

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

W11-04

Title	Action Requested
Juvenile Law: Sibling Visitation	Review and submit comments by January 24, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.670; revise Judicial Council form JV-401	July 1, 2011
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Aleta M. Beaupied, 415-865-8819 aleta.beaupied@jud.ca.gov
Hon. Kimberly Nystrom-Geist, Cochair Hon. Dean Stout, Cochair	

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, made extensive policy and program changes to improve the well-being and outcomes for children in the foster care system, including those related to sibling placement and visitation.

Each state receiving federal foster care funding must submit a *State Plan for Title IV-E of the Social Security Act-Foster Care, Independent Living and Adoption Assistance* to the federal government. A state's plan details the state statutes, regulations, and policies that implement the requirements of the applicable federal laws, regulations, and other official issuances. Pub. L. No. 110-351 requires a state's plan to include a provision that reasonable efforts were made to place siblings in the same foster care placement unless the state documents that such a joint placement would be contrary to the safety or well-being of any of the siblings. For those siblings not placed together, the state plan must provide for visitation or other ongoing interaction unless the state documents that such visitation or interaction would be contrary to the safety or well-being of any of the siblings (42 U.S.C. §671(a)(31)).

Assembly Bill 743 (Portantino; Stats. 2010, ch. 560) implements those provisions of P.L. 110-351 related to sibling placement and ongoing interaction by amending relevant provisions of state law.

Welfare and Institution Code section 16002(a) was amended by AB 743 to state that it is the intent of the legislature that siblings will be placed together to maintain the continuity of the family and family ties when they are removed from their home unless it has been determined that

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

it is “contrary to the safety or well-being of any sibling” rather than “not in the best interest of one or more siblings.” Section 16002(b) was amended to require the social worker to explain why it would be contrary to the safety and well-being of any of the siblings to make efforts to place those siblings who are in different placements in the same placement.

Sections 16002(b) and 362.1(a)(2) were also amended by AB 743 to reflect the change in the federal statute regarding ongoing interaction when siblings are not placed together. Currently, Welfare and Institutions Code section 362.1(a)(2) requires any order placing a child in foster care to provide for visitation between the child and any sibling, unless the court finds by clear and convincing evidence that sibling interaction is detrimental to either child. Effective January 1, 2011, section 362.1(a)(2) is amended to require the court to provide for such sibling visitation unless the court finds by clear and convincing evidence that sibling interaction is contrary to the safety or well-being of either child. The proposed revision to *Visitation Attachment: Sibling* (form JV-401) and the proposed amendment to rule 5.670 of the California Rules of Court incorporate this new language.

The proposed rule and form are attached at pages 3–5.

Assembly Bill 743 is attached at pages 6–9.

Rule 5.670 of the California Rules of Court would be amended, effective July 1, 2011, to read:

1 **Rule 5.670. Initial hearing; detention hearings; time limit on custody; setting**
2 **jurisdiction hearing; visitation**

3
4 **(a) –(f)*****

5
6 **(g) Visitation**

7
8 The court must consider the issue of visitation between the child and other persons,
9 ~~including siblings~~, determine if contact pending the jurisdiction hearing would be
10 beneficial or detrimental to the child, and make appropriate orders.

11
12 **(h) Visitation–Sibling**

13
14 The court must consider the issue of visitation between the child and the child’s sibling
15 when they are not placed together and enter an order for sibling visitation pending the
16 jurisdiction hearing, unless the court finds by clear and convincing evidence that sibling
17 interaction is contrary to the safety or well-being of either child.

CHILD'S NAME: 	CASE NUMBER:
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VISITATION ATTACHMENT: SIBLING

1. Anyone who appears to be under the influence of alcohol or any controlled substance will not be allowed to participate in a scheduled visitation with the child. The visitation supervisor may terminate the visit if this order is violated.

2. Matters relating to the allegations of the petition or issues related to the child's placement are not to be discussed with the child during visits except under the guidance of a counselor in a therapeutic setting. The visitation supervisor may terminate the visit if this order is violated.

3. The prior order of the court suspending
 - a. in-person contact
 - b. written communication
 - c. telephone contact
 between the child and the child's sibling (*name*):
 - (1) continues to be necessary and remains in full force and effect.
 - (2) is modified as set forth in item 4.

4. **Contact between the child and the child's sibling (*name*):**
 - a. **In-person visitation**
 - (1) Unsupervised
 - (2) Supervised by the
 - (a) county agency
 - (b) foster family agency
 - (c) other (*specify*):
 - (3) Frequency and duration
 - (a) times per week for a total of hours per week
 - (b) times per month for a total of hours per month
 - (c) An overnight visit every week every other week
 - (d) Other (*specify*):
 - (4) Location
 - (a) Agency visitation facility
 - (b) Foster family agency facility
 - (c) Other (*specify*):
 - (5) Transportation of the child to and from the visits will be provided by the
 - (a) county agency.
 - (b) foster family agency.
 - (c) other (*specify*):
 - (6) Transportation of the child's sibling to and from the visits will be provided by the
 - (a) county agency.
 - (b) foster family agency.
 - (c) other (*specify*):
 - (7) Other orders concerning in-person visitation (*specify*):
 - b. **Other types of contact permitted (*specify*):**
 - c. **Contact restrictions**
 The following contact between the child and the child's sibling (*name*):
 is not to occur until further order of this court as the court finds, by clear and convincing evidence, that at this time such contact is contrary to the safety or well-being of the child child's sibling
 - (1) In-person contact
 - (2) Written communication
 - (3) Telephone contact

CHILD'S NAME: 	CASE NUMBER:
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5. **Contact between the child and the child's sibling (name):**

a. **In-person visitation**

- (1) Unsupervised
- (2) Supervised by the
 - (a) county agency
 - (b) foster family agency
 - (c) other (specify):
- (3) Frequency and duration
 - (a) times per week for a total of hours per week
 - (b) times per month for a total of hours per month
 - (c) An overnight visit every week every other week
 - (d) Other (specify):
- (4) Location
 - (a) Agency visitation facility
 - (b) Foster family agency facility
 - (c) Other (specify):
- (5) Transportation of the child to and from the visits will be provided by the
 - (a) county agency.
 - (b) foster family agency.
 - (c) other (specify):
- (6) Transportation of the child's sibling to and from the visits will be provided by the
 - (a) county agency.
 - (b) foster family agency.
 - (c) other (specify):
- (7) Other orders concerning in-person visitation (specify):

b. **Other types of contact permitted (specify):**

c. **Contact restrictions**

The following contact between the child and the child's sibling (name):
 is not to occur until further order of this court as the court finds, by clear and convincing evidence, that at this time
 such contact is contrary to the safety or well-being of the child child's sibling

- (1) In-person contact
- (2) Written communication
- (3) Telephone contact

6. Other (specify):

BILL NUMBER: AB 743 CHAPTERED
BILL TEXT

CHAPTER 560
FILED WITH SECRETARY OF STATE SEPTEMBER 30, 2010
APPROVED BY GOVERNOR SEPTEMBER 30, 2010
PASSED THE SENATE AUGUST 18, 2010
PASSED THE ASSEMBLY AUGUST 19, 2010
AMENDED IN SENATE JULY 15, 2010
AMENDED IN SENATE MAY 17, 2010
AMENDED IN ASSEMBLY JANUARY 26, 2010
AMENDED IN ASSEMBLY JANUARY 11, 2010
AMENDED IN ASSEMBLY APRIL 14, 2009

INTRODUCED BY Assembly Member Portantino

FEBRUARY 26, 2009

An act to amend Sections 362.1 and 16002 of, and to repeal and add Section 16010.6 of, the Welfare and Institutions Code, relating to foster care.

LEGISLATIVE COUNSEL'S DIGEST

AB 743, Portantino. Foster care: sibling placement.

Existing law provides for the placement of dependent children by the juvenile court according to specified procedures. Existing law declares the policy of the Legislature relating to foster care, including that foster care should be a temporary method of care for children and that reunification with the natural parent or parents or another alternate permanent living situation such as adoption or guardianship is more suitable to a child's well-being than is foster care.

Existing law requires any order placing a dependent child in foster care, and ordering reunification services, to provide for visitation between the child and any sibling, unless the court finds by clear and convincing evidence that sibling interaction is detrimental to either child.

This bill would, instead, require the order to provide for visitation unless the court finds by clear and convincing evidence that the interaction is contrary to the safety or well-being of either child.

Existing law requires the responsible local agency to make diligent efforts in all out-of-home placements of dependent children to develop and maintain sibling relationships. If siblings are not placed together, the social worker is required to explain why those efforts are not appropriate.

This bill would, instead, require the social worker, if siblings are not placed together, to explain why those efforts would be contrary to the safety or well-being of any of the siblings. The bill also would require the social worker to make diligent efforts to place siblings together in the same placement.

Existing law requires, as soon as possible after a placing agency makes a decision with respect to a placement or a change in placement of a dependent child, the placing agency to notify the child's attorney and provide specified information.

This bill would recast and revise the above requirements relating to the placement of siblings, including requiring the placing agency to make a specified notification to the child's attorney and the

child's sibling's attorney when a planned change of placement will result in the separation of siblings currently placed together.

By increasing the duties of social workers and county placing agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 362.1 of the Welfare and Institutions Code is amended to read:

362.1. (a) In order to maintain ties between the parent or guardian and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a child in foster care, and ordering reunification services, shall provide as follows:

(1) (A) Subject to subparagraph (B), for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child.

(B) No visitation order shall jeopardize the safety of the child. To protect the safety of the child, the court may keep the child's address confidential. If the parent of the child has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child, the court shall order visitation between the child and the parent only if that order would be consistent with Section 3030 of the Family Code.

(2) Pursuant to subdivision (b) of Section 16002, for visitation between the child and any siblings, unless the court finds by clear and convincing evidence that sibling interaction is contrary to the safety or well-being of either child.

(3) If the child is a teen parent who has custody of his or her child and that child is not a dependent of the court pursuant to this chapter, for visitation among the teen parent, the child's noncustodial parent, and appropriate family members, unless the court finds by clear and convincing evidence that visitation would be detrimental to the teen parent.

(b) When reunification services are not ordered pursuant to Section 361.5, the child's plan for legal permanency shall include consideration of the existence of and the relationship with any sibling pursuant to Section 16002, including their impact on placement and visitation.

(c) As used in this section, "sibling" means a child related to another person by blood, adoption, or affinity through a common legal or biological parent.

SEC. 2. Section 16002 of the Welfare and Institutions Code is amended to read:

16002. (a) It 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, either as a group or one

occurrence or individually on separate occurrences, the siblings will be placed in foster care together, unless it has been determined that placement together is contrary to the safety or well-being of any sibling. The Legislature recognizes that in order to ensure the placement of a sibling group in the same foster care placement, placement resources need to be expanded.

(b) The responsible local agency shall make a diligent effort in all out-of-home placements of dependent children, including those with relatives, to place siblings together in the same placement, and to develop and maintain sibling relationships. If siblings are not placed together in the same home, the social worker 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.

(c) When there has been a judicial suspension of sibling interaction, the reasons for the suspension shall be reviewed at each periodic review hearing pursuant to Section 366. When the court determines that sibling interaction can be safely resumed, that determination shall be noted in the court order and the case plan shall be revised to provide for sibling interaction.

(d) If the case plan for the child has provisions for sibling interaction, the child, or his or her parent or legal guardian shall have the right to comment on those provisions. If a person wishes to assert a sibling relationship with a dependent child, he or she may file a petition in the juvenile court having jurisdiction over the dependent child pursuant to subdivision (b) of Section 388.

(e) If parental rights are terminated and the court orders a dependent child to be placed for adoption, the licensed county adoption agency or the State Department of Social Services shall take all of the following steps to facilitate ongoing sibling contact, except in those cases provided in subdivision (b) where the court determines by clear and convincing evidence that sibling interaction is contrary to the safety or well-being of the child:

(1) Include in training provided to prospective adoptive parents information about the importance of sibling relationships to the adopted child and counseling on methods for maintaining sibling relationships.

(2) Provide prospective adoptive parents with information about siblings of the child, except the address where the siblings of the children reside. However, this address may be disclosed by court order for good cause shown.

(3) Encourage prospective adoptive parents to make a plan for facilitating postadoptive contact between the child who is the subject of a petition for adoption and any siblings of this child.

(f) Information regarding sibling interaction, contact, or visitation that has been authorized or ordered by the court shall be provided to the foster parent, relative caretaker, or legal guardian of the child as soon as possible after the court order is made, in order to facilitate the interaction, contact, or visitation.

(g) As used in this section, "sibling" means a child related to

another person by blood, adoption, or affinity through a common legal or biological parent.

(h) The court documentation on sibling placements required under this section shall not require the modification of existing court order forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

SEC. 3. Section 16010.6 of the Welfare and Institutions Code is repealed.

SEC. 4. Section 16010.6 is added to the Welfare and Institutions Code, to read:

16010.6. (a) As soon as a placing agency makes a decision with respect to a placement or a change in placement of a dependent child, but not later than the close of the following business day, the placing agency shall notify the child's attorney and provide to the child's attorney information regarding the child's address, telephone number, and caregiver.

(b) Absent exigent circumstances, as soon as a placing agency becomes aware of the need for a change in placement of a dependent child that will result in the separation of siblings currently placed together, the placing agency shall notify the child's attorney and the child's siblings' attorney of this proposed separation no less than 10 calendar days prior to the planned change of placement so that the attorneys may investigate the circumstances of the proposed separation. If the placing agency first becomes aware, by written notification from a foster family agency, group home, or other foster care provider, of the need for a change in placement for a dependent child that will result in the separation of siblings currently placed together, and that the child or children shall be removed within seven days, then notice shall be provided to the attorneys by the end of the next business day after the receipt of notice from the provider. In an emergency, the placing agency shall provide notice as soon as possible, but no later than the close of the first business day following the change of placement. This notification shall be deemed sufficient notice for the purposes of subdivision (a).

(c) When the required notice is given prior to a change in placement, the notice shall include information regarding the child's address, telephone number, and caregiver or any one or more of these items of information to the extent that this information is known at the time that the placing agency provides notice to the child's attorney. When the required notice is given after the change in placement, notice shall include information regarding the child's address, telephone number, and caregiver.

(d) The Judicial Council shall adopt a rule of court directing the attorney for a child for whom a dependency petition has been filed, upon receipt from the agency responsible for placing the child of the name, address, and telephone number of the child's caregiver, to timely provide the attorney's contact information to the caregiver and, if the child is 10 years of age or older, to the child. This rule does not preclude an attorney from giving contact information to a child who is younger than 10 years of age.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Item W11-04 Response Form

Title: **Juvenile Law: Sibling Visitation** (amend Cal. Rules of Court, rule 5.670; revise Judicial Council form JV-401)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Monday, January 24, 2011
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