A Policy Analysis of California Welfare and Institutions Code Section 16002: Siblings in Foster Care

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Abstract

Maintaining sibling relationships has been a problem in the U.S. child welfare system for a number of years. Legislative efforts to address the relationship rights of siblings in foster care have increased significantly over the past decade. Although nearly half of all states have some policy in place concerning the sibling relationship in foster care, California has led the way in efforts to improve conditions for siblings. This article uses a combination of policy analysis models to further examine the most progressive piece of legislation concerning siblings in foster care, California Welfare and Institutions Code section 16002. This legislation attempts not only to ensure that siblings are placed together in foster care, but also to increase sibling involvement in the decision-making process throughout the foster care experience.

Introduction

Although the majority of children in foster care have siblings, nearly half are in placements without one of their siblings. When compared to other issues in foster care, such as the child-caregiver relationship, the needs of siblings experience in foster care have been severely neglected and overlooked. Nevertheless, interest regarding the rights and experiences of siblings in care has increased amongst researchers, policymakers, and practitioners over the past 10 years. Legislative concerns about siblings in care have also increased. Nearly half of all U.S. states now have a policy in place that addresses sibling placement in foster care.

California leads the nation in legislative efforts to preserve the sibling relationships of foster children. This analysis uses a combination of models to further examine section 16002 of the California Welfare and Institutions Code (Section 16002). This code is widely considered to be the most extensive and exhaustive piece of existing legislation addressing the needs of siblings in foster care.

Section 16002:

- Attempts to ensure that siblings are placed together in foster care regardless of whether they were removed from their home at the same time.
- States an intention to develop resources and funding sources to keep sibling groups intact.
- Requires that sibling interests be considered at each stage of the placement process, from initial removal to either reunification or final adoption.
- Requires provisions for postadoptive sibling contact when siblings are placed separately.
- Limits parental control over decisions regarding postadoptive sibling contact by allowing siblings, in addition to their parents, to make these decisions.
- Asserts that, in some cases, the best interest of a sibling group can override decisions to terminate parental rights.

California Welfare and Institutions Code section 16002 was enacted in an attempt to address the increasing percentage of California foster youth who were separated from their siblings. At the time the code was implemented, in late 1999, nearly 58% of foster youth were separated from at least one sibling. Before this legislation was passed, California had no formal policy directly addressing the problem of sibling separation in foster care.
Authors of Section 16002 note that the intent of this legislation is to maintain the continuity of the family unit and preserve family ties by ensuring that when siblings are removed from their home, the siblings will be placed together. The need for expansion of resources to ensure sibling co-placement was a key issue underlying the legislative intent. The task of interpreting and implementing this policy has primarily been the responsibility of the Children and Family Service Division of the California Department of Social Services.

Most states only go as far as recommending that siblings be placed together; exceptions are Arkansas, Kentucky, and New York, all of which require a qualified professional to make the determination of whether sibling separation is in the best interest of the child. Illinois, another state considered to have a fairly extensive policy on siblings, accepts the separation of siblings when it is requested by a child, as well as when separation is needed to establish permanency for one or more of the children.

Several aspects of the California legislation set it apart from even the most extensive efforts of other states regarding siblings in care. California is now the only state that specifically addresses the issue of whether the siblings were removed at the same time or different times. Time of removal is one of the strongest indicators of whether a sibling group will be placed together. Thus, by ensuring co-placement of siblings despite their time of removal, policymakers have addressed one of the most significant factors contributing to the separation of siblings. In addition, California is now the only state that limits parental control in postadoptive sibling contact. Similarly, California is the only state with legislation addressing the sibling relationship at each stage of the permanency process. Some states attempt to ensure sibling placement together upon initial removal; however, siblings are often separated from one another well into the foster care experience.

In analyzing this policy, we applied a combination of Kathleen McGinnis-Dittrich’s ANALYSIS (McGinnis-Dittrich, 1994) model and the barriers to implementation included in Gallagher’s model for social policy analysis (Gallagher, 1981).

History

Preserving and maintaining sibling ties and relationships has been a problem of foster care for a number of years. Hegar (2005) notes, “Since the decades when the orphan trains carried children westward, placement of siblings has been a child welfare issue.” Studies mentioning the problem of sibling placement in foster care date back as far as 1921 (Theis & Goodrich, 1921). Until very recently, though, little research attention had been given to the issue of siblings in foster care. In her 1988 review of the literature, Hegar notes, “considering the amount of foster care research that is conducted[,] it is surprising that such little attention has been paid to separation of siblings in child placement. Nor have other questions about siblings in foster care been answered adequately.” Because research in this area has been so limited, child welfare workers have been forced to approach this issue with little evidence to help them in making placement decisions for siblings (Shlonsky, Bellamy, Elkins, & Ashare, 2005).

In her ANALYSIS model, McGinnis-Dittrich provides a framework for social policy analysis that is closely aligned with the values and principles of the social work profession. This model of analysis addresses both the approach of the policy as well as the need for such legislation. Furthermore, the model addresses both the effectiveness of the social policy and the analyst’s assessment of the social policy. McGinnis-Dittrich strongly emphasizes both the logic guiding the social policy and the support
provided for implementation. Social justice and the personal reactions of the public as well as researchers are extremely important components in this model as well. A significant concern is how consistent—or, in many cases, inconsistent—the social policy is with the values and principles of the social work profession. Throughout this article, in investigating the innovativeness of a policy, we also address Gallagher’s (1981) institutional barriers to implementation.

Need

The need for improved policies and practices concerning relationship rights of siblings in foster care is urgent and widespread. As of January 2, 2003, more than two-thirds of children in supervised foster care in California had a sibling who was also in foster care (Needell et al., 2004). Less than half of those children (42%) were placed with all of their siblings, and close to a third (32%) were not placed with any siblings (Needell et al., 2004). Separating children in foster care only adds to the trauma and grief that they already experienced when they were separated from their parents.

Most of the components in Section 16002 directly address this problem. A rational connection appears to be present: policymakers have apparently attempted to address the problem appropriately. However, it is not uncommon for states to pass legislation addressing siblings in foster care and fail to follow up in ensuring that the policy is being implemented as intended and is having the intended effects. It is not clear, from a reading of Section 16002, what measures will be taken to ensure that the policies it mandates are actually implemented and followed up on.

Several aspects of the legislation provide evidence that policymakers likely relied upon some of the existing literature and worked closely with experienced professionals concerning the problem of siblings in foster care. Increased training and resources to help foster and adoptive parents develop a better understanding of the importance of sibling relationships, as well as to address common reasons for separation, are two concerns very consistently cited in the literature.

One serious problem regarding sibling placement in foster care is the overall lack of research available. A significant amount of research is available on the impact and importance of the sibling relationship in general (Dale, 1989; Howe, Aquan-Assee and Bukowski, 2001). However, although descriptive research has increased over the past decade, there is still little information on the impact of the sibling relationship on the foster care experience. At this time, there is only a small body of empirical data on the benefit of keeping siblings together. In one of the only outcome studies done on siblings in care, Staff and Fein (1992) found placement disruption to be less likely among siblings who were placed together than among those who were separated. Despite the lack of outcome data on the impact of sibling placement, both the research on the role and significance of the sibling relationship in general, and information collected in qualitative interviews with foster care youth and alumni, provide strong evidence as to the importance of the sibling relationship. Sheehan (2004) notes that sibling relationships can be strengthened in cases where the home environment is not harmonious and significant parental problems exist. Also, because siblings often learn to socialize and cope with difficulties in similar ways, they are more likely to help one another to adapt to certain situations, such as separation from parents (Hegar, 1988).

Approach

Section 16002 is considered by many to be the most progressive piece of legislation extant concerning siblings in foster care. The policy clearly reflects the significance of the relationship rights of siblings in the foster care system. A very important component of the policy is its attempt to ensure that placement for siblings will be made regardless of their
time of removal. Children who enter care within 30 days of one another are nearly four times more likely to reside together than children who enter care at different times (Shlonsky, Webster, & Needell, 2003). This finding illustrates the significance of the universality of the Section 16002 policy, as the eligibility requirements are open to siblings who are removed at different times.

The immediate needs of siblings in foster care were likely a major concern throughout the creation and discussion of this policy/legislation. Such immediate needs include preserving family relationships and having one another to serve as a protective factor in the foster care experience. In her survey of caseworkers, Smith (1996) found the most common reasons for deciding to keep sibling groups together were that siblings alleviate the sense of loss and serve as a source of support to one another. While the design of Section 16002 clearly has a consumption aspect in which the immediate needs of the youth are addressed, it also takes an investment approach in which long-term goals are addressed. When the decision is made to separate a sibling group, parties must be made aware of the long-term implications and considerations of that decision, including the likelihood that the siblings will ever be reunited; the emotional, behavioral, and social impact that separation will have; the possible loss of support in childhood as well as adulthood; and the inability to have new experiences and create new memories. A number of factors, such as education and placement type, have been researched and included as indicators or predictors of success for foster care alumni. Unfortunately, sibling placement has not been included in this group of indicators, primarily because of the complexities of operationally defining intact and separated groups. If research were available to link sibling placement together (co-placement) as a predictor of success for alumni, such placement would likely assume greater priority in child welfare research, policy, and practice.

The California policy on siblings in foster care has a number of characteristics that are similar to the core values of the social work profession. This is surprising, as most social policy seems to contradict the values that the social work profession instills and promotes (McGinnis-Dittrich, 1994). The most obvious similarity between the California policy and the social work code of ethics is that this policy empowers siblings by giving them a louder voice and greater capacity in the decision-making process. Parental control over decision-making regarding sibling contact is limited in postadoptive situations by allowing siblings some input into the decision-making process. Research in the area of child welfare has consistently addressed the fact that many children in foster care lose a number of rights or are not made aware of their rights. With specific regard to the relationship rights of children, policies have historically silenced youth when it comes to making important decisions. A key principle of strength-based social policy is its ability to emphasize choice for participants (Rapp, Pettus, & Goscha, 2006). When they have the choice to maintain contact with their siblings, youth are likely to have a greater sense of empowerment, which will likely have a positive influence on their behaviors and relationships.

Social workers often do not feel that they have sufficient knowledge about the significance of sibling relationships (Beckett, 1999). This presents a serious problem when they must act in the best interest of siblings in foster care. Both the social work code of ethics and California Section 16002 require that the social worker act in the best interest of the child, with the latter asserting that in some cases the best interest of a sibling group can override a decision to terminate parental rights. It should be noted that no other states have policies that take such a strong position regarding permanency decisions for sibling groups.

Attachment and relational theories are playing an increasingly significant role in
decisions to separate or maintain sibling groups. The child-caretaker relationship has been the primary area of interest for most researchers and practitioners, with sibling relationships being treated as a secondary concern or neglected altogether. Steinhauer et al. (1988) note that sibling relationships have the potential to ascend to primary importance in the context of maltreatment and placement in out-of-home care. In order for social workers to act in the best interest of the child, especially when it comes to overriding decisions to terminate parental rights, they must be equipped with knowledge and insight concerning the significance of the sibling relationship.

Assessment

The complex and progressive approach that has been adopted in creating the California legislation is certainly its greatest strength. New York and Illinois are the only other states that have multifaceted policies concerning siblings in foster care, and even those policies are far less extensive than California Welfare and Institutions Code section 16002.

The Center for Social Service Research at the University of California-Berkeley has consistently tracked the number of sibling placements since introduction of the Section 16002 policy in 1998. The empirical evidence suggests that the policy has been somewhat effective in increasing and maintaining the number of sibling placed together. In 1998, prior to the passage of Section 16002, 41.8% of siblings in foster care were placed with all of their siblings and 67% were placed with some of their siblings. By October 2006, 47.4% of siblings in California were placed with all of their siblings, and 69% were placed with some siblings (University of California Berkeley, Center for Social Service Research, 2006).

A strength of the policy suggested by the evidence is that percentages of children placed with all of their siblings increased each year. While the empirical data clearly shows that the policy has increased sibling placements, it also opens the door for questions and concerns about its level of effectiveness. From a simple interpretation of the policy, one would likely conclude that more than half of the children in foster care should be placed with all of their siblings. It appears that child welfare professionals in California are experiencing what many other states that have policies mandating sibling co-placements have also experienced: They do not have the resources available to fully implement the policy as written. One may assume that those who authored and advocated for this legislation had hopes and expectations greater than a 5% increase in sibling co-placements over an eight-year period. Therefore, the implementation of this policy likely constitutes its greatest weakness.

The inability to significantly increase sibling co-placement may also have unintended consequences. California’s policy on siblings in foster care is considered to be the most complex and progressive approach to the problem of siblings in out-of-home care. If other states are assessing their current policies and considering addressing the problem in a manner similar to California, they are going to want to ensure that a more proactive approach, in which policymaking is supported by implementation and service improvements, will lead to a significant increase in sibling co-placements. The data from California cannot be said to show that a policy alone can result in sufficient change, nor that the progressive California approaches to the issue are much more effective than other existing policies.

Logic

California has clearly been far more aggressive than other states in trying to maintain the relationship rights of siblings. However, even the most advanced policy addressing siblings in foster care does not come close to dealing with the complexities that surround this issue. A simple review
of the literature suggests that numerous factors contribute to this problem, and we will likely not see significant increases in the numbers of siblings placed together until policies begin to address these factors.

The fact that the California policy addresses time of removal is extremely promising. Several other states, including Connecticut and Kansas, specifically address the issue of children entering care at different times. Equally promising is the fact that some states, including Colorado, have taken into account factors such as sibling-group size in providing resources for ensuring placement for large sibling groups. Being in a large sibling group has traditionally been a key predictor of sibling separation. Siblings will be much more likely to remain in placements together if more states adopt an approach in which factors that lead to removal are considered, as opposed to simple mandates or suggestions to maintain relationships.

When siblings in foster care are separated from one another, the likelihood that they will be reunified at some point is small at best. Considering the best interest of siblings at different stages in the placement process logically connects to the fact that efforts must be made to reunite siblings who are separated from one another, as opposed to accepting “once separated, always separated.” In a study of 7,468 sibling groups, Wulczyn and Zimmerman (2005) found that 79% of sibling groups that were completely intact at placement were still intact 4 years later. Trends that address issues such as time of removal and placement, and periodic follow-up on efforts to reunify, serve as a good starting point for developing more extensive and appropriate policies for siblings in foster care.

In terms of research and practice, sibling relationships have largely been ignored in favor of caretaker relationships. However, a small number of professionals have played an instrumental role in providing a voice to siblings. Individuals such as Lynn Price, who created Camp to Belong, a summer program designed to temporarily reunite siblings in foster care, as well as a number of other professionals, have been tireless in their efforts to make the reunification of siblings a top priority for policymakers and practitioners. Just as these individuals have been influential in advocating for change for siblings in care, so too can polices such as California Section 16002 be effective in supporting the needs of siblings.

Personal Reaction

The fact that such little legislative attention has been given to sibling issues is troubling. Nothing says more about this problem than the fact that only about half of all states have any policy in place addressing siblings in care. The level of impact that California’s current policy has had on sibling placement is also concerning. It is evident that California has not had the resources to effectively implement the policy in the manner it was initially intended. The question of why this policy has not reached its full potential will undoubtedly have to be answered before significant change can take place. Given the long history of the problem, as well as the inability of previous efforts to increase preservation of intact sibling groups, child welfare professionals must systematically rethink the way children are placed in this nation if we are to improve conditions for siblings.

Although California’s legislation on siblings in foster care does not go to the extent of complete reform regarding child placement, it does take some key steps in that direction. Lindbloom (1981) makes the point that decisions are usually made in small increments rather than big leaps, because information used to make policies is limited to what we know about the problem the policy addresses, and whether previous efforts to solve the problem succeeded or failed. Policies such as the present California Section 16002, which are progressive in nature, serve as the small increments that eventually combine to
create the larger leap. Even policies on a smaller scale that question or run contrary to what has historically been done, and that in many cases have been ineffective by themselves, can be very influential in change on the larger scale.

The efforts and intentions of those involved with creating and advocating for this policy should be commended. One cannot help but hope that the recent increase in research and legislative interest in sibling groups will be the catalyst for change in the lives of those separated from their siblings. The fact that the state of California has made the decision to stand at the forefront on this issue is impressive, to say the least. Few child welfare policies exist that provide children in foster care with any sort of voice. Section 16002 does just that by taking into consideration the best interest of the sibling group when permanency decisions are made, and even more so by allowing siblings to have some input about post-adoptive sibling contact.

Support

Although California Welfare and Institutions Code section 16002 is largely regulatory in nature, it does address the need for additional services. For example, one aspect of the policy is the intent to develop resources and funding sources to keep sibling groups intact. While efforts such as training foster parents and caseworkers on the significance of sibling relationships may initially seem expensive, the long-term impact of such efforts may in fact be extremely cost-effective. No existing studies have investigated the relationship between sibling-group intactness and overall resiliency beyond foster care. The California policy clearly aligns with the theory that siblings serve as a protective factor in the foster care experience. If indeed siblings do serve such a protective function, then outcomes of alumni who were placed with their siblings should be somewhat better than outcomes of those who were separated from their siblings. In terms of cost, these improved outcomes translate into fewer expenses on such things as criminal justice services, housing services, and welfare services for alumni.

The majority of individuals in the general public are not aware of the prevalence and significance of problems pertaining to siblings in foster care. Because of the strong feelings and opinions that many people have about siblings and the sibling relationship, it is highly likely that more support would be available if more people were aware of this issue. The matter of siblings in foster care is far less controversial than many other social issues, especially within the field of foster care.

Innovation

The limited effectiveness of current policy—even the progressive California Section 16002—clearly demonstrates the need for reform. In his model of social policy analysis, James Gallagher (1981) addresses a number of barriers that often inhibit the full implementation of a policy. The barriers that are most relevant to the effectiveness of this policy are the ones Gallagher terms “institutional barriers.”

The foster care system is well known as being a regulated system in which individuals have to adhere to many standards. Because of these regulations and standards, a number of creative, talented, and innovative individuals find the foster care system unattractive as a career field (Krebs & Pitcoff, 2006). It is not uncommon for individuals who are new to work in the foster care system to find their more tenured colleagues to be a little rigid and closed-off to new ideas and programs. Historically, the problem of sibling separation in foster care has existed for decades, and has unfortunately become a commonplace for many in the field of child welfare. This presents a problem when it comes to placing siblings in foster care, because separation of siblings has essentially become the accepted norm. Therefore, in implementing a policy such as California Section 16002, a question that must be addressed is how to educate caseworkers, administrators, foster parents, and others about the significance
and priority of siblings in care. Even more challenging is the question of how to do this without making them feel as though their work over the past years and their justification for separating siblings is being attacked.

Simply convincing child welfare professionals to give the issue of siblings in foster care higher priority is not the only institutional barrier that must be addressed. Public and private child welfare agencies have historically been bombarded with overwhelming caseloads, limited financial resources, a lack of public support, and high turnover. Not until improvements are made in these areas will the issue of siblings in foster care come to the forefront.

Social Justice

Because sibling association has not been established as a right, it is very easy for caseworkers and courts to determine that sibling co-placement and contact are not in the best interest of the child, when in fact they are. The courts and caseworkers usually work under a number of severe constraints, including lack of money, time, and personnel, which limits the amount of resources and time that they can spend to address sibling issues. Also, the sibling relationship has been seen as inferior in many ways to the caretaker or parent relationship. Equally concerning is the fact that youth in foster care have such little input in decisions about their own placement and permanency. California’s Welfare and Institutions Code section 16002 takes a very advocatory stance on a number of these issues. The state has, in a very real sense, “spoken up” for siblings in foster care by taking the sibling group’s best interest into consideration when determining whether to terminate parental rights, by allowing siblings to have input equal to their parents’ regarding sibling contact in postadoptive situations, and by considering the best interest of siblings at each stage of the placement process.

Conclusion

In assessing California Welfare and Institutions Code section 16002, it is very important to look beyond the empirical data and consider the longer-term impact of the policy. One of the most impressive aspects of the policy is its empowering approach to the issue. In a 2003 article, Elizabeth Lightfoot notes the increased incidence of social-policy borrowing on a national scale. This trend has the potential to play a very significant role in the lives of siblings in foster care. More innovative approaches that challenge the traditional policies and practices that have proven to be ineffective in maintain sibling relationships are critical. It is promising that states such as California have decided to make the issue of siblings in foster care a higher priority than has historically been the case. The field of child welfare will certainly benefit when other states view the problem of siblings in care in a similar light and adopt policies that empower this population, which has been overlooked and underestimated for far too long.
References


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