

# Need to Know Series: Law Guardians



## Youth In Progress

New York State Foster Care  
Youth Leadership Advisory Team

“ *The mission of Youth In Progress is to enhance and advance the lives of today’s and tomorrow’s youth by supporting their sense of self and responsibility.*

*To do this, we pledge to educate everyone involved in the various systems Youth In Progress members represent to the realities of this experience.* ”

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

## First, you should know...

Every child who is placed in foster care has a case that goes to Family Court. Family Court hearings take place immediately before or soon after a youth enters foster care. Subsequent court hearings take place at regular intervals to determine whether placement in foster care continues to be appropriate. Each youth is provided with a law guardian (lawyer) who will continue to represent the youth throughout the life of the case.

## A law guardian is...

A lawyer who represents children and youth in Family Court cases and other special cases. Law guardians are paid by the state and do not work for anyone but the youth. It is the responsibility of the law guardian to diligently advocate the youth's position in the court. In determining that position, the law guardian must consult with and advise the youth in a manner consistent with the youth's capacities.




*“ My law guardian meets with me to talk about stuff that is happening in my life. In the beginning, we met a few times before we even went to court. We made a plan about my life. ”*

## How does a lawyer become a law guardian?

A lawyer must meet certain training and education requirements in order to become a







law guardian. The Appellate Divisions redesignate law guardians each year based upon an evaluation of their performance which must meet certain criteria such as:



-  Rapport with clients
-  Case preparation
-  Legal knowledge

*“ I feel as if my law guardian can help me in my program, to try to figure out what I can and can't do. A lot of youth don't have parents or guardians in their life to make choices for them, so I feel that I need a law guardian who would be in on a decision process with me. ”*

## Youth are assigned a law guardian when:






-  A caregiver is accused of abuse and/or neglect.
-  A caregiver is seeking custody or visitation.
-  A youth is placed in foster care by request of the caregiver.
-  Minors are accused of a crime or in need of supervision (JD/PINS).

## The role of a law guardian is...

-  Protect youth interests.
-  Help the youth express their wishes to the court.



## The law guardian's responsibilities include:

-  To vigorously represent the youth;
-  To begin representation promptly;
-  To contact, interview, and provide initial services to the youth at the earliest practical opportunity, and before the first court appearance when possible;
-  To remain reasonably accessible to youth, and maintain such contact with the child as necessary to inform the child of the course of the proceedings, and to be aware of and respond to significant changes in the child's circumstances; and
-  To appear and participate actively in all court proceedings and remain accessible to monitor implementation of the dispositional order and seek intervention when necessary, to work toward compliance, safety, and protection of the child.

## Common questions from youth leaders in foster care:

### **What should I expect?**

Expect your law guardian to fulfill their responsibilities as your assigned lawyer. Your law guardian will get to know you and the circumstances in your life to help you to understand and to decide what is best for you.

### **What will they expect of me?**

Your law guardian can only help you if you are open, honest, and share information and your feelings about your situation.



## Will my law guardian tell everything we talk about?

Your law guardian is your lawyer, which means your interactions are confidential. With your permission, he or she will only share information that is necessary for the judge to make a decision about what is best for you. An exception is when the law guardian thinks that information you gave him or her shows an intent to commit a crime.

*“ I need my law guardian to explain the situation that's going to go on in court. My law guardian needs to help me even if it's to get more visits with a family member or friend. ”*

## Can my law guardian come to my Service Plan Review (SPR)?

Your law guardian *must* be invited to your Service Plan Review and should come to assist you in planning for your life.

## Do I get to go to court?

You can attend your court proceedings. You should talk to your law guardian about whether you want to or should attend your court hearings.

## What if I am considered a Person In Need of Supervision (PINS) or a Juvenile Delinquent (JD)?

It is the also the responsibility of the law guardian to vigorously represent the youth in these cases.



# Glossary of Common Terms:

## Advocate

A person who speaks or writes in support or defense of a person, cause, etc.

## Capacity/Competence

If the law guardian believes that a youth has capacity for making an informed decision, he or she should be directed by the wishes of the youth. If the law guardian believes that the youth lacks capacity or that his or her wishes would result in a risk of physical or emotional harm to self or others, the law guardian is justified in taking a position that is not what the youth wishes. However, the law guardian should still report the youth's wishes to the court if the youth makes this request.

## Confidentiality and Privilege

The right to have your law guardian keep your information private and not share it with others. An exception may occur when a court order authorizes release of information that the law guardian believes shows intent to commit a crime.

## Court Hearings

A session in Family Court when a judge listens to lawyers and caseworkers talk about a case and makes a decision (ruling).

## Criminal Court

The court that handles criminal cases, which involve illegal actions.

## Custody

Legal responsibility for a youth and the authority to act in the place of a parent, granted by Family Court or by voluntary placement or surrender. The DSS Commissioner has custody of children and youth while they are in foster care.

## Family Court

The court that deals with issues of families, youth, and children.



# Glossary of Common Terms:

## **Foster Care**

Foster care is a place to live while you and your family can get the services and support you need. Foster care is meant to provide a safe home and to care for children and youth when their parents can't.

## **JD (Juvenile Delinquent)**

A youth between the ages of 7-16 who commits offenses (crimes). The youth may be placed in foster care.

## **PINS (Person in Need of Supervision)**

A youth under the age of 18 beyond the control of his or her parent. The youth may be placed in foster care.

## **Service Plan Review (SPR)**

A regular meeting to discuss the youth's plan for the future, including the permanency goal and any services needed. The law guardian must be invited to the meeting. Others who must be invited are the caseworker, supervisor, youth if 10 years of age or older unless there is a documented reason why the child should not be involved, birth parents unless parental rights have been surrendered or terminated, or other caretaker relatives, foster parents, or pre-adoptive parents.

## **Trial Discharge**

A period of time (at least 6 months) when a youth in foster care is living on his or her own in the community or with a parent, relative, or other adult permanency resource, before final discharge from foster care. During trial discharge, DSS still has legal custody of the youth.

## **Visiting Plan (Visitation)**

A plan for visits between youth in foster care and their families, specifying how often, how long, where, who, and whether the visits must be supervised.



Who should I call if I need **HELP** or more information?

My law guardian is:

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

## The Law Guardian Program

The purpose of each of the Law Guardian Programs in the four Judicial Departments of the state is to help law guardians provide high quality legal services for children in Family Court proceedings and Supreme Court matters of custody and visitation.

*For more information and to find out which department serves your county, visit:*

**<http://nycourts.gov>**

And click on the link for: “Courts”

And click on the link for: “Appellate Divisions”

### **Professional Development Program**

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