

A Legislative Brief on House Bill 448

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Overview

This legislative brief provides information relevant to HB 448 such as: the significance of the sibling bond, defining siblings, relevant legal issues, and state comparisons.

How Siblings Become Separated

Siblings get separated for many reasons such as divorce, adoption, and foster care.

“Given the large number of families impacted by divorce each year, much effort has been put forth toward a better understanding of how experiencing parental divorce affects children's adjustment.”¹ It turns out a child is more likely to adjust better if he or she has a sibling during the divorce.² Qualitative studies have concluded that the simple companionship of a sibling provided reassurance and encouraged resilience between kids who experienced divorce in childhood or adolescence.³ “Furthermore, research suggests siblings may provide psychological, psychosocial, and emotional support, often looking to one another during distressing times of parental divorce.”⁴

It is therefore, not surprising judges take notice of children experiencing the trauma of their parents' separation, and often see separating them from each other as an added cruelty at an already vulnerable time. One court noted, “Young brothers and sisters need each other's strengths and association in their everyday and often common experiences, and to separate them,

¹ Jessica Hallberlin, *Surviving the divorce: The Power of the Sibling Relationship*. (2015). Theses, Dissertations, and Projects. Paper 646.

² Jessica Hallberlin, *Surviving the divorce: The Power of the Sibling Relationship*. (2015). Theses, Dissertations, and Projects. Paper 646. See also: Kempton, T., Armistead, L., Wierson, M., & Forehand, R. (1991). Presence of a sibling as a potential buffer following parental divorce: An examination of young adolescents. *Journal of Clinical Child and Adolescent Psychology*, 20(4), 434-438

³ Jessica Hallberlin, *Surviving the divorce: The Power of the Sibling Relationship*. (2015). Theses, Dissertations, and Projects. Paper 646. See also: Jacobs and Sillars: (2012) Sibling support during post-divorce adjustment: An idiographic analysis of support forms, functions, and relationship types. *Journal of Family Communication*, 12(2), 167-187

⁴ Jessica Hallberlin, *Surviving the divorce: The Power of the Sibling Relationship*. (2015). Theses, Dissertations, and Projects. Paper 646.

unnecessarily, is likely to be traumatic and harmful.”⁵ If the courts agree separating siblings in the context of a divorce is traumatic and harmful, then the same concern would apply to denying visitation to siblings that are separated for any reason including but not limited to if the parents were never married and visitation is denied, foster care, and adoption.

Often, half-siblings and stepsiblings separate. “If the common parent dies, disappears, or divorces again, the contact between the siblings may terminate. In most jurisdictions, the children have no judicial recourse if the surviving parent does not allow visitation between the half-siblings” or stepsiblings.⁶

Another way children are separated from their siblings is through foster care and adoption. A child is often adopted by a stepparent or after being placed in foster care and the rights of the biological parents have been terminated.

Currently, the termination of a biological parent’s rights also terminates the legal relationship between siblings. HB 448 seeks to rectify this so that the sibling relationship is not legally terminated when parental rights are severed, and in addition would provide a sibling an avenue to petition the court for continued sibling relationship.

“Unfortunately, many children are removed from their homes all together and placed in the midst of the foster care. Sometimes this happens when a parent or guardian dies. Yet all too often, the reason is abuse, neglect, or dependency. While the Federal Government through the Fostering Connections Act has taken a leadership role in mandating reasonable efforts to maintain sibling relationships, it is up to the States to vigorously support these connections.”⁷ “The Fostering Connections Act sends a clear message that sibling relationships are critically important to preserve, but it is unclear as to whether the

⁵ *Obey v. Degling*, 37 N.Y.2d 768, 771, 375 N.Y.S.2d 91, 94, 337 N.E.2d 601, 602 (1975)

⁶ *Id.*

⁷ *Id.*

reference to “adoptive placement” in the statute refers to the post adoption period as well. Mandelbaum (2011) recognizes the placement of this phrase after the term “kinship guardianship,” which clearly is a permanent arrangement and can infer that “adoptive placement” also refers to the child’s life in a permanent adoptive home.”⁸

While, Ohio attempts to encourage agencies to make reasonable efforts to place siblings together under 2151.411, there is habitually a gap, amongst what is measured as best practice or what the law requires and what occurs in day-to-day practice.⁹

If children are separated in foster care, (such as one child is adopted but the other is not, two siblings in separate foster home, or an aged out sibling) there is currently no judicial recourse in Ohio for these siblings to maintain those crucial relationships which only adds salt to the wound of losing their parents. These children now have not only lost their parents, but the closest human relationship they have, their sibling. HB 448, seeks to cure this situation by allowing siblings to petition for sibling visitation. While, it is important to note that the child would be able to petition through a guardian ad litem, parent, or next of kin, actually permitting visitation would be at the discretion of a magistrate or judge who would consider the best interest of the child. The best interest of the child includes multiple factors and also takes into consideration the wishes of parents. While the wishes of the biological, foster, or adoptive parents would be considered, it would not override the best interest of the child.

The Significance of the Sibling Bond

“The sibling relationship is life’s longest lasting relationship, longer, for the most of us by a quarter of a century, than our ties to our parents. It lasts longer than our relationship with

⁸ Child Welfare Information Gateway. (2013). Sibling Issues in Foster Care and Adoption. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau.

⁹ Gustavsson, N. S., & MacEachron, A. E. (2010). Sibling connections and reasonable efforts in public child welfare. *Families in Society*, 91(1), 39-44. See also: Michelle Cohen, National Resource Center for Permanency and Family Connections: Information Packet: Sibling Placement: The Importance of the Sibling Relationship for Children in Foster Care. (June 2012)

our children, certainly longer than with a spouse, and with the exception of a few lucky men and women, longer than with a best friend.”¹⁰

Until the last couple of decades, it was regularly thought that parents were the main people responsible for influencing the personalities of their children.¹¹ “Today we know that siblings are part of a far more complex and mysterious story of how people develop.”¹² It was not until after the first edition of *The Sibling Bond* by Stephen P. Bank and Michael D. Kahn was published in 1982 that Psychologists and Psychiatrists, realized “the sibling relationship has a distinctive, emotional, passionate, painful, and solacing power which shapes the story of who we are and who we become—that siblings are not minor actors on the stage of human development.”¹³ Siblings are our best teachers in life. Sibling relationships offer kids their first peer communications and the first chance to deal with different features of enduring and cherished relationships.¹⁴

A New York Court has said, “Young brothers and sisters need each other's strengths and association in their everyday and often common experiences...” and “The importance of rearing brothers and sisters together, and thereby nourishing their familial bonds, is also strengthened by the likelihood that the parents will pass away before their children.”¹⁵ The court ultimately ruled in favor of sibling visitation.¹⁶

The significance of the sibling bond is even more important for children entering the foster-care system and separated by adoption. “Many children report experiencing a great deal of

¹⁰ Stephen Banks, Michael Kahn, *The Sibling Bond* § xi. (2003)

¹¹ *Id.* § xv.)

¹² *Id.*

¹³ *Id.* at 5.

¹⁴ Alena Hall, The Huffington Post. Proof There’s Nothing Quite Like A Sibling Bond.” (August 22, 2014).

¹⁵ *In re W.*, 89 Misc. 2d 368, 379, 392 N.Y.S.2d 180, 187 (Fam. Ct. 1977)

¹⁶ *Id.*

pain, anxiety, guilt, grief, and “lost identity” when they enter the foster care system.”¹⁷ Their whole life suddenly feels upside down. “Uprooted from their homes and families, a sense of detachment from their community, culture, and identity is common among these children.”¹⁸ As if this heartbreak is not enough, kids entering the system usually become separated from their siblings.¹⁹ Commonly the system separates these siblings from the very moment they enter the system.²⁰ On occasion, they initially are put together only to later to be pulled apart.²¹

When kids are detached from their siblings, the research shows that a many kids sense “they have lost a part of themselves,” which increases the anxiety and pain they already feel about being taken away from their parents and placed into what many kids have termed as stranger care.”²²

Siblings placed together use their relationships to figure out their own identity.²³ In addition, siblings not only help each other to adjust to different and terrifying circumstances, but also they stay pertinent figures during their lives.²⁴ “Oftentimes, children who are abused or neglected by their caregivers have especially strong ties to one another and separating them may cause additional trauma.”²⁵ Furthermore, the emotional support of the brother or sister bond can

¹⁷ Emily Kernan. National Center for Youth Law. *Keeping Siblings Together: Past, Present, Future*. (November 8, 2016). <https://youthlaw.org/publication/keeping-siblings-together-past-present-and-future/>

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ Mary Anne Herrick & Wendy Piccus, Sibling Connections: The Importance of Nurturing Sibling Bonds in the Foster Care System, 27 *Children and Youth Services Review* 845, 849 (2005).

²⁴ Rebecca L. Hegar, Sibling Placement in Foster Care and Adoption: An Overview of International Research, 27 *Children and Youth Services Review* 717, 719 (2005).

²⁵ Michelle Cohen, National Resource Center for Permanency and Family Connections: Information Packet: *Sibling Placement: The Importance of the Sibling Relationship for Children in Foster Care*. (June 2012)

deliver “a sense of safety” as kids go into foster care.²⁶ HB 448 would help ensure siblings could maintain these crucial relationships through visitation.

Defining a Sibling

Under House Bill 448, "sibling" means a person that shares at least one biological or adoptive parent or has been raised in the household as a sibling. “Children’s definitions of their siblings often differ from those of other adults such as caseworkers or official legislative definitions. Children are less formal than adults in their view of who is a brother or sister.”²⁷ “Research indicates that biological relatedness was not associated with young children’s perceptions of closeness to siblings; being a full, half, or step-sibling did not influence their perception of closeness.”²⁸

Children in foster care may reside with and obtain connections to children whom they might not be related.²⁹ The word “fictive kin” is used to identify kinds of relationships in a child’s life where a legal and biological connection is absent, but a resilient, lasting union occurs.³⁰ However, “children in care are likely to form sibling-like relationships with non-related children in their placements... [such as] other foster children...[or] related children in kinship placements.”³¹ Thus, many children who view themselves as siblings are not biologically related. Consequently, professionals need to “seek the views of children” in making a correct

²⁶ Id.

²⁷ Child Welfare Information Gateway. (2013). Sibling Issues in Foster Care and Adoption. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau.(2)

²⁸ Id.

²⁹ Child Welfare Information Gateway. (2013). Sibling Issues in Foster Care and Adoption. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau.(2)

³⁰ Id. See Casey Family Programs (2002, May). Proceedings of the National Leadership Symposium on Siblings in Out-of-Home Care. Seattle, WA: Author

³¹ Tarren-Sweeney, M. & Hazell, P. (2005). The mental health and socialization of siblings in care. Children and Youth Services Review, 27, 821-843.

evaluation of sibling associations.³² The Fostering Connections Act or any Ohio State Statute do not protect these less formal bonds.

This definition does not propose that the child is free to pick and choose who a sibling is, but instead gives a judge broad discretion on deciding which sibling relationships ought to be preserved on a case by case basis depending on the appropriateness and best interest of the children involved.

The definition must be broad, because if the starting point is a restrictive law which limits siblings to a biological tie relationship which may be in the child's best interest could be cut off. Currently, Cuyahoga County Children and Family Services states, "Siblings are defined as full, half, step, adoptive or fictive siblings. Fictive siblings are children or adults who have formed a relationship with one another, but who are not necessarily blood-related."³³ While, there has been some push back about the definition of sibling in HB448 being overbroad, HB 448's definition is much narrower compared to Cuyahoga County Children and Family Services definition of sibling.

The Constitutional Rights of Parents

Currently all 50 states have enacted a grandparent visitation statute and some of these statutes allow third parties to seek visitation of a minor child under certain circumstances.³⁴ "At common law, grandparents did not possess a legal right to visit their grandchildren. However, in the 1970's, through the lobbying efforts of several grandparent organizations, many states promulgated "grandparent visitation statutes" that gave grandparents derivative or independent

³² Hindle, D. (2000). Assessing children's perspective on sibling placements in foster or adoptive homes. *Clinical Child Psychology and Psychiatry*, 5(4), 613-625.

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³⁴ Goldberg, Michael K. (2009) "A Survey of the Fifty States' Grandparent Visitation Statutes," *Marquette Elder's Advisor*: Vol. 10: Iss. 2, Article 4.

statutory rights to associate with their grandchildren.”³⁵ However, as grandparent visitation statutes started to battle with parents’ rights to decide which third parties ought to be allowed to have prolonged interaction with their kids, numerous states examined the constitutional validity of these kinds of statutes.³⁶ By 1999, a number of states had professed their grandparent visitation statutes unconstitutional.³⁷ However, many states have had their grandparent visitation statute upheld as constitutional, including Ohio.³⁸

Currently, Ohio’s third-party visitation statute (R.C. 3109.051) permits grandparents, and other relatives to seek visitation in a child support, divorce, disillusionment, or annulment hearing.³⁹ In *Troxel v. Granville*, a Washington third-party visitation statute was struck down because it gave no consideration to the wishes of the parents.⁴⁰ The key here is none. However, Ohio’s current third-party statute under 3109.051 has already been found Constitutional in *Harrold v. Collier*.⁴¹ The Supreme Court in “*Harrold* [,]decided that *Troxel* does not affect Ohio’s statute, and Ohio’s third party visitation statutes are “constitutional on their face” and “nothing in *Troxel* suggests that the parent’s wishes should outweigh the best interest of the child.”⁴² Therefore, court-ordered sibling visitation would not require a showing that the parents

³⁵ THE STATUS OF SIBLINGS' RIGHTS: A VIEW INTO THE NEW MILLENNIUM, 51 DePaul L. Rev. 1

³⁶ *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054 (2000)

³⁷ THE STATUS OF SIBLINGS' RIGHTS: A VIEW INTO THE NEW MILLENNIUM, 51 DePaul L. Rev. 1, 28 *

³⁸ *Harrold v. Collier*, 2005-Ohio-5334, 107 Ohio St. 3d 44, 836 N.E.2d 1165; *McGuire v. Morrison*, 1998 OK CIV APP 128, 964 P.2d 966

³⁹ Ohio Rev. Code Ann. § 3109.051

⁴⁰ *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054 (2000)

⁴¹ *Harrold v. Collier*, 2005-Ohio-5334, 107 Ohio St. 3d 44, 836 N.E.2d 1165

⁴² Laura Schneider, Members Only: Grandparent Visitation Rights in Ohio. Volume 127. Issue 3. (February 1,2007)

were unfit, only that visitation is in the best interests of the minor child. It means that to protect a parent's constitutional rights, the wishes must be one of the best interest factors, but that one factor doesn't trump the best interest of the child.

This is already the current law, pertaining to third-party visitation petitions in private matters under 3109.051. Since HB 448 if enacted, is a third-party visitation statute which includes consideration of a parent's interest, it is constitutional and does not infringe on parent's constitutional rights. The only difference is that it would extend to petitions where a child may have been adopted or is in foster care.

The Ohio Family Care Association has brought up that there is a petition concerning an Alabama Case which concerns whether adoptive parents have the same rights as biological parents. This case is irrelevant to Ohio Law. It was an Alabama case that the US Supreme Court, as of date, has not decided if it will even hear. Therefore, it carries no legal authority on Ohio law. Second, even if the Supreme Court decides that adoptive parents have the same rights as biological parents, their constitutional rights still would not be violated because HB 448 lists parental wishes as one of the best interest factors. If the Supreme Court does take the case, and decides adoptive parents do not have the same rights as biological parents, then the point is further irrelevant. In sum, as of this date, the Alabama Case cited by OFCA has no impact on HB 448 or the constitutional rights of an adoptive parent.

Comparison of Other State Statutes

Several other states currently have sibling visitation statutes and many of them apply to foster-care and post-adoption situations. The following is a preliminary list.

Arkansas

Statute: A.C.A. § 9-9-215; 9-13-102

Definition of Sibling: These sections do not explicitly define sibling but 9-13-102 states “any person who is a brother or sister, regardless of the degree of blood relationship” may petition for visitation.

Mechanism for Enforcement: Sibling visitation ordered before an adoption for a child in foster care does not terminate with the adoption. In addition, a sibling or a parent, guardian, or next friend in behalf of the minor may petition the court. It is not limited to siblings in foster care or adopted from foster care.

California

Statute: California Welfare and Institutions Code, Section 16002

Definition of Sibling: “Sibling” means a person related to the identified child by blood, adoption, or affinity through a common legal or biological parent.

Mechanism for Enforcement While Child is in Foster Care: If siblings are not placed together in the same home, the social worker or probation officer shall explain why the siblings are not placed together and what efforts he or she is making to place the siblings together or why making those efforts would be contrary to the safety and well-being of any of the siblings. When placement of siblings together in the same home is not possible, a diligent effort shall be made, and a case plan prepared, to provide for ongoing and frequent interaction among siblings until family reunification is achieved, or, if parental rights are terminated, as part of developing the permanent plan for the child. If the court determines by clear and convincing evidence that

sibling interaction is contrary to the safety and well-being of any of the siblings, the reasons for the determination shall be noted in the court order, and interaction shall be suspended.

When there has been a judicial suspension of sibling interaction, the reasons for the suspension shall be reviewed at each periodic review hearing. In order for the suspension to continue, the court shall make a renewed finding that sibling interaction is contrary to the safety or well-being of either child.

If a person wishes to assert a sibling relationship with a dependent child or ward, he or she may file a petition in the juvenile court having jurisdiction over the dependent child.

Mechanism for Enforcement Post Adoption: The county placing agency convenes a meeting with the child, the siblings of the child, the prospective adoptive parents, and a facilitator for the purpose of deciding whether to voluntarily execute a postadoption sibling contact agreement. This meeting does not need to be held if the county child placing agency determines it would be contrary to the safety and well being of the child or the child does not wish to have such a meeting. The child may petition the court for an order requiring the county placing agency to convene such a meeting.

Florida

Statute: FLA. STAT. § 63.0427

Definition of Sibling: None in visitation section.

Mechanism for Enforcement after Adoption: At time of adoption, child has right for court to consider post adoption contact with siblings and include in adoption order. Adoptive parents can ask court to review this contact order at any point.

Massachusetts

Statute: MASS. GEN. LAWS ch. 119 § 26B(b)

Definition of Sibling: None in visitation section.

Mechanism for Enforcement in Foster Care: A child, sibling, parent, legal guardian or the government department with custody of the child may file a petition for sibling visitation in the court committing the child to the custody of the department. Periodic reviews evaluate the effectiveness and appropriateness of sibling visitations. The child's right to petition may only be available after the age of 12.

Mechanism for Enforcement after Adoption: Any child over 12 years of age may request visitation with siblings who have been separated and placed in care or have been adopted in a foster or adoptive home other than where the child resides.

New Jersey

Statute: 9:2-7.1

Definition of Sibling: No definition in Title 9.

Mechanism for Enforcement: Sibling petitions the court and has the burden to prove visitation is in the child's best interests. Factors to be considered in best interest determination is listed. It is not limited to siblings in foster care or adopted from foster care. The New Jersey Supreme court has interpreted the statute to apply to children who have been adopted.

This is not an exhaustive list of state laws regarding sibling visitation but are examples of the types of laws states have used to address sibling contact and visitation in foster care and adoption. For a longer explanation of the various ways states have addressed the issue see "Sibling Issues in Foster Care and Adoption" published in 2013 by the Child Welfare

Information Gateway and “Delicate Balances: Assessing the needs and Rights of Siblings in Foster Care to Maintain their Relationship Post-Adoption” by Randi Mandelbaum published in the New Mexico Law Review in 2011, specifically pages 11-20.