

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0475.01 Richard Sweetman x4333

SENATE BILL 16-026

SENATE SPONSORSHIP

Woods,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING PERSONAL RIGHTS OF PROTECTED PERSONS, AND, IN
102 CONNECTION THEREWITH, LIMITING THE ABILITY OF A
103 GUARDIAN OR CONSERVATOR TO ISOLATE A PROTECTED
104 PERSON.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

A guardian or conservator shall not restrict a protected person's right of communication, visitation, or interaction with other persons, including the right to receive visitors, telephone calls, or personal mail,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

unless such restrictions are authorized by a court order.

A court may issue an order restricting the communications, visitations, or interactions that a person may have with a protected person upon a showing of good cause by a guardian or conservator. In determining whether to issue such an order, the court shall consider certain factors.

An interested person, including the protected person, who reasonably believes that a guardian or conservator has violated a court order or abused his or her discretion in restricting a protected person's right of communication, visitation, or interaction with other persons may move the court to:

- ! Require the guardian or conservator to grant a person access to the protected person;
- ! Restrict, or further restrict, a person's access to the protected person;
- ! Modify the guardian or conservator's duties; or
- ! Remove the guardian or conservator.

A guardian or conservator who knowingly isolates a protected person in violation of law or a court order is subject to removal.

With certain exceptions, a guardian or conservator shall promptly notify a protected person's closest known family members and any person designated by the protected person to be notified in the event that the protected person:

- ! Changes his or her residence;
- ! Resides at a location other than the protected person's residence for more than 7 days;
- ! Is admitted to a medical facility for acute care or emergency care; or
- ! Dies.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 15-14-119.5 as
3 follows:

4 **15-14-119.5. Limitations on powers of guardians and**
5 **conservators.** (1) THE SHORT TITLE OF THIS SECTION IS THE "PETER FALK
6 ACT".

7 (2) (a) EXCEPT AS DESCRIBED IN PARAGRAPH (b) OF THIS
8 SUBSECTION (2), A GUARDIAN OR CONSERVATOR SHALL NOT RESTRICT A

1 PROTECTED PERSON'S RIGHT OF COMMUNICATION, VISITATION, OR
2 INTERACTION WITH OTHER PERSONS, INCLUDING THE RIGHT TO RECEIVE
3 VISITORS, TELEPHONE CALLS, OR PERSONAL MAIL, UNLESS SUCH
4 RESTRICTIONS ARE AUTHORIZED BY A COURT ORDER.

5 (b) (I) IF A PROTECTED PERSON IS UNABLE TO EXPRESS CONSENT TO
6 COMMUNICATION, VISITATION, OR INTERACTION WITH A PERSON DUE TO A
7 PHYSICAL OR MENTAL CONDITION, THEN THE GUARDIAN OR CONSERVATOR
8 MAY PRESUME THE PROTECTED PERSON'S CONSENT TO OR REFUSAL OF THE
9 COMMUNICATION, VISITATION, OR INTERACTION BASED ON PROOF
10 CONCERNING THE NATURE OF THE PROTECTED PERSON'S RELATIONSHIP
11 WITH THE PERSON.

12 (II) IF A PERSON WHO WANTS TO COMMUNICATE, VISIT, OR
13 INTERACT WITH A PROTECTED PERSON PRESENTS TO THE PROTECTED
14 PERSON'S GUARDIAN OR CONSERVATOR PHOTOS, DOCUMENTS, OR OTHER
15 PROOF CONCERNING THE NATURE OF THE PERSON'S RELATIONSHIP WITH
16 THE PROTECTED PERSON, THE GUARDIAN OR CONSERVATOR SHALL
17 CONSIDER SUCH PROOF.

18 (3) (a) WITH GOOD CAUSE, A GUARDIAN OR CONSERVATOR MAY
19 MOVE THE COURT TO RESTRICT A PERSON'S ABILITY TO COMMUNICATE,
20 VISIT, OR INTERACT WITH A PROTECTED PERSON.

21 (b) A COURT MAY ISSUE AN ORDER RESTRICTING THE
22 COMMUNICATIONS, VISITATIONS, OR INTERACTIONS THAT A PERSON MAY
23 HAVE WITH A PROTECTED PERSON UPON A SHOWING OF GOOD CAUSE BY A
24 GUARDIAN OR CONSERVATOR. IN DETERMINING WHETHER TO ISSUE SUCH
25 AN ORDER, A COURT SHALL CONSIDER THE FOLLOWING FACTORS:

26 (I) WHETHER ANY PROTECTIVE ORDERS HAVE BEEN ISSUED TO
27 PROTECT THE PROTECTED PERSON FROM THE OTHER PERSON;

1 (II) WHETHER THE OTHER PERSON HAS BEEN CHARGED WITH
2 ABUSE, NEGLECT, OR FINANCIAL EXPLOITATION OF THE PROTECTED
3 PERSON;

4 (III) WHETHER THE PROTECTED PERSON HAS EXPRESSED A DESIRE
5 TO COMMUNICATE, VISIT, OR INTERACT WITH THE OTHER PERSON OR HAS
6 EXPRESSED A DESIRE TO NOT COMMUNICATE, VISIT, OR INTERACT WITH
7 THE OTHER PERSON;

8 (IV) IF THE PROTECTED PERSON IS UNABLE TO COMMUNICATE,
9 WHETHER A PROPERLY EXECUTED LIVING WILL, DURABLE POWER OF
10 ATTORNEY, OR ADVANCE DIRECTIVE CONTAINS A PREFERENCE BY THE
11 PROTECTED PERSON WITH REGARD TO THE OTHER PERSON'S
12 COMMUNICATION, VISITATION, OR INTERACTION WITH THE PROTECTED
13 PERSON; AND

14 (V) ANY OTHER FACTORS DEEMED RELEVANT BY THE COURT.

15 (c) BEFORE ISSUING AN ORDER PURSUANT TO THIS SUBSECTION (3),
16 THE COURT SHALL CONSIDER IMPOSING THE FOLLOWING RESTRICTIONS IN
17 THE ORDER LISTED:

18 (I) PLACING REASONABLE TIME, MANNER, OR PLACE RESTRICTIONS
19 ON COMMUNICATION, VISITATION, OR INTERACTION BETWEEN THE
20 PROTECTED PERSON AND THE OTHER PERSON BASED ON THE HISTORY
21 BETWEEN THE PROTECTED PERSON AND THE OTHER PERSON OR THE
22 PROTECTED PERSON'S WISHES, OR BOTH;

23 (II) REQUIRING THAT COMMUNICATION, VISITATION, OR
24 INTERACTION BETWEEN THE PROTECTED PERSON AND THE OTHER PERSON
25 BE SUPERVISED; OR

26 (III) DENYING COMMUNICATION, VISITATION, OR INTERACTION
27 BETWEEN THE PROTECTED PERSON AND THE OTHER PERSON; EXCEPT THAT,

1 UNLESS THE COURT FINDS THAT THE OTHER PERSON POSES A THREAT TO
2 THE PROTECTED PERSON, THE COURT SHALL ORDER SUPERVISED
3 COMMUNICATION, VISITATION, OR INTERACTION UNDER SUBPARAGRAPH
4 (II) OF THIS PARAGRAPH (c) BEFORE DENYING ANY COMMUNICATION,
5 VISITATION, OR INTERACTION.

6 (4) (a) IF ANY PERSON, INCLUDING THE PROTECTED PERSON,
7 REASONABLY BELIEVES THAT A GUARDIAN OR CONSERVATOR HAS
8 VIOLATED A COURT ORDER OR ABUSED HIS OR HER DISCRETION IN
9 APPLYING PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, THEN THE
10 PERSON MAY MOVE THE COURT TO:

11 (I) REQUIRE THE GUARDIAN OR CONSERVATOR TO GRANT A PERSON
12 ACCESS TO THE PROTECTED PERSON;

13 (II) RESTRICT, OR FURTHER RESTRICT, A PERSON'S ACCESS TO THE
14 PROTECTED PERSON;

15 (III) MODIFY THE GUARDIAN OR CONSERVATOR'S DUTIES; OR

16 (IV) REMOVE THE GUARDIAN OR CONSERVATOR PURSUANT TO
17 SECTION 15-10-503.

18 (b) A GUARDIAN OR CONSERVATOR WHO KNOWINGLY ISOLATES A
19 PROTECTED PERSON AND HAS VIOLATED SUBSECTION (2) OF THIS SECTION
20 OR AN ORDER ISSUED PURSUANT TO SUBSECTION (3) OF THIS SECTION IS
21 SUBJECT TO REMOVAL PURSUANT TO SECTION 15-10-503.

22 (5) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS
23 SUBSECTION (5), THE COURT SHALL SCHEDULE A HEARING ON A MOTION
24 FILED PURSUANT TO SUBSECTION (3) OR (4) OF THIS SECTION NO LATER
25 THAN SIXTY-THREE DAYS AFTER THE DATE THE MOTION IS FILED. THE
26 COURT MAY, IN ITS DISCRETION, ORDER THE PARTIES AND THE PROTECTED
27 PERSON TO PARTICIPATE IN MEDIATION BEFORE THE HEARING. IF

1 MEDIATION RESULTS IN AN AGREEMENT BETWEEN THE PARTIES AND THE
2 PROTECTED PERSON, THE AGREEMENT MUST BE APPROVED AND
3 MEMORIALIZED IN AN ORDER BY THE COURT.

4 (b) (I) IF A MOTION FILED PURSUANT TO SUBSECTION (3) OR (4) OF
5 THIS SECTION STATES THAT THE PROTECTED PERSON'S HEALTH IS IN
6 SIGNIFICANT DECLINE OR THAT THE PROTECTED PERSON'S DEATH MAY BE
7 IMMINENT, THE COURT SHALL CONDUCT AN EMERGENCY HEARING AS SOON
8 AS PRACTICABLE BUT NO LATER THAN SEVEN DAYS AFTER THE MOTION IS
9 FILED.

10 (II) WHEN A COURT ISSUES AN ORDER FOR AN EMERGENCY
11 HEARING PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE
12 COURT SHALL ALSO ORDER THE GUARDIAN OR CONSERVATOR TO GRANT
13 THE PETITIONER'S SUPERVISED COMMUNICATION, VISITATION, OR
14 INTERACTION WITH THE PROTECTED PERSON DURING THE PERIOD
15 PRECEDING THE HEARING.

16 (III) NOTICE OF THE HEARING, A COPY OF THE MOTION, AND A
17 COPY OF ANY ORDER ISSUED PURSUANT TO SUBPARAGRAPH (I) OF THIS
18 PARAGRAPH (b), IF APPLICABLE, MUST BE PERSONALLY SERVED UPON THE
19 PROTECTED PERSON AND ANY PERSON AGAINST WHOM THE MOTION IS
20 FILED, AND NOTHING IN THIS SECTION AFFECTS THE PROTECTED PERSON'S
21 RIGHT TO APPEAR AND BE HEARD IN THE PROCEEDINGS.

22 (6) (a) IN ANY ACTION BROUGHT UNDER THIS SECTION, THE COURT
23 MAY AWARD TO THE PREVAILING PARTY COSTS AND REASONABLE
24 ATTORNEY'S FEES; EXCEPT THAT AN AWARD OF COSTS OR ATTORNEY'S
25 FEES MAY NOT BE PAID OUT OF THE PROTECTED PERSON'S ESTATE.

26 (b) THE COURT, UPON MOTION OR UPON ITS OWN INITIATIVE, MAY
27 IMPOSE UPON A GUARDIAN OR CONSERVATOR AN APPROPRIATE MONETARY

1 SANCTION, INCLUDING, AS MAY BE APPLICABLE, AN ORDER TO PAY COSTS
2 AND REASONABLE ATTORNEY'S FEES OF ANOTHER PARTY OR PARTIES, IF
3 THE GUARDIAN OR CONSERVATOR IS FOUND TO HAVE KNOWINGLY
4 ISOLATED A PROTECTED PERSON AND TO HAVE VIOLATED SUBSECTION (2)
5 OF THIS SECTION OR AN ORDER ISSUED PURSUANT TO SUBSECTION (3) OF
6 THIS SECTION; EXCEPT THAT SUCH A SANCTION MAY NOT BE PAID OUT OF
7 THE PROTECTED PERSON'S ESTATE.

8 **SECTION 2.** In Colorado Revised Statutes, **add** 15-14-119.7 as
9 follows:

10 **15-14-119.7. Guardians and conservators required to provide**
11 **notice - exception.** (1) (a) EXCEPT AS DESCRIBED IN SUBSECTIONS (2)
12 AND (3) OF THIS SECTION, A GUARDIAN OR CONSERVATOR SHALL
13 PROMPTLY NOTIFY THE CLOSEST FAMILY MEMBER OF THE PROTECTED
14 PERSON, ALL PERSONS OF COURT RECORD, AND ANY OTHER PERSON
15 DESIGNATED BY THE PROTECTED PERSON TO BE NOTIFIED IN THE EVENT
16 THAT THE PROTECTED PERSON:

17 (I) CHANGES HIS OR HER RESIDENCE, INCLUDING BUT NOT LIMITED
18 TO A CHANGE OF RESIDENCE TO OR FROM ONE NURSING HOME OR ASSISTED
19 CARE FACILITY TO OR FROM ANOTHER NURSING HOME OR ASSISTED CARE
20 FACILITY;

21 (II) RESIDES AT A LOCATION OTHER THAN THE PROTECTED
22 PERSON'S RESIDENCE FOR MORE THAN SEVEN DAYS;

23 (III) IS ADMITTED TO A MEDICAL FACILITY FOR ACUTE CARE OR FOR
24 EMERGENCY CARE; OR

25 (IV) DIES. THE GUARDIAN OR CONSERVATOR SHALL NOTIFY THE
26 CLOSEST FAMILY MEMBER OF THE PROTECTED PERSON IN PERSON OR BY
27 TELEPHONE. FOR ALL PERSONS OF COURT RECORD AND ANY OTHER PERSON

1 DESIGNATED BY THE PROTECTED PERSON TO BE NOTIFIED, THE GUARDIAN
2 OR CONSERVATOR SHALL PROVIDE NOTIFICATION BY WRITTEN
3 CORRESPONDENCE.

4 (b) A NOTIFICATION PROVIDED PURSUANT TO PARAGRAPH (a) OF
5 THIS SUBSECTION (1) MUST INCLUDE THE CURRENT LOCATION OF THE
6 PROTECTED PERSON.

7 (2) A GUARDIAN OR CONSERVATOR IS NOT REQUIRED TO PROVIDE
8 NOTICE TO A PERSON IN ACCORDANCE WITH SUBSECTION (1) OF THIS
9 SECTION IF:

10 (a) THE PERSON INFORMS THE GUARDIAN OR CONSERVATOR IN
11 WRITING THAT THE PERSON DOES NOT WISH TO RECEIVE SUCH NOTICE; OR

12 (b) THE PROTECTED PERSON OR A COURT ORDER HAS EXPRESSLY
13 PROHIBITED THE GUARDIAN OR CONSERVATOR FROM PROVIDING NOTICE
14 TO THE PERSON.

15 (3) A GUARDIAN OR CONSERVATOR SHALL NOT PROVIDE CONTACT
16 INFORMATION TO ANY PERSON IF AN ORDER OF PROTECTION OR A
17 RESTRAINING ORDER HAS BEEN ISSUED AGAINST THE PERSON ON BEHALF
18 OF THE PROTECTED PERSON.

19 **SECTION 3. Act subject to petition - effective date.** This act
20 takes effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly (August
22 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
23 referendum petition is filed pursuant to section 1 (3) of article V of the
24 state constitution against this act or an item, section, or part of this act
25 within such period, then the act, item, section, or part will not take effect
26 unless approved by the people at the general election to be held in

- 1 November 2016 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.