephone calls and visits may allow siblings to maintain regular contact, play together, and catch-up on their recent experiences, it does not allow them to grow up alongside each other in the way many siblings are able to. Thus, the prioritization of mitigation techniques in deciding whether siblings should be separated in placement may not be beneficial, and in some ways, could be potentially harmful by placing more value on occasional visits than should be afforded.

## VII. CONCLUSION

Children pulled into the dependency system deserve to have their sibling relationships appropriately valued and honored by the law. Though some sibling relationships can be affected by the unhealthy environment in which they were formed, many sibling relationships have long-term beneficial effects for siblings who have bonded over their experiences in an abusive or neglectful household. These relationships provide safety, comfort, and a sense of self for each and every sibling within the sibling group. Decisions about sibling placement should not merely be determined by subjective value judgments by dependency judges or limitations posed by potential placements, especially when children with siblings explicitly request joint placement. Instead, children who want their siblings in their lives should be listened to. The dependency system can better honor the sibling’s wishes in three ways: 1) using targeted interviewing questions intended to extract specific details on the sibling bond, 2) prioritizing sibling relationships above other familial relationships when doing so aligns with the child’s wishes, and 3) allowing the siblings an active role in deciding their visitation and communication plan, if the siblings must be separated.

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<sup>253</sup> *Id.*