

Child Welfare History & Federal/State Laws

MARY ELLEN'S STORY

Mary Ellen's case took place in 1874. Her spirit remains with us because her case is generally regarded as the beginning of public concern for the plight of children who have been abused or neglected.

Mary Ellen was a child whose father was dead and whose mother could not care for her because she was destitute and had to work full time. The New York Commission of Charities and Correction placed Mary Ellen with Mary McCormack Connolly and her husband, who were to care for her and report each year on her progress.

Instead, Mrs. Connolly abused her. She beat Mary Ellen, locked her in a room, rarely allowed her outside and did not provide adequate food or clothing.

Upset by the child's screaming, a neighbor told a mission worker about Mary Ellen. The mission worker could find no one to intervene; the police had no grounds because no crime was being committed, and the agencies wouldn't get involved because they did not have legal custody.

The mission worker finally appealed to Henry Bergh, the founder and president of the American Society for the Prevention of Cruelty to Animals (ASPCA). He took up her cause and was able to persuade a judge to hear her case.

Mary Ellen was carried into the courtroom wrapped in a horse blanket. This is what the newspaper reported that she told the judge:

"My father and mother are dead. I don't know how old I am. I call Mrs. Connolly mama. I have never had but one pair of shoes, but I cannot recollect when that was. . . . My bed at night has been only a piece of carpet stretched on the floor underneath a window. Mama has been in the habit of whipping and beating me almost every day. She used to whip me with a twisted whip—a rawhide. [Mama] struck me with the scissors and cut me. . . . I have no recollection of ever having been kissed by anyone—have never been kissed by Mama. Whenever Mama went out I was locked up in the bedroom. I do not want to go back to live with Mama because she beats me so."

Mary Ellen was removed from the people who had mistreated her. Her case stirred public attention, and complaints began to pour in to Henry Bergh. So many cases of child beating and cruelty to children came to light that citizens called a community meeting and formed an association “for the defense of outraged childhood.” That association gave rise to the Society for the Prevention of Cruelty to Children, which was formally incorporated the year after Mary Ellen’s situation came to light.

CHILD-FOCUSED POLICIES ARE RELATIVELY NEW

1899: The country’s first juvenile court, in Chicago, placed dependent and delinquent children in homes for wayward youth or reform schools.

1910: X-ray technology was developed, eventually allowing doctors to detect subdural (under the skin) injuries and untreated fractures. This allowed for better identification of cases of child abuse.

1938: The Fair Labor Standards Act (FLSA), which detailed children’s first legal rights, imposed restrictions on working hours and conditions.

1962: Dr. C. Henry Kempe created the diagnosis for battered child syndrome.

1965: Mandatory reporting laws were in place in all states.

Beginning in the 1970s, the United States Congress became aware (along with the rest of the nation) that the child welfare system was not adequately protecting children. From a historical perspective, it can be said that we are still relatively new to the concepts of protecting children who’ve been abused or neglected. We are also new to developing appropriate systems, methods, and programs to cope with the problems these families and children face.

Federal Child Abuse and Neglect Laws

1974: Child Abuse Prevention and Treatment Act (CAPTA), Public Law 93-247, amended 1996

Created the National Center on Child Abuse and Neglect and earmarked federal funds for states to establish special programs for child victims of abuse or neglect.

Requires that states:

- Have child abuse and neglect reporting laws.
- Investigate reports of abuse and neglect.
- Educate the public about abuse and neglect.
- Provide a guardian ad litem to every child who has been abused or neglected whose case results in a judicial proceeding.
- Maintain the confidentiality of child protective services records.

1978: Indian Child Welfare Act (ICWA), Public Law 95-608

Responded to congressional hearings in the 1970s that revealed pattern of public and private removal of Indian children from their homes, undermining families and threatening tribal survival and Native American cultures. ICWA was designed to implement the federal government's trust responsibility to the nations by protecting and preserving the bond between Indian children and their tribe and culture.

Requires that states:

- Recognize that Indian children have special rights as members of sovereign nations within the United States.
- Set up placement preference schemes for foster care placements and adoptions of children who have been determined to be Indian children.
- Establish the right of certain entities, including the tribe and the Indian custodian, if one exists, to appear as parties to child welfare cases.
- Determine when and if a case should be transferred to tribal court.
- Describe rights of the Indian child and the child's tribe.

CASA/GAL volunteers should:

- Ask whether every child has Native heritage.
- Investigate tribal resources and services that can benefit the child.
- Be aware that jurisdiction can be transferred to the tribal court.
- Pay attention to the heritage and identity needs of the child and be culturally responsive.
- Remember that Adoption and Safe Families Act (ASFA) timelines do not apply to Indian children sovereign nations within the United States.
- Keep in mind that ICWA takes precedence over other federal and state laws.
- Visit the National Indian Child Welfare Association website; it has several excellent packets of ICWA information available for a small charge.

1980: Adoption Assistance and Child Welfare Act, Public Law 96-272

Requires that states:

- Recruit culturally diverse foster and adoptive families.
- Comply with the Indian Child Welfare Act.
- Establish standards for foster family homes and review the standards periodically.
- Set goals and plan for the number of children who will be in foster care for more than 24 months.
- Provide “reasonable efforts” to prevent or eliminate the need for removal of the child from their home or to make it possible for the child to return to their home.
- Have a data collection and reporting system about the children in care.

CASA/GAL volunteers should:

- Consider possible placements that respect a child's cultural heritage but do not limit their options.
- Become familiar with IMPACT, the data collection system used by DFPS to document all stages of service of a case, including when someone reports abuse, neglect, or exploitation and when those cases are investigated.

1990: Indian Child Protection and Family Violence Prevention Act

Establishes federal requirements for the reporting and investigation of child abuse and neglect on tribal lands.

Requires background checks on individuals who have contact with Indian children (including foster and adoptive families).

Authorizes funding for tribal child abuse prevention and treatment programs.

1993: Court Improvement Legislation

Encourages reform in the court system.

1994: Multi-Ethnic Placement Act (MEPA)

Prevents discrimination on the basis of race, color or national origin in the placement of children and in the selection of foster and adoptive placements.

Facilitates the development of a diverse pool of foster and adoptive families.

Decreases the time children wait to be adopted.

1996: Child Abuse Prevention and Treatment Act (CAPTA) Amended

Amended to include Court Appointed Special Advocates as guardian ad litem.

1997: Adoption and Safe Families Act (ASFA), Public Law 105-89

This act embodies three key principles:

- The safety of children is the paramount concern.
- Foster care is a temporary setting and not a place for children to grow up.
- Permanency planning should begin as soon as the child enters foster care.

This act directs timelines within which the child welfare system operates:

- Requires a permanency plan within 12 months.
- Requires a dispositional hearing within 12 months of placement.
- Requires court reviews every six months.

1997: Volunteer Protection Act

Limits liability of volunteers.

1999: Foster Care Independence Act

Addresses needs of older youth in foster care, particularly those aging out of the system.

This act does the following:

- Allows states to serve youth up to age 21 regardless of whether or not they are eligible for the Title IV-E Foster Care Program.
- Increases federal funding to assist and serve young people transitioning from foster care.
- Establishes the John H. Chafee Foster Care Independence Program, which strongly supports the dependency system's capacity to help youth make a healthy transition into adulthood (see information on the next page).
- Allows states to provide Medicaid to young people between the ages of 18 and 21 who were in foster care on their 18th birthday.

Federal Child Abuse and Neglect Laws

- Increases the youth-assets limit from \$1,000 to \$10,000 without jeopardizing the youth's eligibility for Title IV-E-funded foster care.
- Ensures that foster parents have adequate preparation to care for the children placed in their home. This provision can be used to strengthen the preparation of foster parents to care for adolescents.
- Provides additional funding for adoption incentive payments.
- Mandates that states use a portion (up to 30 percent) of their independent living program funds to provide room and board for youth 18 to 21 who have left foster care.

The John H. Chafee Foster Care Independence Program does the following:

- States explicitly that “enrollment in Independent Living Programs can occur concurrently with continued efforts to locate and achieve placement in adoptive families for older children in foster care,” thereby clarifying that independent living services should not be seen as an alternative to adoption for teens.
- Requires states to train both foster and adoptive parents (as well as group-care workers and case managers) about the issues confronting adolescents preparing for independent living.
- Reinforces the importance of providing personal and emotional support for children aging out of foster care, through the promotion of interactions with dedicated adults.
- Specifies that independent living services may be provided to young people at “various ages” and various stages of achieving independence, “including children waiting for adoption or other permanent options”.

2018: Family First Preventive Services Act

This act embodies three key principles:

- That outcomes for children are greatest when left with their families
- When children must be removed, kinship placements are the preferred
- That prevention of removal should receive equal attention to management of already removed cases.

This act encourages placements in family settings and allows for preventive services prior to removal:

- Limits the use of residential facilities for youth in foster care
- Allows funding flexibility to allocate money to preventive services for services such as mental health and addiction
- Provides for more resources for kinship providers

Missouri Foster Care Bill of Rights (RSMo. 210.564)

In all circumstances, the best interests of the child shall be the first priority of the Children's Division

Recognizing the importance of familial stability in foster care and adoption placement, it shall be the practice of the children's division, when appropriate, to support a child's return to the custody and care of the parents or guardians with whom the child resided immediately prior to state custody

When restoration of care and custody is not appropriate or possible, the Children's Division shall attempt to place the child with suitable relatives in accordance with section 210.565

The Children's Division shall further support familial stability by ensuring continuity of foster placement, except in instances where cause for a change in a child's placement is reasonably found

The Children's Division shall work with each child in state custody to develop both a permanency plan and a case plan. These plans shall be developed within twelve months of a child's entrance into state custody. The permanency plan shall include the child's immediate and long-term placement goals, while the case plan shall address a child's specific medical and emotional needs

Recognizing the value of familial relationships in foster care and adoption settings, it shall be the practice of the Children's Division to place siblings in the same foster care, kinship, guardianship, or adoptive placement, unless doing so would be contrary to the safety or well-being of any of the siblings. If siblings are not placed together, it shall be the practice of the children's division to support regular visitation and communication between siblings in state custody, and between children in state custody and their parents and relatives, where not otherwise prohibited or against a child's best interests

The Children's Division shall support all children twelve years of age or older in state custody to attend any hearings pertaining to the child's placement, custody, or care, provided that the child is willing and able to attend such hearings, and that attending such hearings is in the best interests of the child.