# Proposal for Expanded Pre-Litigation Defense for Parents in New Jersey

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ACLU New Jersey

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## Introduction

Every year, thousands of New Jersey families receive a knock at the door from the Division of Child Protection and Permanency (DCPP) to investigate an allegation of abuse or neglect of a child. Many of these families are navigating poverty, illness, crisis, or domestic violence – not abuse or neglect.

Under the Division's own policies, a caseworker has ten days to resolve a safety concern before one of the agency's attorneys must file a petition with the family court, triggering court oversight and a parent's statutory right to be represented by an attorney.[1] But between that knock at the door and the ten-day deadline, families unable to afford a private attorney are largely on their own.

During that window, caseworkers routinely request drug tests, mental health evaluations, home inspections, and other invasive assessments, and families routinely comply. Most do not know that they have the legal right to refuse. Even those who do know rarely feel free to act on it when the implicit choice is between compliance and losing their child. Court involvement, for many families, is the only mechanism that would guarantee them access to free, quality legal representation, but the process of invoking that protection requires a level of informed decision-making on the parent's part that the system currently does not support. The result is a system in which compliance with ostensibly "voluntary" services frequently leads to worse outcomes than the original allegation would have produced on its own.

This report will explain how it is in the best interest of New Jersey families – and of the child welfare system itself – to expand the statutory mandate of the Office of Parental Representation (OPR) to represent parents who are being investigated during that ten-day period before the family court petition is filed. Any indigent parent whose family is the subject of a Division investigation should have the right to speak with an OPR attorney, free of charge, before complying with any affirmative demand from the State. As a parallel reform, all parents should receive a standardized, enforceable rights disclosure – a "Miranda warning" for family policing[2] – at that same first contact. Even before

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[1] N.J. Dep't of Child. & Fams., *New Jersey Department of Children and Families Policy Manual: Structured Decision Making* 3 (2020), https://policy.dcf.nj.gov/app/file/CPP-III-B-6-600.pdf.

[2] Due to the role that this system and the child welfare agency lays in families' lives, including surveilling, punishing, and often oppressing Black, Brown, and low-income families, many now refer to the child welfare system as the "family policing system." Given its mirroring of the criminal legal system and the similar ways in which it impacts New Jerseyans, this report will also refer to the system involving the Division as such. *See also* David Benjamin & David Komlos, *The Purpose of a System Is What It Does, Not What It Claims to Do*, Forbes (Sept. 13, 2021, at 6:00 ET), https://www.forbes.com/sites/benjaminkomlos/2021/09/13/the-purpose-of-a-system-is-what-it-does-not-what-it-claims-to-do/?sh=20a7add63887.

a statutory change takes effect, the Division should be required to inform every parent of their rights.

## Background

### The Investigative Process

In New Jersey, reports alleging child abuse or neglect can be made anonymously by any person, even without any proof to support their allegation.[3] These reports go to the State Central Register (SCR), which screens and routes them to the appropriate local office, where a caseworker is assigned to investigate. That investigation includes interviewing the alleged child victim in person and separately from other family members, frequently at the child's school and without prior parental notice or consent.[4] Between January 2025 and March 2026, the Division conducted 61,730 such investigations.[5] In a subset of cases where a caseworker identifies a "safety threat" during the investigation – defined as a circumstance that places a child at imminent risk – the Division may implement a Safety Protection Plan (SPP). An SPP is a written agreement outlining steps a family must take to address an identified safety concern. These plans often require that the family receive services that bear no direct relationship to the underlying concern: drug testing, mental health evaluations, parenting classes, restrictions on who may be present in the home, and, in the most extreme cases, physical separation of parent and child. A public records request confirms that 1,648 of those investigations – roughly 2.7% – resulted in a formal Safety Protection Plan.[6]

Under the Division's policy CPP-III-B-6-600, if the safety issue identified in an SPP is not resolved within ten days, the Division must file a complaint in family court to initiate litigation. The ten-day rule exists to ensure prompt judicial oversight of state intrusion into private family life and to trigger a parent's statutory right to appointed counsel. While public information on compliance is unavailable, legal service providers report anecdotally that this deadline is not always met. Understandably, caseworkers may not always want to default to judicial proceedings when a situation could be resolvable with a few extra days of out-of-court involvement. However, missing the deadline inherently deprives parents of legal representation while extending their exposure to State surveillance, because the right to free counsel attaches *only* once the filing is made in court, which itself happens only when the ten-day deadline after the signing of an SPP is followed. During

[3] *See, e.g.*, *Educational Materials: Defining Child Abuse and Neglect*, NJ.gov: N.J. Dep't of Child. & Fams., https://www.nj.gov/dcf/stay-connected/get-involved/educational-materials.shtml (last visited July 29, 2026) ("Calls can be placed to the hotline anonymously.").
[4] N.J.S.A. 9:6-8.18; N.J. Dep't of Child. & Fams., *New Jersey Department of Children and Families Policy Manual: Structured Decision Making*, *supra*, at 2-3.
[5] *New Jersey Child Welfare Data Hub*, Rutgers Univ. Sch. of Soc. Work, Inst. for Fams., https://njchilddata.rutgers.edu (last visited Mar. 17, 2026).
[6] Email response to OPRA request from Allyson Mahoney, OPRA Custodian, N.J. Dep't of Child. & Fams., to Maya Hiebert, ACLU-NJ Skadden Fellow (June 5, 2026) (on file with ACLU-NJ).

that ten-day limit after a formal SPP is signed, and perhaps longer if the deadline is not met, a parent is not subject to any policy or statute giving them access to an attorney free of cost.

## Lack of Informed Consent

The family policing system's legal framework departs sharply from the parallel framework that governs criminal investigations, despite the fact that the consequences can be equally severe.[7] A defendant under criminal investigation has fundamental rights, protected by the state and federal constitutions, that attach long before arrest: the right to remain silent, the right to refuse entry to their home absent a judicial warrant, and the right to speak with an attorney, including a public defender if they cannot afford one. These constitutional protections exist precisely to prevent the State from having unchecked discretion to gather evidence and question suspects, particularly when such evidence may later be used against the individual.

The right to family integrity is likewise fundamental, recognized for decades by both the United States Supreme Court and the New Jersey Supreme Court. *See, e.g.*, *Troxel v. Granville*, 530 U.S. 57, 66-67 (2000); *In re Guardianship of K.L.F.*, 129 N.J. 32, 37 (1992). Yet no equivalent of a Miranda warning exists for parents under Division investigation and surveillance. During the initial investigation period, a caseworker may – at a minimum – inspect a family's home, interview children alone, and demand drug tests, medical records, pediatrician contact information, and comprehensive psychological evaluations. In the criminal context, demanding that a suspect submit to interrogation, produce drug test results, or disclose confidential medical information before being read their rights would be unthinkable. In the family policing context, this happens routinely. And unlike in the criminal context, most of what is produced in that process can later be used against a parent in family court.

The power and knowledge imbalance, without corresponding procedural protections, creates inherent coercion in any investigation. Many parents are acutely aware that the State has the ability to remove their child or escalate the case based on a number of factors. This looming threat strips away the meaningful ability to decide whether to consent, and with no pre-litigation right to counsel, the presence of a caseworker will inevitably function as coercion, even when the caseworker acts in good faith.

OPR is authorized under N.J.S.A. 30:4C-15.4 to provide legal counsel to indigent parents in Title 9 (abuse and neglect) and Title 30 (guardianship and termination) proceedings, but this authority is triggered only by the filing of a court petition. Throughout the entire investigation period – from the caseworker's first call to the filing of a court complaint – an indigent parent has no access to OPR,

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[7] Both systems may result in the loss of a fundamental liberty interest. In the criminal legal system, this may look like the loss of liberty in the form of incarceration, while in the family policing system, investigations may end in a termination of parental rights—the irreversible, permanent loss of parent-child ties.

the institution created to serve them. Absent a court filing, OPR attorneys cannot counsel an investigated parent, even though their advice at this stage could be decisive.

This creates a catch-22 for parents. A parent who doesn't know they can refuse an investigation or services will never affirmatively instigate the court filing that gives them access to a lawyer. The State is, in effect, extracting compliance, thereby gathering information and disclosures from families at their most vulnerable moments. The information gathered during that period enters the record and may later support continued separation, loss of custody, or termination of parental rights.

The most common example of this scenario involves drug testing. A caseworker arrives at a home following a report of suspected neglect – often something as vague as a "messy home" or a child seen wearing worn clothing. The caseworker requests that the parent submit to a drug test. The parent, not knowing they can decline and fearing what a refusal might signal, agrees. The test returns a positive result for a legally prescribed opioid, perhaps following recent surgery, that the parent never thought to mention because no one asked. That positive result, obtained without counsel and under implicit pressure, becomes the foundation for required drug testing, substance abuse treatment, and restricted parenting time. None of this was ordered by a court and all of it, at least on paper, was "voluntary."

The parent who complied in an effort to demonstrate cooperation now faces a record of "substance use concerns" that would not have existed if they had declined the test. The parent, who might have had the case closed in court in ten days, instead faces months of supervision and mandatory services. Ironically, compliance – the thing caseworkers imply will make the problem go away – can make it worse.

The coercive character of these pre-petition interactions has begun to receive judicial attention. In *Croft v. Westmoreland County Children & Youth Services*, the Third Circuit explicitly rejected the notion that a parent's compliance following a threat to remove their child constitutes voluntary action, describing such threats as "blatantly coercive." 103 F.3d 1123, 1125 n.1 (3d Cir. 1997). New Jersey courts have also recognized the right at stake when the State intrudes into private family life. As the New Jersey Supreme Court held in *New Jersey Division of Child Protection & Permanency v. J.C.*, 257 N.J. 451, 465-66 (2024), the Division may not continue imposing service requirements on a parent after their Title 30 action – and with it, a parent's appointed counsel – has been dismissed. The Court further recognized that "periodic in-person visits to an intact family by a Division representative are inherently disruptive to the family in general and the children in particular" due to their "interruption of the family routine." *J.C.*, 257 N.J. at 467. When these invasive processes are embedded in every investigation triggered by an SCR report, it is critical that parents have the option to seek judicial oversight as an affirmative structural protection.

## **Disparate Impact**

Research consistently demonstrates that child welfare investigations are concentrated in low-income communities and communities of color, in part because poverty-related conditions – housing instability, food insecurity, reliance on public benefits – are systematically misclassified as neglect. Furthermore, families who can afford private counsel are able to assert their rights from the first caseworker visit. This amplifies the disproportionality in investigations across our state.

Racial disparities in the New Jersey child welfare system before any investigative finding is even made are well-documented. In 2025, the Division received 57,591 referrals to investigate alleged abuse and neglect involving a total of 88,847 children.[8] While most of the investigations were dismissed, at the end of the year, a total of 31,148 children continued to be actively involved with the Division in some way. Of those 31,148 children, 68% were children of color. *Id.* This is nearly three times the number of white children involved with the Division. Furthermore, Black children were involved in a Division investigation at a rate more than two times their proportion in the general population (34% and 13% respectively). *Id.* White children were involved at a little more than half the rate of their proportion in the general population (24% and 43% respectively). *Id.* These disparities are reflected nationally as well. Across the United States, more than half of Black children will experience a Child Protective Services investigation before they turn eighteen, and nearly one in ten will be removed from their parents and placed into foster care.[9]

These patterns reflect, in part, the heightened surveillance of Black families and communities by social services and law enforcement. They also reflect the highly contextual and subjective nature of abuse and neglect assessments. For example, the same act of a spanking or a missed meal may be perceived as discipline by one observer, abuse by another, or economic hardship by a third. The court in *J.C.* recognized that this kind of structural problem – prolonged surveillance with discretionary decision-making authority – is precisely what judicial oversight is meant to check. 257 N.J. at 465-66 ("the Division's continued involvement with the family without the requisite judicial oversight . . . is inconsistent with the express provisions of N.J.S.A. 30:4C-12").

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[8] *New Jersey Child Welfare Data Hub*, *supra*.

[9] Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among US Children* 107 Am. J. Pub. Health 274, 278 (2017); Elisa Minoff & Alexandra Citrin, Ctr. for the Study of Soc. Pol'y, *Systemically Neglected: How Racism Structures Public Systems to Produce Child Neglect* 15 (2022), https://cssp.org/wp-content/uploads/2025/03/Systemically-Neglected-How-Racism-Structures-Public-Systems-to-Produce-Child-Neglect.pdf.

## The Current Reform Landscape

### Progress in New Jersey

New Jersey has taken steps to address the lack of informed consent that pervades the pre-petition stage. In 2024, the Division launched a pilot program in Passaic County, described by the agency as "a new initiative intended to promote transparency and accountability with families in the agency's ongoing work to address historical system flaws in child welfare."[10] The program requires caseworkers to provide parents facing certain types of allegations with a notice stating that the caseworker is "requesting permission to enter [the] home to have a conversation about the reported concerns and to explain [their] assessment process" which would include speaking to members of the household and interviewing all the children residing in the home.[11] The notification also states that the parent has "the right to deny CP&P entry into [the] home at this time," though this would lead to the caseworker having to "determine what steps may need to occur to ensure that [the] child(ren) is/are safe."[12] The notice must be signed by the parent.

Upon completion of the pilot program in Passaic, the Division expanded the program statewide through a staggered rollout from the second half of 2025 until June 2026.[13] As of the date of this report, the Parent/Caregiver Notification policy is effective in every county. However, despite confirmation of extensive tracking metrics, no public data on the expanded program has been released, including any statistics on the number of families who received this notice, the proportion who sought legal assistance as a result, or whether the expansion has produced any change in family court outcomes.

The pilot program also has significant limitations. A caseworker still retains full discretion to conduct initial interviews of minor children *without* parental presence, consent, or knowledge when the caseworker deems such an interview "crucial for the investigation's integrity and safety assessment." *Id.* Distribution of the notice is also limited to a narrow subset of cases. The Division has published a list of 104 excluded allegations that render a family ineligible to receive it.[14] These range from severe outcomes such as child death resulting from alleged physical abuse to the most common type of allegation – neglect due to risk of harm.

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[10] N.J. Att'y Gen.'s Advocacy Inst., *Program Announcement: An Overview of the Parent Notification Protocol*, https://www.nj.gov/oag/advocacy_institute/2025-0407_An-Overview-of-the-Parent-Notification-Protocol.pdf (last visited July 29, 2026).
[11] N.J. Dep't of Child. & Fams., *New Jersey Department of Children and Families Policy Manual: Parent/Caregiver Notification* 3 (2026), https://policy.dcf.nj.gov/app/file/CPP-II-F-1-100.pdf.
[12] N.J. Dep't of Child. & Fams., *New Jersey Department of Children and Families Policy Manual: Child Protective Services (CPS) Parent/Caregiver Notification* 1 (2025), https://policy.dcf.nj.gov/app/file/CPP-X-A-1-3-50.pdf.
[13] N.J. Dep't of Child. & Fams., *New Jersey Department of Children and Families Policy Manual: Parent/Caregiver Notification*, *supra*, at 1.
[14] N.J. Dep't of Child. & Fams., *Included Allegations for Parent/Caregiver Notification* (2025), https://policy.dcf.nj.gov/app/file/Allegations%20for%20Notification.pdf.

More fundamentally, the notice does not expand any pre-existing rights of parents. It explains the investigation process, acknowledges that families may decline entry to Division caseworkers, and provides a list of county-based legal resources. While the list is helpful in theory, it offers little practical guidance to an indigent parent already experiencing financial difficulties who may be eager to conclude the investigation as quickly as possible to avoid risking their job or housing. Moreover, the information that parents most need is either not included or not legally required of the Division under our current laws: the voluntary nature of services and access to free legal assistance.

## **Successful Models in Other States**

The shortcomings of the pilot become most obvious when contrasted with the codified parental notification law in Texas. Under Texas Family Code § 261.307, upon "first contact with the parent or with the alleged perpetrator," the department employee must provide a written summary that includes, among other things, an explanation that any statement or admission may be used in a subsequent criminal or civil proceeding; that the individual has a right not to speak with any agent of the department without legal counsel present; and that, if indigent, the parent has the right to a court-appointed attorney if the department seeks a court order or requires participation in services. This puts the decision-making power into the hands of the parent while simultaneously allowing the State to conduct its investigation without compromising due process.

New York has similarly proposed legislation requiring child welfare caseworkers to inform parents of their rights at the outset of any investigation – essentially, a statutory Miranda warning for family policing. As of this writing, the bill is pending in the New York Senate as S551 (companion bill A1234 in the Assembly), referred to the Senate Children and Families Committee in January 2026. The bill would require disclosure of the right to remain silent, the right to refuse entry, the voluntary nature of services, and the right to consult an attorney. This is at least the fifth consecutive legislative session in which the bill has been introduced without passage, serving as a reminder that the political obstacles to this kind of reform are real even where the policy case is strong.

Notice of the right to consult an attorney is especially meaningful in New York City, where many organizations already provide formal pre-petition support to parents. This means that a parent would not need to scrape together the means to retain private counsel just to exercise the rights the bill would guarantee. While New York has not yet enacted this legislation, the proposal provides a direct model for the regulatory reform proposed in this report.

The Division's pilot program, by contrast, discloses rights that already exist without making them meaningful or actionable. It does not tell a parent that services are voluntary, that the Division is required to file in court within ten days if a safety concern is unresolved, or that they would have the right to a court-appointed attorney at that point.

## The Need to Go Further

The reality is that no "Miranda-esque" notice can fully address the deeper, underlying problem. An indigent parent confronted by a Division caseworker must in effect choose between refusing cooperation and waiting for the State to file in court (at which point they will finally have access to a lawyer free of charge) or complying with services without any legal guidance or clear endpoint. An indigent parent should not be forced to face this crossroad with such high stakes when parents who can afford private counsel face no such dilemma.

A lawyer at an early stage of an investigation can change the entire trajectory of a case. The facts and statements established in the first few days may affect a trial that does not happen until months in the future. Without legal advice, a parent is at a significant disadvantage at this stage without full understanding of their leverage, rights, and consequences. An attorney, on the other hand, can assess the full picture, including the strength of the allegation, the proportionality of what is being asked, and the realistic consequences of each option. As Professor Josh Gupta-Kagan has written, "the agency has a tremendous information advantage – they are repeat players negotiating with parents who, in the aggregate, are of a low socioeconomic status and likely do not understand the nuances of child protection law, but certainly understand that the agency is threatening their relationships with their children."[15]

Across the country, jurisdictions that have experimented with early defense models have consistently found that providing parents with counsel at the pre-petition stage reduces unnecessary filings, prevents removals, and produces better outcomes for families. This holds true regardless of whether that counsel is housed in a nonprofit organization or inside a state public defender's office, and regardless of geography. The Bronx Defenders' Early Defense Team in New York City kept 230 of 320 investigated families out of court entirely in a single quarter[16]; a public-defender-affiliated clinic in Snohomish County, Washington, has avoided a petition in 84% of its pre-petition cases[17]; and the Detroit Center for Family Advocacy, a university-based legal clinic that operated from 2009 to 2016, met its objectives in more than 98% of its cases between 2009-2012, with no child it served ever entering foster care[18]. In 2023, a program was launched in Hennepin County, Minnesota's largest county, to provide parents, either pregnant or with a child younger than

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[15] Josh Gupta-Kagan, America's Hidden Foster Care System, 72 Stan. L. Rev. 841, 902 (2020).
[16] Katie Joh, Anna Nevarez, Dependency Advoc. Ctr. & Jean Padilla, Michael White, Bronx Defenders, Early Defense Practice: Two Models of Early Intervention and Pre-Petition Advocacy 11 (2023), https://bartoncenter.net/wp-content/uploads/2023/10/PP-Early-Defense-Practice_final-1.pdf.
[17] Emilie T. Cook, Barton Child L. & Pol'y Ctr., Preventive Legal Advocacy & Pre-Petition Representation: Where We Are, Where We're Headed & What We're Learning 9 (Aug. 10, 2023), https://bartoncenter.net/wp-content/uploads/2023/10/NACC-PRESENTATION-2023.pdf.
[18] Detroit Ctr. for Fam. Advoc., *Promoting Safe and Stable Families* 12 (2014), https://artscimedia.case.edu/wp-content/uploads/sites/35/2014/02/14194055/CFAReport.pdf.

five in the home, with counsel during the pre-petition stage. The program has grown considerably, and in 2025, it connected with 475 clients before any child protection hearings happened in family court[19], successfully "prevent[ing] the snowball effect" where a family is sent down "this road of unnecessary disruption and trauma."[20] Comparable results have been documented in Ohio, Iowa, and Texas. Across these programs, we see three consistent factors: the organizations have attorneys with child welfare expertise, the ability to reach families before a case escalates, and organizational infrastructure including funding, staffing, and referral networks that allow them to respond quickly and effectively.

## New Jersey Families Need Support from OPR – The Legislature Can Provide It

New Jersey has already piloted a pre-petition assistance program through Legal Services of New Jersey (LSNJ). Since 2018, LSNJ has grown the program to now include five full-time attorneys and a parent ally on the team providing pre-petition assistance to parents. The organization supported 273 cases alone in their 2025-2026 grant cycle.[21] Of these 273, 93 came from their pre-petition referral program with the Division and OPR, accounting for 34% of the total statewide. However, this breakdown of the source of cases varies greatly by county – in counties where there is significant buy-in from the State such as Hudson, Essex, and Passaic, a higher proportion of referrals come from the Division. In counties where the Division is less invested in collaboration with LSNJ, most referrals come from OPR, community networks and programs, or the LSNJ hotline.

In the first few years of the program, LSNJ prevented the removal of a child in every case that it became involved in. The success of the program is measured beyond the numbers alone. Sylvia Thomas, Chief Counsel of the Family Stability and Preservation Project at LSNJ, works to give parents a baseline understanding of their experience and then relieve their anxieties so they can face the investigation or case equipped with knowledge and information. This creates a more honest relationship between the parent and the State. Sylvia gauges her success by looking to how her clients respond to her, how she connects service providers with them, how she facilitates conversations between parties, and how her clients gain understanding of their options – all things that are not reflected in any public statistics, but that play a role in empowering our communities.

However, despite its incredible success – both in preventing removals and building relationships with families across the state – LSNJ continues to face barriers to expansion and consistent implementation across counties. LSNJ must rely on relationships with individual Division

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[19] Hennepin County, *2026 Budget Presentation* 12 (Oct. 1, 2025), https://www.hennepincounty.gov/-/media/hennepinus/your-government/budget-finance/documents/2026-LSJ-budget-presentation.pdf.
[20] Alex Perez, *New Legal Help Offered to Minneapolis Parents Accused of Maltreatment — Before Their Children Are Taken*, Imprint (Oct. 16, 2024, at 15:01 ET), https://imprintnews.org/child-welfare-2/new-legal-help-offered-to-minneapolis-parents-accused-of-maltreatment-before-their-children-are-taken/255561.
[21] Data on file with ACLU-NJ.

caseworkers to maintain referrals or otherwise depend on parents reaching out affirmatively through the hotline during an investigation. There is no automatic referral process by which LSNJ is put in touch with a parent who needs assistance. A large proportion of LSNJ's cases coming from the Division also means that the Division retains full discretion over which parents receive assistance and which do not. As a result, in counties where the Division is less invested in that collaboration such as in the southern and western parts of the state, families see little to no pre-petition advocacy work. In this respect, the LSNJ model faces the same structural constraint as the Passaic County Parental Notification pilot by having the Division, not the parent, decide whether, when, and how someone gets help. The only mechanism that removes that discretion from the agency would be legislation that codifies a right to representation.

LSNJ's successes demonstrate the core insight of preventive legal advocacy, showcasing how the earlier a parent has access to counsel, the less harm the system inflicts in the meantime. But the model is most effective when paired with the institution that already provides the bulk of family court representation to parents. In New York City, that institution is the nonprofit defender organizations, but in New Jersey, it is OPR. OPR already operates in every family court in every county of the state. Its existing role in post-petition representation also means that early representation transitions seamlessly into litigation should a case proceed to court, preventing unnecessary attorney handoff and disruption mid-case. OPR's longstanding institutional relationships with the Division also make pre-litigation negotiation more effective from the start. LSNJ has done as much as any organization could with the resources and infrastructure available to it, but scaling this work statewide and making it a right rather than a discretionary referral requires a structural change that a single organization cannot achieve on its own.

## OPR's History and Mandate

OPR was established as a division of the New Jersey Office of the Public Defender in 1999, when the Legislature recognized that termination of parental rights – among the most consequential civil proceedings the State can initiate – required appointed counsel to satisfy constitutional due process. The 1999 legislation, codified at N.J.S.A. 30:4C-15.4, extended to the family policing context the same principle already governing the criminal system – that where the State moves to burden a fundamental interest, the individual facing the action cannot meaningfully participate without adequate legal protection. OPR's mandate was later extended to cover Title 9 abuse and neglect proceedings in addition to Title 30 guardianship and termination proceedings, in recognition that effective representation at abuse and neglect proceedings serves the same family preservation goals that drove the original legislation.

Today, OPR operates statewide through the Office of the Public Defender and employs staff attorneys, investigators, social workers, and appellate counsel working in all of New Jersey's family courts. OPR's institutional mission, as stated on its website, is to promote family reunification with the earliest possible return of children to their parents; defend parents against the Division's civil charges; help parents obtain visitation; and assist parents in acquiring counseling and services from State and non-governmental agencies. With pre-petition advocacy, OPR attorneys could do what they already do: assess the strength of the State's allegations, negotiate with opposing counsel, and connect parents to services. That work would be more effective if it began at the earliest stage of parent-State contact by increasing access to relevant and helpful services and putting parents in touch with social workers, parents with lived experience, and other advocates within OPR that can provide non-legal guidance and support during the process.

The only thing holding New Jersey back from serving parents in this capacity is OPR's statutory limitation: under current law, OPR may not become involved and will not know about a family's investigation until a petition is filed in family court. While the underlying facts of a family's case differ little the day before and the day after a petition is filed, a parent's ability to secure legal protection differs enormously.

## **The Proposed Legislative Change**

The most direct and durable reform available to the Legislature is to amend N.J.S.A. 30:4C-15.4 to authorize OPR to provide legal advice and representation to indigent parents during the pre-litigation period. The right to representation from an OPR attorney should attach at the moment that the Division first requests any affirmative action from a parent under investigation, whether it be consenting to a home visit, participating in a drug test or psychological evaluation, enrolling in services, or executing a Safety Protection Plan or other written agreement. The mere fact that an initial referral is made to the SCR would not alone trigger this right, but the first demand that a parent *do* something under State surveillance should. This is analogous to Miranda attaching at custodial interrogation rather than any police encounter. Importantly, this would *not* require that every parent retain OPR representation; it would be a matter of removing the statutory barrier that currently prevents OPR from serving families at the earliest, most consequential stage of State involvement, and leaves the scope and intensity of representation to OPR's professional judgment case by case.

A significant portion of these pre-petition matters would involve clients that OPR is likely to represent post-petition, meaning that the largest impact of such reform effectively extends an existing attorney-client relationship rather than creating a new one. Earlier interventions that prevent unnecessary services from accumulating may also reduce the complexity and duration of any subsequent post-petition representation and reduce the number of petitions filed in family court to begin with.

This change would further be fully consistent with New Jersey's codified policy on child welfare. Recognizing the importance of family integrity and the maintenance of parent-child ties, the New Jersey Legislature has declared that "[t]he preservation and strengthening of family life is a matter of public concern as being in the interests of the general welfare." *In re Guardianship of K.H.O.*, 161 N.J. 337, 347 (1999) (quoting N.J.S.A. 30:4C-1(a)). OPR's involvement at the earliest stages of a case would only serve to advance this interest by limiting removals to cases that actually warrant them, minimizing disruption to families during investigation, all without impeding the Division's process.

As a complementary reform, the Division should be required by regulation to provide all parents at the moment of first contact with a standardized written notice that clearly explains: (1) the voluntary nature of services; (2) the right to refuse entry; (3) the Division's ten-day obligation to file in court if a safety concern remains unresolved; (4) the right to consult an attorney before agreeing to any services; and (5) how to reach an attorney or advocate at OPR, at no cost.

To be effective, such a notice must go further than the Passaic County pilot. It must cover all case types, and it must carry consequences for noncompliance. A caseworker's failure to provide the notice should render any subsequently obtained "consent" inadmissible, and supervisory review should be required before a family can proceed with services without having received it.

Even before the Legislature expands OPR's mandate, an important piece of this policy reform can be implemented by the Division administratively. A notice telling a parent that they have the right to speak with an attorney is only meaningful if OPR actually has the authority to answer the call. However, even a disclosure requirement without expanded OPR funding would represent an important step, as families who know their rights are better positioned to invoke them, seek out available legal resources (even at cost), and avoid the worst consequences of uninformed compliance.

## **<u>Implementation</u>**

This program should be funded through a direct state appropriation and designed to scale. The proposal below is for Phase 1, which would allow for statewide reach from the outset without a significant increase in resources, and structured to generate the outcome data that can inform future expansion.

The core of Phase 1 would be a dedicated OPR pre-petition intake line that would be available to any parent in any county in the state at the moment that the Division first makes an affirmative demand. A team of three to four attorneys could staff the line, providing time-limited consultations by phone or video focused on the immediate decision a parent is facing: what is being asked of them, whether they can refuse, what the consequences of each choice are, and whether the matter warrants further involvement. OPR already operates statewide infrastructure, so the hotline would designate capacity within that existing system rather than build something new.

A public records request submitted to the Division confirmed that 1,648 SPPs were executed out of 61,730 investigations between January 2025 and March 2026 – annualized, roughly 1,300-1,400 formal safety plans per year. The broader population entitled to representation under the proposed reform is larger, but actual OPR engagement will be self-limiting: many investigations close without any affirmative demand being made of the parent, and not every family will seek OPR's involvement even when entitled.

Alongside the hotline, one to two attorneys would practice within the highest-volume counties – Essex, Hudson, and Passaic – for in-person representation in the most serious cases: those involving physical separation of parent and child, SPPs that have already been implemented, or matters that appear likely to proceed to court. These attorneys would carry smaller dockets and provide the kind of sustained pre-petition advocacy that can go beyond what a phone consultation can provide.

Total Phase 1 staffing therefore would require five to six attorneys plus proportional support staff. The cost to support this increase in staff would be a fraction of the cost of a single year of foster care for the families this program would keep together.

It is important to note that Phase 1 would be a floor, not a ceiling. The hotline model can provide universal access while keeping the resource investment minimal, while also generating critical data that will become the foundation for any subsequent expansion, whether of staff, county presence, or the scope of representation.

The cost of Phase 1 as well as the cost of any future expansion must be weighed against what this program would prevent. Every pre-litigation case that resolves without a court petition avoids the judicial and prosecutorial costs of a Title 9 or Title 30 proceeding, which includes the Division's attorney's time, family court resources, and Law Guardian costs. The savings from reduced foster care placements could also be substantial. The Department of Children and Families anticipates a foster care budget of nearly $242 million this year. Even a marginal decrease in placement rates would have a significant impact on this line item.

## Acknowledgment of Tradeoffs

Not every family benefits from insisting on court involvement. For families facing a straightforward concern – say, an isolated housing instability issue with a clear, short-term resolution – quick voluntary compliance with what the caseworker is asking for may be the most sensible path, particularly where the alternative is a court filing that extends timelines and increases stress. Any reform of the pre-litigation framework should be designed to expand options, not mandate confrontation.

That said, formal court involvement does carry real costs of its own. It can subject a family to ongoing agency oversight and licensing-style scrutiny that many reasonably experience as intrusive, and it introduces a judge who may ultimately order a more invasive intervention than the family or the caseworker had originally contemplated. A family that might have resolved a narrow concern through a brief, mutually agreeable arrangement could instead find itself facing a more disruptive outcome once a case is in court.[22]

This is why this proposed OPR expansion should be structured as a right to consult, rather than a requirement to litigate. A parent who speaks with an attorney before deciding whether to comply with a caseworker's requests is in a fundamentally different position than a parent who complies without any advice, even if both ultimately make the same choice. The attorney can assess the strength of the underlying allegation, evaluate whether the proposed services are proportionate to the safety concern, advise on the risks of refusal, and negotiate on the parent's behalf.

A parent who can make an informed choice about whether to comply should not be viewed as the adversary of the child welfare system. This reform would instead allow parents and families to face the daunting investigation process with the information they need to make the right choices for their family alongside the support of the State. That outcome is within reach through a targeted amendment to the statutes currently governing OPR.

## Conclusion

New Jersey has the institutional infrastructure to implement this reform today. OPR already operates in every family court in the state, and LSNJ has demonstrated for nearly a decade that pre-petition representation prevents removals, keeps families together, and empowers our communities. Amending N.J.S.A. 30:4C-15.4 to allow OPR to serve families before a court petition is filed would only serve to increase transparency, efficiency, and fairness in a system that has long operated without meaningful accountability or oversight.

[22] Gupta-Kagan, *American's Hidden Foster Care System*, *supra*, at 845.

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