

Parental Defense Alliance of Utah, Inc.

## Sibling Bonds and Foster Placements

According to some mental health experts, the bond between siblings is “longer lasting and more influential than any other...” *The Sibling Bond: Its Importance in Foster Care and Adoption*, Nat’l Ctrg Hse on Child Abuse and Neglect Information, [http://www.child-welfare.gov/pubs/f\\_sibling.pdf](http://www.child-welfare.gov/pubs/f_sibling.pdf). When that relationship is severed, the “fallout can last a lifetime.” Id. The bond between brothers and sisters may “wax and wane” over a lifetime, but “a person’s lifetime quest for personal identity is undeniably interwoven with his and her siblings.” Id.

“In early childhood, siblings are constant companions and playmates.” Id. Through their interactions with each other, they learn how to interact in the larger community. Id. In adolescence, the bond may temporarily weaken as children “exert their individuality and independ-

ence,” but their ties often emerge stronger in adulthood. Id. And, when siblings reach old age, their bonds become stronger as they may well become companions once again, after their own families are grown and their parents have passed away. Id.

The sibling bond is present in well-adjusted families, but “it is even stronger in brothers and sisters from dysfunctional families.” Id. Separating siblings in foster care only adds to their emotional burden. Id. Children do suffer and grieve the loss of their parents. Id. If they are also separated from their siblings, their grief and suffering is only compounded.

Separation of siblings has been considered by some social workers to be appropriate when one sibling is unable to give up his or her role as caregiver. Id. While it may be desirable to

afford the child the opportunity to be a child, “the advantages of remaining with the family are so powerful that social workers are reexamining kinship care as the preferred family arrangement for children in the face of nuclear family breakup.” Id.

Studies invalidate reasons espoused by some for separating siblings. Id. Separating siblings “often delivers inappropriate messages and results in greater problems for children in the long run.” Id. Sibling relationships may be the only “semblance of normalcy” some children may have. Id. “When you take away someone’s siblings...you’re stripping him of everything he has that makes him feel okay about himself.” Id. “If the idea of the child welfare system is to protect and help children... everyone should keep in mind what the best interest of the child really is.” Id.

*“If the idea of the child welfare system is to protect and help children... everyone should keep in mind what the best interest of the child really is.”*

*The Sibling Bond: Its Importance in Foster Care and Adoption*

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## Residual Parental Rights and Duties

Utah law defines residual parental rights and duties as “Residual parental rights and duties” means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including: (A)

the responsibility for support; (B) the right to consent to adoption; © the right to determine the child’s religious affiliation; and (D) the right to **reasonable parent time unless restricted by the court.**

(ii) If no guardian has been appointed, “residual parental rights and duties” also include the right to consent to marriage, enlistment, and **major medical, surgical, or psychiatric treatment.** U.C.A. 78-3a-103.  
Continued...

## FETAL ALCOHOL SPECTRUM DISORDERS

According to the Center for Disease Control (CDC), fetal exposure to alcohol can cause a range of disorders. Fetal Alcohol Spectrum Disorder (FASD) refers to conditions such as fetal alcohol syndrome, (FAS) alcohol-related neurodevelopmental disorder (ARND), and alcohol related birth defects (ARBD). It is estimated that 40,000 babies are born each year in the United States with an FASD. The FASD Center, <http://fasdcenter.samhsa.gov/>.

**FAS** FAS is one of the most severe effects of drinking during pregnancy and one of the leading known preventable causes of mental retardation and birth defects. <http://www.cdc.gov/ncbddd/fas/fasask.htm>. FAS is characterized by abnormal facial features, growth deficiencies and

ARBD are used to describe behavioral and cognitive problems in children who were prenatally exposed to alcohol but who do not have all of the diagnostic features of FAS. Children with ARND might have functional or mental problems. Children with ARBD might have problems with their heart, kidneys, bones, and/or hearing.

While FASD children who live in abusive or unstable homes are “much more likely” than those who do not live in abusive or unstable homes to develop “secondary conditions” such as psychiatric problems, criminal behaviors, unemployment and incomplete education, because a child exhibits those secondary conditions does not support a conclusion that the child must have an FASD. Children who become involved in youth vio-

-the avoidance of disruption in their home life. Id.

Children rarely benefit from being separated from their parents, and all children benefit from the avoidance of disruption in their home life. There is added concern, however, with children who have diminished coping abilities due to an FASD.

To learn more about FASD's, see:

<http://www.cdc.gov/ncbddd/fas/fasask.htm>

<http://www.child.gov.ab.ca/whatwedo/fas/page.cfm?pg=index>

<http://www.fasdcenter.samhsa.gov/>

<http://www.aafp.org/afp/20050715/279.html>



“Fetal Alcohol Syndrome is one of the leading known preventable causes of mental retardation and birth defects”  
-CDC



## Residual Parental Rights and Duties, continued

When the court places a child in the “temporary physical custody” of DCFS while parents work towards the reunification of their families, how is it that DCFS can - on its own—divest parents of their residual parental rights? Where does the Division do this? Primarily in three areas: The right to determine the child’s religious affiliation, the right to reasonable parent-time, and the right to

consent to major medical, surgical or psychiatric treatment.

How many times has a parent complained that their child underwent diagnostic testing or surgery and the parents weren’t given advance notice to attend, let alone give their consent? How many times has a parent attempted to contact a doctors office to check on the status of their child only to be told that they couldn’t get the informa-

tion without DCFS approval? How many times has a parent been told that their child attends a church whose belief system is inconsistent with the parent and that they have no say in where their child attends church while with a foster family?  
Continued...



## A WORD ABOUT MEDIATION

How many times have you told your client, "if there's anything else I need to know tell me now so that we can deal with it instead of finding ourselves surprised in court?" Besides court, another area to stress avoidance of surprise disclosures is mediation.

Child Welfare Mediation is a program wherein a neutral third party - the mediator - helps families, attorneys and DCFS agents negotiate an agreement that will meet the needs and best interests of the child and family. Mediation gives parties the opportunity to express themselves and to be heard by other parties outside of a formal court setting, and provides an opportunity to develop a plan of care for the safety of children and benefit of the family unit.

Participants to a child wel-

fare mediation will include parents, their attorneys, DCFS representatives, their attorneys, and the Guardian ad litem. The mediator - who is not an employee of DCFS - does not have a position for any party. They do not show bias or favoritism, nor do they advocate, for any of the parties. The mediator does not make decisions about the case, rather, they help parties identify the issues and negotiate a resolution.

While mediation is confidential to the extent that the mediator cannot be called to testify in any court proceeding about information obtained during a mediation session, if the information discussed during a mediation can be obtained from another source, then the information CAN be used in court. In addition, communication about incidents of previously unre-

ported child abuse or threats of physical harm are not confidential. Attorneys are advised to counsel parents on the distinction and exceptions to confidentiality.

Parents are never advised to be deceptive with DCFS, however, prior to any mediation, parents must be cautioned against disclosing any information during the mediation which will result in DCFS looking for other ways to obtain that information to use against them. Once again, the best option is to encourage parents to let counsel know if there is any other information counsel needs to adequately represent and protect their interests.



## Residual Parental Rights and Duties, continued

And, how many times have parents complained that one brief hour a week of parent time is not enough time with their children?

In each of these areas, counsel should be prepared to challenge DCFS when it seeks to assume more power and control than authorized by law. Depriving parents of their right to determine their child's religious affiliations, restricting

Contact with their children to one mere hour a week, and proceeding with medical treatment without a parents' consent should be zealously opposed.

Counsel should consider seeking orders at the initial adjudication confirming the parents residual rights. After all, the Division never "forgets" to seek enforcement of the parents residual duty for support.

There are few circumstances which would justify the Division's failure to adhere to the parents' residual rights.



*"To have doubted one's own first principles is the mark of a civilized man"*

*-Oliver Wendell Holmes*

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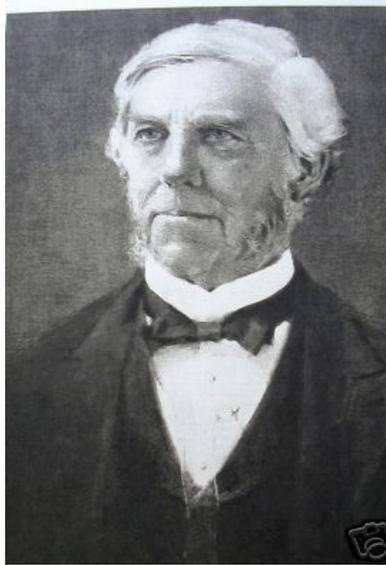
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Don't forget to check the website for useful downloads and information:

[www.parentaldefense.org](http://www.parentaldefense.org)



## Notices

**Practice Guidelines.** Unable to access the internet or print off the Practice Guidelines from the DCFS website? Contact John Norman, john@parentaldefense.org and he will see that you get a copy of the guidelines, free of charge, provided to you by the Parental Defense Alliance of Utah, Inc.

**Blue Binders** If you have not requested blue binders to help your clients track important court dates, appointments and attendance at services, contact Lisa Lokken today at llokken@l2law.com and request your copies today.

**Family Advocates.** In the right case, a family advocate can be helpful to clients as they work

their way through services. Family advocates attend court hearings and explain matters in plain English to clients, they attend family team meetings for parents support, and they can act as a go-between when the caseworker fails to engage (a practice model term) with the family.

**The Annual Parental Defense Seminar** will take place April 16 and 17, 2007 at the Zermatt Resort in Midway, Utah. The conference will be held at the same time the Juvenile Court Judges and AAG hold their annual meetings. The Agenda and Presenters include:

R. Chris Barden, Ph.D. J.D. L.P. Examining Expert methodologies in Child Welfare Cases.

Duane Betournay, Director DCFS About DCFS and Accessing Discretionary funds

David Boyer, J.Ds., HIPAA Requirements and Releases

Panel Discussion— Tips and Tricks to representing parents in Child Welfare Proceedings

Brad Lundahl, PhD., Motivation Interviewing Techniques and Application

Weber Mental Health—Drug Testing: What Do The Results Really Mean?

Danielle Allison—Appellate Law and Juvenile Appeals Update

Dan Shumway—Court Reports in Juvenile Court

Lisa Lokken—Legislative and Adam Walsh Update

Diane Akiyama, Office of Prof. Conduct—Ethics for Parents' Counsel

**13.5 hours of CLE (pending); To register, follow the link from "Events" on the website: [www.parentaldefense.org](http://www.parentaldefense.org)**

