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# Siblings Torn Apart No More

Jennifer M. M. Schwartz

## Code Sections Affected

Welfare and Institutions Code §§ 16004 (new); §§ 358.1, 361.2, 362.1, 366, 366.1, 366.3, 388, 16002, 16501.1 (amended).  
AB 1987 (Steinburg); 2000 STAT. Ch. 909

*"I wanted to die . . . but in a way I didn't. My brother needed me, and that would stop me [from killing myself]. I kept thinking of my brother and how he was counting on me."*<sup>1</sup>

## I. INTRODUCTION

At the age of seven, Lidia Cabrera assumed the care of her newborn baby brother.<sup>2</sup> In fact, when her brother "took his first steps, he walked to Lidia and no one else."<sup>3</sup> Lidia was responsible for finding food for the both of them and would often steal money from her mother's purse to pay for groceries when her mother was "passed out from drinking."<sup>4</sup> When Lidia was placed in foster care, "Lidia's only request was that she and her brother [be allowed to] stay together."<sup>5</sup>

Many siblings fear separation and request placement together in foster homes, they are even willing to face abuse to remain together.<sup>6</sup> Like Lidia, more and more children are being removed from their home and placed in foster care: often in different foster homes than their siblings.<sup>7</sup> Many younger siblings depend upon an older sibling for emotional and physical support; just as Lidia's brother depended

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1. See Duane Noriyiki, *Giving: A Weekly Look at Those Who Help Getting Past the Pain Ex-Foster Youth Like Lidia Cabrera Grieve for Their Lost Childhoods and For the Relatives Who Abused Them*, L.A. TIMES, Sept. 7, 1999, at E1, available in 1999 WL 26173174 (quoting Lidia Cabrera, a past victim of child abuse who assumed the care of her baby brother when her alcoholic mother failed to care for him).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Infra* note 44 and accompanying text.

7. See MELISSA SICKMUND & HOWARD N. SNYDER, U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 40-44 (1999) (reporting an increase in the number of children who are abused and neglected); Sara Latz & William Wesley Patton, *An Analysis of Siblings' Association*, 48 U. MIA. L. REV. 745, 757-58 (discussing an increased prevalence of sibling separation in various states).

upon her.<sup>8</sup> Chapter 909 implements procedures that attempts to keep siblings together in both foster and adoptive placement.<sup>9</sup> However, where siblings cannot be placed together in adoptive or foster homes, Chapter 909 provides for a heightened standard of proof be met in order to deny siblings visitation.<sup>10</sup> Thus, California is showing its statutory support for the preservation of sibling relationships.

## II. LEGAL BACKGROUND

### A. Overview of Sibling Placement in Dependency Court

Before 1992, juvenile courts did not have to consider siblings when determining where to place dependent children.<sup>11</sup> Additionally, most siblings only had one attorney representing the interests of all the siblings in court proceedings.<sup>12</sup> Thus, when some siblings desired visitation with each other but other siblings did not, a potential conflict of interest arose for the attorney.<sup>13</sup> Notwithstanding this conflict, the court in *In re Candida S.*<sup>14</sup> did not see a need for siblings to have individual attorneys.<sup>15</sup> However, a year prior, the court in *In re Elizabeth M.*<sup>16</sup> had held that denying each child her own counsel was reversible error if the result constituted a miscarriage of justice.<sup>17</sup> The court concluded that determination of the child's best

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8. See Latz & Patton, *supra* note 7, at 760-68 (identifying different sources of information concerning the importance of sibling bonds in promoting growth and social skills, meeting emotional needs, and influencing personality development; and emphasizing that more research is needed to truly appreciate and understand the bonds and influence of sibling relationships).

9. *Infra* Part IV.

10. *Infra* Part III.C.

11. See 1992 Cal. Legis. Serv. ch. 3332, sec. 1, at 8 (amending CAL. WELF. & INST. CODE § 16501.1(a)(6)) (considering siblings for the first time when determining placement of dependent children); 10 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent & Child* § 719, at 788-92 (9th ed. 1999).

12. See *In re Elizabeth M.*, 232 Cal. App. 3d 553, 563-64, 283 Cal. Rptr. 483, 488 (1991) (detailing a case in which six siblings were represented by one counsel and highlighting that the desired outcome of the dependency action may vary among siblings). For instance, Servando Jr. did not want to be reunited with his parents as long as he could see his brothers Eric and Daniel; Elizabeth and Margaret did not ask to see Servando Jr., and Margaret, a three-and-a-half-year-old, did not know that she had any siblings other than Elizabeth. 232 Cal. App. 3d at 565, 283 Cal. Rptr. at 488. See also *In re Candida S.*, 7 Cal. App. 4th 1240, 1251, 9 Cal. Rptr. 2d 521, 527-28 (1992) (describing a dependency action in which the district attorney represented all four minors in one family although some siblings wanted visitation and others did not); *In re Marquis D.*, 38 Cal. App. 4th 1813, 1819, 46 Cal. Rptr. 2d 198, 201 (1995) (noting a case in which one attorney represented six siblings and one sibling wanted to reunite with the mother, while the other five siblings wanted to stay with the father).

13. *In re Elizabeth M.*, 232 Cal. App. 3d at 565-66; 283 Cal. Rptr. at 489.

14. 7 Cal. App. 4th at 1253, 9 Cal. Rptr. 2d at 529.

15. *In re Candida S.*, 7 Cal. App. 4th at 1251-52, 9 Cal. Rptr. 2d at 527-28.

16. 232 Cal. App. 3d at 570, 283 Cal. Rptr. at 493.

17. *In re Elizabeth M.*, 232 Cal. App. 3d at 568, 283 Cal. Rptr. at 493. *Elizabeth M.* was decided just months before Welfare and Institutions Code section 16501.1(a)(6) was amended. 1992 Cal. Legis. Serv. ch. 3332, sec. 1, at 8 (amending CAL. WELF. & INST. CODE § 16501.1(a)(6)).

interests mandated consideration of sibling visitation, even in the absence of statutes or prior case-law addressing sibling visitation.<sup>18</sup>

All courts recognized that the purpose of dependency actions was to “protect the welfare and best interests of the child;” yet, some courts determined that their best interests did not necessarily include formal orders for sibling visitation.<sup>19</sup> For example, in *In re Candida S.*, the court disagreed with the reasoning in *Elizabeth M.* and held that siblings must request visitation through their attorney in order to get a formal order for visitation on appeal.<sup>20</sup> If informal visitation was already exercised, the court was satisfied that no formal order was necessary.<sup>21</sup> The court’s hesitancy to impose formal orders left siblings with informal arrangements; even where the children were not placed within the same foster home and their visitation was subject to the whim of their foster parents.<sup>22</sup>

The 1992 amendment of Welfare and Institutions Code section 16501.1(a)(6) required that the juvenile courts consider unsupervised sibling visitation.<sup>23</sup> Once a court terminated parental rights or whenever “out-of-home services [were] used,” the social worker assigned to the child’s case evaluated whether the visitation would be beneficial or detrimental to the child’s welfare and reported her findings in the case plan.<sup>24</sup> Welfare and Institutions Code section 16501.1(a)(6) did not provide any guidelines to social workers or courts for determining whether visitation among siblings was proper.<sup>25</sup>

In 1993, the Legislature enacted Welfare and Institutions Code section 16002 which provides for joint sibling placement.<sup>26</sup> Welfare and Institutions Code section 16002 requires siblings to be placed together in the same foster home unless a court determines that sibling interaction is harmful.<sup>27</sup> This law also established a standard of proof, if siblings were not placed together, for the judge to use when considering whether sibling visitation was within the “best interests of the child”—a preponderance of the evidence standard.<sup>28</sup>

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18. *In re Elizabeth M.*, 232 Cal. App. 3d at 569, 283 Cal. Rptr. at 492.

19. See *In re Candida S.*, 7 Cal. App. 4th at 1253-54, 9 Cal. Rptr. 2d at 528 (holding that when siblings have already exercised informal visitation no formal court order is needed). But see *In re Elizabeth M.*, 232 Cal. App. 3d at 569, 283 Cal. Rptr. at 492 (declaring that the analysis to determine the “best interests of the child” requires consideration of visitation and noting that a formal order is necessary regardless of whether siblings already exercise informal visitation).

20. *In re Candida S.*, 7 Cal. App. 4th at 1253, 9 Cal. Rptr. 2d at 529.

21. *Id.* at 1251, 9 Cal. Rptr. 2d at 528.

22. *In re Candida S.*, 7 Cal. App. 4th at 1253, 9 Cal. Rptr. 2d at 529.

23. 1992 Cal. Legis. Serv. ch. 3332, sec. 1, at 8 (amending CAL. WELF. & INST. CODE § 16501.1(a)(6)).

24. *Id.*

25. *Id.*

26. 1993 Cal. Legis. Serv. ch. 1089, sec. 32, at 36 (enacting CAL. WELF. & INST. CODE § 16002).

27. *Id.*

28. *Id.*

## B. *The Child's Best Interest*

Dependency proceedings focus on the child's best interests, balanced with parental rights.<sup>29</sup> The following factors help courts determine what is in the child's best interests: "(1) the seriousness of the problem that led to the dependency...(2) the strength of relative bonds between the dependent child and both parents and caretakers; and (3) the degree to which the problem may be, and has been ameliorated."<sup>30</sup> These factors were developed in *In re Kimberly F.*<sup>31</sup>, to help provide guidance for other courts in determining the best interests of the minors involved.<sup>32</sup> However, factors that are *not* to be considered include personality traits and any comparison between the foster family's income, standard of living, or number of children with that of the biological family.<sup>33</sup> At issue in a dependency action is not whether the child will have a better life at the foster home or adoptive home, but whether the biological parents are fit to care for their children.<sup>34</sup> Thus, with no express requirements to consider sibling placement and visitation within the best interests of the child standard, the courts were free to make that determination at will. However, once a child has been removed from the home, Chapter 909 has mandated a court to consider sibling placement and visitation as an added factor of the child's best interests.<sup>35</sup>

## III. CHAPTER 909

### A. *Mandatory Sibling Placement Evaluations*

Chapter 909 requires a case social worker to include a "factual discussion" of several considerations in her social study or evaluation regarding sibling placement.<sup>36</sup> Some of the important considerations to be included are (1) the "nature of the relationship" of the siblings, (2) an explanation of why the siblings are not

29. See CAL. WELF. & INST. CODE § 300.2 (West Supp. 2001) (stating in pertinent part that, "(t)he focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child").

30. *In re Kimberly F.*, 56 Cal. App. 4th 519, 532, 65 Cal. Rptr. 2d 495, 501 (1997).

31. *Id.*

32. *Id.*

33. *In re Kimberly F.*, 56 Cal. App. 4th at 530, 65 Cal. Rptr. 2d at 501. See *In re Cheryl E.* 161 Cal. App. 3d 587, 606-07, 207 Cal. Rptr. 728, 741 (1984) (asserting that the court "cannot encourage, under the guise of 'best interests' . . . the arbitrary determination by a governmental agent that a well-educated 'professional' couple will be better parents than 'red-necked hillbillies' [adoption worker's words, not the court's words] who are on welfare and have six other children").

34. *In re Cheryl E.*, 161 Cal. App. 3d at 606-07, 207 Cal. Rptr. 2d at 741.

35. See CAL. WELF. & INST. CODE § 361.2(j) (West Supp. 2001) (requiring consideration of sibling relationships with placement and permanency planning).

36. See CAL. WELF. & INST. CODE § 358.1 (West Supp. 2001) (listing five new factors to be evaluated in the contents of a social worker's report).

placed together if they are not placed in the same home, (3) the suitability of “developing or maintaining” the sibling relationship, and (4) the “frequency and nature of the visits between siblings.”<sup>37</sup> In addition, Chapter 909 provides indicators for determining the character of the sibling relationship.<sup>38</sup> The social worker must now assess (1) whether the siblings have a close relationship, (2) whether they were raised in the same household, (3) whether the siblings want to visit, and (4) whether visitation will be “in the child’s best emotional interest.”<sup>39</sup> Not all sibling relationships are strong or healthy.<sup>40</sup> These new indicators help the court to determine if the continuation or the development of the sibling relationship is beneficial to the child.<sup>41</sup>

### B. Placement with Siblings

Once the court has ordered the children removed from the parental home, Chapter 909 requires the court to evaluate whether to place siblings together.<sup>42</sup> The court must consider factors such as the “nature of the relationship,” and the “appropriateness of developing or maintaining the sibling relationship” before placing the child or her siblings in a different home.<sup>43</sup> Many siblings do not report abuse for fear of being separated; however, more in depth analysis of sibling relationships by the court may help to encourage siblings to disclose any physical or sexual abuse.<sup>44</sup>

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37. *Id.* at 358.1(d)

38. *Id.*

39. *Id.*

40. See Joel V. Williams, *Sibling Rights to Visitation: A Relationship Too Valuable to Be Denied*, 27 U. TOL. L. REV. 259, 262 (1996) (pointing out that “the existence of a brother or sister does not guarantee a sibling relationship”).

41. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1987, at 3 (June 20, 2000).

42. CAL. WELF. & INST. CODE § 361.2 (West Supp. 2001).

43. *Id.* at § 361.2(j).

44. See *Foster Kids' Lobby, for Reform to Work, Victims of System Must Be Heard*, SACRAMENTO BEE, Feb. 17, 2000 [hereinafter *Foster Kids' Lobby*] (noting that an adult who grew up in the foster care system along with her seven siblings did not report their abuse to the social worker “because they feared being separated”); Letter from Karen M. Jones-Mason, Chair, Children’s Committee, San Francisco Women Lawyers Alliance, to Gray Davis, Governor of the State of California at 2 (June 27, 2000) (on file with the *McGeorge Law Review*) (stating that many siblings “return to physically and sexually abusive households in order to protect younger siblings”); Letter from Christopher Wu, President, Northern California Association of Counsel for Children, to Gray Davis, Governor of the State of California at 2 (June 27, 2000) (on file with the *McGeorge Law Review*) (declaring that many siblings have “risked their lives to save the lives of [their] brothers and sisters”); Fact Sheet from California Youth Connection to the Assemblymember Darrell Steinburg, at 1 (Feb. 3, 2000) (copy on file with the *McGeorge Law Review*) (reporting that some children in abusive households claim that they would rather remain in their abusive home than be placed in foster care, if, as a result, they were separated from their siblings).

C. *New Standard of Proof for Determining Whether Sibling Visitation is Detrimental*

Chapter 909 includes a new evidence standard for finding sibling visitation detrimental to the child.<sup>45</sup> Instead of the original preponderance of the evidence standard, the new standard is clear and convincing evidence. Denying or terminating visitation is now more difficult because a judge must have clear and convincing evidence that visitation will be detrimental.<sup>46</sup> Thus, the amendment helps to strengthen family bonds by focusing on sibling interaction.<sup>47</sup>

D. *Definition of Sibling and Petition To Recognize a Sibling Relationship*

Further, Chapter 909 changes the definition of “sibling.”<sup>48</sup> Chapter 909 defines “sibling” as “a child related to another person by blood, adoption, or affinity through a common legal or biological parent.”<sup>49</sup> Expanding the definition of sibling allows two siblings related by adoption to seek visitation whereas the prior law did not.<sup>50</sup>

Chapter 909 also allows anyone, including a dependant child, to petition the court to recognize a sibling relationship.<sup>51</sup> The court must determine whether the petitioner fits within the definition of a sibling according to Welfare and Institutions Code sections 362.1 and 16002.<sup>52</sup> If so, the court then considers whether visitation with the petitioner is within the best interests of the child.<sup>53</sup>

E. *Placement Resources to Accommodate Sibling Groups*

Chapter 909 also requires that the Department of Social Services study and make suggestions to increase sibling placement resources.<sup>54</sup> Specifically, these organizations will study: (1) “a special licensing category for sibling care,” (2) “(d)velopment of children’s villages with separate cottages to provide a home for each sibling group,” (3) funding to secure homes for large sibling groups, (4) increased payment to foster parents who accept sibling groups, (5) funding for

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45. CAL. WELF. & INST. CODE § 362.1(a)(2) (West Supp. 2001); *id.* § 16002(b) (West Supp. 2001).

46. *Id.*; SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1987, at 9 (June 20, 2000).

47. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1987, at 9 (June 20, 2000).

48. CAL. WELF. & INST. CODE § 362.1(c) (amended by Chapter 909); *id.* § 16002(f) (amended by Chapter 909).

49. CAL. WELF. & INST. CODE § 362.1 (West Supp. 2001); *id.* § 16002(f) (West Supp. 2001).

50. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1987, at 6 (June 20, 2000).

51. CAL. WELF. & INST. CODE § 388(b) (West Supp. 2001).

52. *Id.*

53. *Id.* at § 388(b)(4), (c).

54. *See* CAL. WELF. & INST. CODE § 16004 (West Supp. 2001) (requiring that the Department of Social Services, in conjunction with the County Welfare Directors Association, the California Children’s Lobby, the California Youth Connection, the Judicial Council, and other similarly concerned groups, make recommendations to the Legislature regarding resources and placement of sibling groups).

“costs to remodel homes” and other costs such as “vans, car seats, and other items,” (6) “(e)stablishment of guidelines for placing siblings, who cannot be placed in the same home” and (7) an option to attend the same school “even when the siblings reside in different school districts.”<sup>55</sup>

#### F. Informing Siblings of Important Family Events

Finally, Chapter 909 also requires the social worker assigned to the case to inform siblings who are not placed in the same home about family events.<sup>56</sup> These include death of a family member, “birth of a sibling,” “major medical or mental health diagnoses,” arrests, and “changes in the permanent plan.”<sup>57</sup> Chapter 909 attempts to alleviate some of the pain and isolation of separation by providing siblings with more information and freer communication regarding family events.<sup>58</sup>

### IV. ANALYSIS OF CHAPTER 909

The purpose of Chapter 909 is clear—not only to encourage, but to require that everything necessary be done to keep siblings together.<sup>59</sup> However, Chapter 909 other than reimbursement by the state for mandated services by local agencies up to one million dollars does not allocate any funds towards this goal.<sup>60</sup> Chapter 909 requires the case social worker to spend more time on evaluations, to write reports, and to speak with the dependant child about family matters, but Chapter 909 does not include funding to support the increased workload of social workers.<sup>61</sup> In addition, it does not restrict the caseload of social workers so that they will have more time to adequately satisfy the requirements of Chapter 909.<sup>62</sup> Furthermore, Chapter 909 requires that the Department of Social Services study the need for placement resources of sibling groups.<sup>63</sup> However, although Chapter 909 calls for funding of this mandate, it does not specify the amount of funding necessary to implement it.<sup>64</sup> Chapter 909 also may tax existing court resources by requiring more

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55. CAL. WELF. & INST. CODE § 16004(b) (West Supp. 2001).

56. *Id.* § 16501.1 (West Supp. 2001).

57. *Id.* § 16501.1(a)-(c).

58. *Foster Kids' Lobby*, *supra* note 44 (reporting that one youth who spoke of the “pain of losing all contact with a brother who was adopted by another family” and how he learned of his grandmother’s death three years later).

59. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1987, at 1-2 (June 20, 2000).

60. *Id.* at 10-11; 2000 Cal. Legis. Serv. ch. 909, sec. 11, at 42.

61. *Id.* at 11.

62. See Letter from Baxter Culver, Legislative Advocate, County of Sacramento Legislative Office, to the Assemblymember Darrell Steinburg at 1 (Mar. 9, 2000) (on file with the *McGeorge Law Review*) (stating that Chapter 909 “may require additional time for the social worker to evaluate and write court reports”).

63. CAL. WELF. & INST. CODE § 16004 (West Supp. 2001).

64. *Id.*



frequent and lengthy hearings for siblings.<sup>65</sup>

#### V. CONCLUSION

Chapter 909 forwards a respectable objective—keeping siblings together.<sup>66</sup> Despite the past efforts of many social workers, attorneys, and judges, the prior law failed to focus upon keeping siblings together. Consequently, many siblings were separated.<sup>67</sup> Although Chapter 909 does not provide additional funding for courts or social workers, it nevertheless benefits sibling children substantially.<sup>68</sup> For instance, as a result of Chapter 909, dependant sibling children are more likely to live with their siblings, attend the same school, and be informed of significant family events.<sup>69</sup> Most importantly, Chapter 909 should encourage siblings to report physical or sexual abuse because the threat of separation from their brothers and sisters has been corroded.<sup>70</sup> Because of the shield of protection by Chapter 909, devoted brothers and sisters will be torn apart no more.

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65. See Letter from Terry Friedman, Chair, Juvenile Court Judges of California, to the Senator Martha M. Escutia, Chair, Senate Health and Human Services Committee at 1 (June 23, 2000) (on file with the *McGeorge Law Review*) (discussing the concern of juvenile court judges that Chapter 909 “may require additional court resources, as yet unfunded”).

66. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1987, at 1-2 (June 20, 2000) (discussing the number of siblings who are separated during the court’s dependancy process and noting that Chapter 909 will prevent this from occurring).

67. *Id.*

68. See *supra* Part IV (asserting that Chapter 909 does not provide funding for the additional workload it places upon the courts and social services).

69. See *supra* Part III (describing the benefits of Chapter 909 to siblings).

70. See *supra* Part III.B (noting that many children would rather continue to be sexually and physically abused than be separated from their siblings and stating that consideration of sibling bonds by the court will encourage siblings to report their abuse).

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