

Section One
THE DEVELOPMENT OF CHILD ABUSE AND
NEGLECT LAWS

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Section One

The Real Story of Mary Ellen Wilson

The sufferings of the little girl Mary Ellen led to the founding of the New York Society for the Prevention of Cruelty to Children, the first organization of its kind, in 1874. In 1877, the New York SPCC and several Societies for the Prevention of Cruelty to Animals from throughout the country joined together to form the American Humane Association. The following is Mary Ellen's story, which marked the beginning of a worldwide crusade to save children.

Over the years, in the re-telling of Mary Ellen Wilson's story, myth has often been confused with fact. Some of the inaccuracies stem from colorful but erroneous journalism, others from simple misunderstanding of the facts, and still others from the complex history of the child protection movement in the United States and Great Britain and its link to the animal welfare movement. While it is true that Henry Bergh, president of the American Society of the Prevention of Cruelty to Animals (ASPCA), was instrumental in ensuring Mary Ellen's removal from an abusive home, it is not true that her attorney—who also worked for the ASPCA—argued that she deserved help because she was “a member of the animal kingdom.”

The real story—which can be pieced together from court documents, newspaper articles, and personal accounts—is quite compelling, and it illustrates the impact that a caring and committed individual can have on the life of a child.

Mary Ellen Wilson was born in 1864 to Francis and Thomas Wilson of New York City. Soon thereafter, Thomas died, and his widow took a job. No longer able to stay at home and care for her infant daughter, Francis boarded Mary Ellen (a common practice at the time) with a woman named Mary Score. As Francis's economic situation deteriorated, she slipped further into poverty, falling behind in payments for and missing visits with her daughter. As a result, Mary Score turned two-year-old Mary Ellen over to the city's Department of Charities. The Department made a decision that would have grave consequences for little Mary Ellen; it placed her illegally, without proper documentation of the relationship, and with inadequate oversight in the home of Mary and Thomas McCormack, who claimed to be the child's biological father. In an eerie repetition of events, Thomas died shortly thereafter. His widow married Francis Connolly, and the new family moved to a tenement on West 41st Street.

Mary McCormack Connolly badly mistreated Mary Ellen, and neighbors in the apartment building were aware of the child's plight. The Connollys soon moved to another tenement, but in 1874, one of their original neighbors asked Etta Angell Wheeler, a caring Methodist mission worker who visited the impoverished residents of the tenements regularly, to check on the child. At the new address, Etta encountered a chronically ill and homebound tenant, Mary Smitt, who confirmed that she often heard the cries of a child across the hall. Under the pretext of asking for help for Mrs. Smitt, Etta Wheeler



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introduced herself to Mary Connolly. She saw Mary Ellen’s condition for herself. The 10-year-old appeared dirty and thin, was dressed in threadbare clothing, and had bruises and scars along her bare arms and legs. Ms. Wheeler began to explore how to seek legal redress and protection for Mary Ellen.

At that time, some jurisdictions in the United States had laws that prohibited excessive physical discipline of children. New York, in fact, had a law that permitted the state to remove children who were neglected by their caregivers. Based on their interpretation of the laws and Mary Ellen’s circumstances, however, New York City authorities were reluctant to intervene. Etta Wheeler continued her efforts to rescue Mary Ellen and, after much deliberation, turned to Henry Bergh, a leader of the animal humane movement in the United States and founder of the American Society for the Prevention of Cruelty to Animals (ASPCA). It was Ms. Wheeler’s niece who convinced her to contact Mr. Bergh by stating, “You are so troubled over that abused child, why not go to Mr. Bergh? She is a little animal surely.”¹

Ms. Wheeler located several neighbors who were willing to testify to the mistreatment of the child and brought written documentation to Mr. Bergh. At a subsequent court hearing, Mr. Bergh stated that his action was “that of a human citizen,” clarifying that he was not acting in his official capacity as president of the NYSPCA. He emphasized that he was “determined within the framework of the law to prevent the frequent cruelties practiced on children.”² After reviewing the documentation collected by Etta Wheeler, Mr. Bergh sent an NYSPCA investigator (who posed as a census worker to gain entrance to Mary Ellen’s home) to verify the allegations. Elbridge T. Gerry, an ASPCA attorney, prepared a petition to remove Mary Ellen from her home so she could testify to her mistreatment before a judge. Mr. Bergh took action as a private citizen who was concerned about the humane treatment of a child. It was his role as president of the NYSPCA and his ties to the legal system and the press, however, that [would] bring about Mary Ellen’s rescue and the movement for a formalized child protection system.

Recognizing the value of public opinion and awareness in furthering the cause of the humane movement, Henry Bergh contacted *New York Times* reporters who took an interest in the case and attended the hearings. Thus, there were detailed newspaper accounts that described Mary Ellen’s appalling physical condition. When she was taken before Judge Lawrence, she was dressed in ragged clothing, was bruised all over her body and had a gash over her left eye and on her cheek where Mary Connelly had struck her with a pair of scissors. On April 10, 1874, Mary Ellen testified:

“My father and mother are both dead. I don’t know how old I am. I have no recollection of a time when I did not live with the Connollys...Mamma (Mrs. Connolly) has been in the habit of whipping and beating me almost every day. She used to whip me with a twisted whip—a raw hide. The whip always left a black and blue mark on my body. I have now the black and blue marks on my head which were made by mamma, and also a cut



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on the left side of my forehead which was made by a pair of scissors. She struck me with the scissors and cut me; I have no recollection of ever having been kissed by any one—have never been kissed by mamma. I have never been taken on my mamma's lap and caressed or petted. I never dared to speak to anybody, because if I did I would get whipped...I do not know for what I was whipped—mamma never said anything to me when she whipped me. I do not want to go back to live with mamma, because she beats me so. I have no recollection ever being on the street in my life.”³

In response, Judge Lawrence immediately issued a writ *de homine replagiando*, provided for by Section 65 of the Habeas Corpus Act, to bring Mary Ellen under court control. The newspapers also provided extensive coverage of the caregiver Mary Connolly's trial, raising public awareness and helping to inspire various agencies and organizations to advocate for the enforcement of laws that would rescue and protect abused children.⁴ On April 21, 1874, Mary Connolly was found guilty of felonious assault and was sentenced to one year of hard labor in the penitentiary.⁵

Less well known, but as compelling as the details of her rescue, is the rest of Mary Ellen's story. Etta Wheeler continued to play an important role in the child's life. Family correspondence and other accounts reveal that the court placed Mary Ellen in an institutional shelter for adolescent girls. Believing this to be an inappropriate setting for the 10-year-old, Ms. Wheeler intervened. Judge Lawrence gave her permission to place the child with her own mother, Sally Angell, in northern New York. When Ms. Angell died, Etta Wheeler's youngest sister, Elizabeth, and her husband Darius Spencer, raised Mary Ellen. By all accounts, her life with the Spencer family was stable and nurturing.

At the age of 24, Mary Ellen married a widower and had two daughters—Etta, named after Etta Wheeler, and Florence. Later, she became a foster mother to a young girl named Eunice. Etta and Florence both became teachers; Eunice was a businesswoman. Mary Ellen's children and grandchildren described her as gentle and not much of a disciplinarian. Reportedly, she lived in relative anonymity and rarely spoke with her family about her early years of abuse. In 1913, however, she agreed to attend the American Humane Association's national conference in Rochester, NY, with Etta Wheeler, her long-time advocate. Ms. Wheeler was a guest speaker at the conference. Her keynote address, “The Story of Mary Ellen which started the Child Saving Crusade Throughout the World,” was published by the American Humane Association. Mary Ellen died in 1956 at the age of 92.

1 E. A. Wheeler, *The Story of Mary Ellen*, 3, quoted in Sallie A. Watkins, “The Mary Ellen Myth: Correcting Child Welfare History,” *Social Work* 35, no. 6 (1990), 501.

2 Watkins, “The Mary Ellen Myth,” 502.

3 “Mary Ellen Wilson,” *New York Times*, April 10, 1874, 8, quoted in Watkins, “The Mary Ellen Myth,” 503.

4 Watkins, “The Mary Ellen Myth.”

5 *Ibid.*

From *Helping in Child Protective Services: A Competency-Based Casework Handbook*, Oxford University Press, 2004. Used with permission from the American Humane Association.



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Historical Treatment of Children

Historically, many cultures did not value children. There are exceptions to this, of course, and some cultures have respected and protected children throughout history.

Many practices that were once accepted or condoned would be considered abusive today, such as:

- Treating children as “property” with no rights

“The justice of a master or father is different from that of a citizen; for a son or a slave is property and there can be no injustice to one’s property.” – Aristotle

- Harsh physical discipline

“If one beats a child until it bleeds then it will remember; but if one beats it to death, the law applies.” – 13th-century saying

- Infanticide—the willful killing of a child—particularly of weak or “deformed” infants and of female children

- Dubious child-rearing practices, such as swaddling for prolonged periods or early marriage of children

“We went the next day into the town and to the house of the merchant and he said, ‘My daughter is 13 years old and no longer a child and she is fit for marriage.’” – Pearl S. Buck, The Good Earth

Some cultures honored and supported children by:

- Punishing the mistreatment or murder of children

The Code of Hammurabi (1780 B.C.E.)

- Opposing physical discipline

“A loving parent’s hands should be as soft as feathers and not cast iron, and should not break bones.” – Ghana

“A whipped child loses courage and his soul withers and dwindles away until he dies. For the soul of a child is a tender thing and easily hurt.” – Havasupai

Deeply embedded in the history of many industrialized societies, including the United States, were “anti-child” practices such as:

- Indentured servitude and child slavery



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- Orphan trains
- Boarding schools for Native American children
- Child labor in mines and factories

Child-focused policies are relatively new.

- 1899: First juvenile court (Chicago) placed dependent and delinquent children in homes for wayward youth or reform schools
- 1910: Development of X-ray technology, which eventually allowed doctors to detect subdural (under the skin) injuries and untreated fractures
- 1938: First legal rights of children—Fair Labor Standards Act imposed restrictions on working hours and conditions
- 1962: Dr. C. Henry Kempe created the diagnosis for battered child syndrome
- 1965: Mandatory reporting laws 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 and their families. From a historical perspective, it can be said that we are still relatively new to the concepts of protecting abused and neglected children and developing appropriate systems, methods, and programs to cope with the problems these children face.

The chart on the next page outlines information about federal child abuse and neglect laws.



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Federal Child Abuse and Neglect Laws

1974: Child Abuse Prevention and Treatment Act (CAPTA) <i>Public Law 93-247, amended in 1996</i>	
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.	
<i>This law requires that states:</i>	
<ul style="list-style-type: none">• 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 abused or neglected child whose case results in a judicial proceeding.• Maintain the confidentiality of child protective services records.	
1978: Indian Child Welfare Act (ICWA) <i>Public Law 95-608</i>	
<ul style="list-style-type: none">• Recognizes that Indian children have special rights as members of sovereign nations within the United States• Responded to congressional hearings in the 1970s that revealed a pattern of public and private removal of Indian children from their homes, undermining their families and threatening tribal survival and Native American cultures• 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• Sets up placement preference schemes for foster care placements and adoptions of children who have been determined to be Indian children• Establishes the right of certain entities, including the tribe and the Indian custodian, if one exists, to appear as parties to child welfare cases• Determines when and if a case should be transferred to tribal court• Describes rights of the Indian child and the child’s tribe	<i>For CASA volunteers:</i> <ul style="list-style-type: none">• Ask whether every child has Native heritage.• Research tribal resources and services that can be of great benefit to the child.• Be aware that jurisdiction can be transferred to the tribal court.• Pay attention to the heritage and identity needs of the child.• Remember that ASFA timelines (see next page) do not apply to Indian children.• Keep in mind that ICWA takes precedence over other federal and state law.



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Federal Child Abuse and Neglect Laws (continued)

1980: Adoption Assistance and Child Welfare Act—Public Law 96-272	
<p><i>This law requires that states:</i></p> <ul style="list-style-type: none"> • 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 a 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 his/her home or to make it possible for the child to return to his/her home. • Have a data collection and reporting system about the children in care. 	<p><i>For CASA volunteers:</i></p> <ul style="list-style-type: none"> • Consider possible placements that respect the child’s cultural heritage but do not limit his/her options. • Learn the name of the data collection system used in Arizona. • Learn how to access this information.
1990: Indian Child Protection and Family Violence Protection Act	
<ul style="list-style-type: none"> • 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)	
<p><i>The goals of this law are to:</i></p> <ul style="list-style-type: none"> • Decrease the time children wait to be adopted. • Prevent discrimination on the basis of race, color, or national origin in the placement of children and in the selection of foster and adoptive placements. • Facilitate the development of a diverse pool of foster and adoptive families. 	
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	
<p><i>This act embodies three key principles:</i></p> <ul style="list-style-type: none"> • 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 	<p><i>The act directs timelines within which the child welfare system operates:</i></p> <ul style="list-style-type: none"> • Requires permanency plan within 12 months • Requires 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	



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



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The Indian Child Welfare Act (ICWA)

BACKGROUND

The Indian Child Welfare Act (ICWA) was a response to Congressional findings that there was a need for a federal law to prevent state courts and social workers, as well as private agencies, from further destruction of the American Indian family caused by unwarranted removal of Indian children from their tribes and families.

ICWA acknowledges the loss of Indian culture resulting from historical government policies, such as separating Indian children completely from their tribe, placing them in boarding schools, and forbidding them to speak their native language. In an effort to “civilize” and assimilate Indians into the mainstream, a decision was reached in the early 1800s to start with the children. Bureau of Indian Affairs (BIA) agents and social workers were given cash incentives based on the head count of children taken away from their tribes and placed in non-Indian institutions and adoptive homes—usually far from home.

The Indian Civilization Act was passed in 1810 to facilitate the removal of children in an attempt to assimilate them into Anglo-America. Subsequently, non-Indian caseworkers, courts, and agencies continued to see the Indian family structure as alien, foreign, and undesirable, so the process of adoptions by non-Indians occurred in wholesale numbers. The sense of loss and devastation not only tore away the child’s heritage and foundation, it nearly destroyed the Indian family unit and the tribal government structure.

The Indian Child Welfare Act was established to strengthen the participation by Indian tribes when placement of Indian children is being considered. It establishes requirements for child-placing agencies to follow when placing Indian children.

SUMMARY

Children who are members of an Indian tribe, or who are the biological children of a member of an Indian tribe and are eligible for membership in the tribe themselves, may only be placed in foster care or for adoption according to the requirements of the Indian Child Welfare Act. The child’s tribe is the final determinant of who is a member of the Indian community entitled to ICWA coverage. When ICWA coverage applies in a child’s case, it takes precedence over other federal or state legislation.

If a state agency initiates an Indian child custody proceeding on the reservation, jurisdiction belongs exclusively with the tribe. When the proceeding is off-reservation, the case must be transferred to the tribe upon the request of the tribe unless there is “good cause to the contrary,” as set forth in the Department of the Interior’s 1979 BIA “Guidelines for State Courts,” Indian Child Custody Proceedings.



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Some of the reasons not to transfer include the following:

- Parents object
- Child is over 12 and he/she objects
- The case is at an advanced stage and all witnesses are off-reservation

The state court cannot look at the economics of the family or tribe in making the decision not to transfer. Likewise, the state court cannot look at what it might deem “in the best interest of the child,” since the law presumes that it is always in the best interest of an Indian child to have his/her own people determine what is proper for his/her future.

ICWA sets forth the following requirements:

1. State court proceedings for foster care placement or termination of parental rights that involve an Indian child must be transferred to the jurisdiction of the tribe unless they meet one of the exceptions outlined in the 1979 BIA “Guidelines for State Courts.”
2. A state court faced with pending proceedings for the foster care placement of an Indian child or the termination of parental rights must notify the child’s parent, custodian, or tribe of the proceedings.
3. An Indian child may not be placed in foster care unless there is a determination, supported by clear and convincing evidence, that the child will likely suffer serious emotional or physical damage if left in the custody of his/her parent or Indian custodian.
4. An Indian child’s parents may not have their parental rights terminated unless there is a determination, supported by evidence beyond a reasonable doubt, that the child is likely to suffer serious emotional or physical damage if left in the custody of his/her parent or Indian custodian.
5. Voluntary consents to foster care placement or termination of parental rights that involve Indian children are not valid unless executed in writing before a judge and accompanied by the judge’s certificate that the terms and consequences of the consent were fully explained to and fully understood by the parent or Indian custodian.
 - Voluntary consents to foster care placement may be withdrawn at any time.
 - Voluntary consents to termination of parental rights or adoption may be withdrawn at any time before the final decree of termination or adoption is issued—and up to two years thereafter upon a showing of fraud or duress.



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6. In adoptions of Indian children, preferences for placement must be accorded as follows: (1) to a member of the child's extended family; (2) to other members of the child's tribe; and (3) to other Indian families.
7. In foster care or pre-adoptive placements of Indian children, preferences for placement must be accorded as follows: (1) to a member of the child's extended family; (2) to a foster home licensed or approved or specified by the child's tribe; (3) to an Indian foster home licensed or approved by an authorized non-Indian licensing authority; and (4) to an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suited to the child's needs.

*Synopsis prepared in October 1995 by Jill Moore, UNC law student.
Updated in May 2000 by Evelyn M. Stevenson, tribal attorney,
Confederated Salish and Kootenai Tribes of the Flathead Nation.*

It is critical to understand that ICWA applies different standards to cases involving Indian children. It is always in the best interest of an Indian child to have ICWA followed. By identifying Indian children and monitoring ICWA compliance, CASA volunteers can help ensure that the Indian child's cultural and familial needs will be fully considered by the court.



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Other Laws that Affect CASA Volunteer Work

In your work as a CASA volunteer, you will encounter other federal laws that have an impact on child abuse and neglect cases. Below are a few of them:

- **The Health Insurance Portability and Accountability Act of 1996 (HIPAA)** requires, among other things, permission or a court order to access “protected health information” for any individual.
- **Special Immigrant Juvenile Status (SIJS)** assists some children, including those in foster care, in obtaining legal permanent residency.
- **Title VI of the 1964 Civil Rights Act** says that any entity that receives federal funds must provide a professional interpreter in court.
- **Titles IV-B and IV-E of the Social Security Act: IV-E** is the primary federal funding stream that partially reimburses states for foster care for qualified children. IV-B allots funding for targeted case management services. The state must pay all expenses for a child who is not IV-E eligible out of state general revenues. These expenses include foster care, therapy, etc.
- **The Victims of Child Abuse Act of 1990 (VOCAA)** protects the privacy rights of child victims or witnesses during the investigation or prosecution of a federal crime.
- **McKinney-Vento Homeless Assistance Act of 1997 (Public Law 100-77)** helps youth and their families who are experiencing homelessness and protects the right of homeless youth to attend school. (*More information is provided in section 5.*)
- **2004 Reauthorization of the Individuals with Disabilities Education Act (IDEA)** focuses on improving educational stability, opportunities and outcomes for special-needs children in foster care. (*More information is provided in section 5.*)
- **Safe and Timely Interstate Placement of Foster Children Act of 2006:**
 - Improves protections for children and holds states accountable for the safe and timely placement of children across state lines.
 - Requires state courts to ensure that foster parents, pre-adoptive parents, and relative caregivers of a child in foster care are notified of proceedings
 - Requires agencies to provide youth with their health and educational records when they are emancipated.
- **Fostering Connections to Success and Increasing Adoptions Act of 2008** amends part B and E of title IV of the Social Security Act to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, and improve incentives for adoption.



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Resources

American Bar Association Center on Children & the Law

www.abanet.org/child/home.html

The goal of the ABA Center on Children and the Law is to improve the lives of children through advances in law, justice, knowledge, practice, and public policy. This site includes child welfare tips and great child advocacy links.

American Humane Association

www.americanhumane.org

Through a network of child and animal protection agencies and individuals, American Humane provides national leadership in developing policies, legislation, curricula and training programs—and taking actions—to protect children and animals from cruelty, abuse, neglect and exploitation.

US Department of Health and Human Services

www.acf.hhs.gov/programs/cb/pubs/ij_adopt/support.htm.

Summarizes federal laws directly relevant to permanency planning and interjurisdictional placements of children in foster care.

INDIAN CHILD WELFARE ACT

National Indian Child Welfare Association

www.nicwa.org

Improves the lives of American Indian children and families by helping tribes and other service providers implement services that are culturally competent, community-based, and focused on the strengths and assets of families. This work includes collaborating with tribal and urban Indian child welfare programs to increase their service capacity, enhancing tribal-state relationships, and providing training, technical assistance, information services and alliance building.

The Indian Child Welfare Act and CASA/GAL Volunteers: Advocating for the Best Interests of Native Children

http://www.casnet.org/download/tribal-casa/0709_icwa_and_volunteer_0012.pdf

Understanding the Relational Worldview in Indian Families

<http://www.casnet.org/program-services/tribal/relational-worldview-Indian-families.htm>



