

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-0475.01 Richard Sweetman x4333

SENATE BILL 16-026

SENATE SPONSORSHIP

Woods,

HOUSE SPONSORSHIP

(None),

Senate Committees

Judiciary
Appropriations

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 TO ISOLATE A PROTECTED 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/bills summaries>.)

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, unless such restrictions are authorized by a court order.

A court may issue an order restricting the communications,

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.*

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.** (1) THE
5 SHORT TITLE OF THIS SECTION IS THE "PETER FALK ACT".

6 (2) (a) EXCEPT AS DESCRIBED IN PARAGRAPH (b) OF THIS
7 SUBSECTION (2), A GUARDIAN SHALL NOT RESTRICT A PROTECTED
8 PERSON'S RIGHT OF COMMUNICATION, VISITATION, OR INTERACTION WITH
9 OTHER PERSONS, INCLUDING THE RIGHT TO RECEIVE VISITORS, TELEPHONE
10 CALLS, OR PERSONAL MAIL, UNLESS SUCH RESTRICTIONS ARE AUTHORIZED

1 BY A COURT ORDER.

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

9 (II) IF A PERSON WHO WANTS TO COMMUNICATE, VISIT, OR
10 INTERACT WITH A PROTECTED PERSON PRESENTS TO THE PROTECTED
11 PERSON'S GUARDIAN _____ PHOTOS, DOCUMENTS, OR OTHER PROOF
12 CONCERNING THE NATURE OF THE PERSON'S RELATIONSHIP WITH THE
13 PROTECTED PERSON, THE GUARDIAN __ SHALL CONSIDER SUCH PROOF.

14 (3) (a) WITH GOOD CAUSE, A GUARDIAN __ MAY MOVE THE COURT
15 TO RESTRICT A PERSON'S ABILITY TO COMMUNICATE, VISIT, OR INTERACT
16 WITH A PROTECTED PERSON.

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

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

24 (II) WHETHER THE OTHER PERSON HAS BEEN CHARGED WITH
25 ABUSE, NEGLIGENCE, OR FINANCIAL EXPLOITATION OF THE PROTECTED
26 PERSON;

27 (III) WHETHER THE PROTECTED PERSON HAS EXPRESSED A DESIRE

1 TO COMMUNICATE, VISIT, OR INTERACT WITH THE OTHER PERSON OR HAS
2 EXPRESSED A DESIRE TO NOT COMMUNICATE, VISIT, OR INTERACT WITH
3 THE OTHER PERSON;

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

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

11 (c) BEFORE ISSUING AN ORDER PURSUANT TO THIS SUBSECTION (3),
12 THE COURT SHALL CONSIDER IMPOSING THE FOLLOWING RESTRICTIONS IN
13 THE ORDER LISTED:

14 (I) PLACING REASONABLE TIME, MANNER, OR PLACE RESTRICTIONS
15 ON COMMUNICATION, VISITATION, OR INTERACTION BETWEEN THE
16 PROTECTED PERSON AND THE OTHER PERSON BASED ON THE HISTORY
17 BETWEEN THE PROTECTED PERSON AND THE OTHER PERSON OR THE
18 PROTECTED PERSON'S WISHES, OR BOTH;

19 (II) REQUIRING THAT COMMUNICATION, VISITATION, OR
20 INTERACTION BETWEEN THE PROTECTED PERSON AND THE OTHER PERSON
21 BE SUPERVISED; OR

22 (III) DENYING COMMUNICATION, VISITATION, OR INTERACTION
23 BETWEEN THE PROTECTED PERSON AND THE OTHER PERSON; EXCEPT THAT,
24 UNLESS THE COURT FINDS THAT THE OTHER PERSON POSES A THREAT TO
25 THE PROTECTED PERSON, THE COURT SHALL ORDER SUPERVISED
26 COMMUNICATION, VISITATION, OR INTERACTION UNDER SUBPARAGRAPH
27 (II) OF THIS PARAGRAPH (c) BEFORE DENYING ANY COMMUNICATION,

1 VISITATION, OR INTERACTION.

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

7 (I) REQUIRE THE GUARDIAN ___ TO GRANT A PERSON ACCESS TO
8 THE PROTECTED PERSON;

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

11 (III) MODIFY THE GUARDIAN'S DUTIES; OR

12 (IV) REMOVE THE GUARDIAN _____ PURSUANT TO SECTION
13 15-10-503.

14 (b) A GUARDIAN ___ WHO KNOWINGLY ISOLATES A PROTECTED
15 PERSON AND HAS VIOLATED SUBSECTION (2) OF THIS SECTION OR AN
16 ORDER ISSUED PURSUANT TO SUBSECTION (3) OF THIS SECTION IS SUBJECT
17 TO REMOVAL PURSUANT TO SECTION 15-10-503.

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

27 (b) (I) IF A MOTION FILED PURSUANT TO SUBSECTION (3) OR (4) OF

1 THIS SECTION STATES THAT THE PROTECTED PERSON'S HEALTH IS IN
2 SIGNIFICANT DECLINE OR THAT THE PROTECTED PERSON'S DEATH MAY BE
3 IMMINENT, THE COURT SHALL CONDUCT AN EMERGENCY HEARING AS SOON
4 AS PRACTICABLE BUT NO LATER THAN SEVEN DAYS AFTER THE MOTION IS
5 FILED.

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

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

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

21 (b) THE COURT, UPON MOTION OR UPON ITS OWN INITIATIVE, MAY
22 IMPOSE UPON A GUARDIAN AN APPROPRIATE MONETARY SANCTION,
23 INCLUDING, AS MAY BE APPLICABLE, AN ORDER TO PAY COSTS AND
24 REASONABLE ATTORNEY'S FEES OF ANOTHER PARTY OR PARTIES, IF THE
25 GUARDIAN IS FOUND TO HAVE KNOWINGLY ISOLATED A PROTECTED
26 PERSON AND TO HAVE VIOLATED SUBSECTION (2) OF THIS SECTION OR AN
27 ORDER ISSUED PURSUANT TO SUBSECTION (3) OF THIS SECTION; EXCEPT

1 THAT SUCH A SANCTION MAY NOT BE PAID OUT OF THE PROTECTED
2 PERSON'S ESTATE.

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

5 **15-14-119.7. Guardians _____ required to provide notice -**
6 **exception.** (1) (a) EXCEPT AS DESCRIBED IN SUBSECTIONS (2) AND (3) OF
7 THIS SECTION, A GUARDIAN _____ SHALL PROMPTLY NOTIFY THE CLOSEST
8 FAMILY MEMBER OF THE PROTECTED PERSON, ALL PERSONS OF COURT
9 RECORD, AND ANY OTHER PERSON DESIGNATED BY THE PROTECTED
10 PERSON TO BE NOTIFIED IN THE EVENT THAT THE PROTECTED PERSON:

11 (I) CHANGES HIS OR HER RESIDENCE, INCLUDING BUT NOT LIMITED
12 TO A CHANGE OF RESIDENCE TO OR FROM ONE NURSING HOME OR ASSISTED
13 CARE FACILITY TO OR FROM ANOTHER NURSING HOME OR ASSISTED CARE
14 FACILITY;

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

17 (III) IS ADMITTED TO A MEDICAL FACILITY FOR ACUTE CARE OR FOR
18 EMERGENCY CARE; OR

19 (IV) DIES. THE GUARDIAN _____ SHALL NOTIFY THE CLOSEST FAMILY
20 MEMBER OF THE PROTECTED PERSON IN PERSON OR BY TELEPHONE. FOR
21 ALL PERSONS OF COURT RECORD AND ANY OTHER PERSON DESIGNATED BY
22 THE PROTECTED PERSON TO BE NOTIFIED, THE GUARDIAN _____ SHALL
23 PROVIDE NOTIFICATION BY WRITTEN CORRESPONDENCE.

24 (b) A NOTIFICATION PROVIDED PURSUANT TO PARAGRAPH (a) OF
25 THIS SUBSECTION (1) MUST INCLUDE THE CURRENT LOCATION OF THE
26 PROTECTED PERSON.

27 (2) A GUARDIAN _____ IS NOT REQUIRED TO PROVIDE NOTICE TO A

1 PERSON IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION IF:

2 (a) THE PERSON INFORMS THE GUARDIAN ___ IN WRITING THAT THE
3 PERSON DOES NOT WISH TO RECEIVE SUCH NOTICE; OR

4 (b) THE PROTECTED PERSON OR A COURT ORDER HAS EXPRESSLY
5 PROHIBITED THE GUARDIAN ___ FROM PROVIDING NOTICE TO THE PERSON.

6 (3) A GUARDIAN ___ SHALL NOT PROVIDE CONTACT INFORMATION
7 TO ANY PERSON IF AN ORDER OF PROTECTION OR A RESTRAINING ORDER
8 HAS BEEN ISSUED AGAINST THE PERSON ON BEHALF OF THE PROTECTED
9 PERSON.

10 (4) (a) AS USED IN THIS SECTION, UNLESS THE CONTEXT
11 OTHERWISE REQUIRES, "CLOSEST FAMILY MEMBER OF THE PROTECTED
12 PERSON" MEANS, IN ORDER:

13 (I) A SPOUSE OF THE PROTECTED PERSON OR A PARTNER OF THE
14 PROTECTED PERSON IN A CIVIL UNION;

15 (II) AN ADULT CHILD OF THE PROTECTED PERSON;

16 (III) A PARENT OF THE PROTECTED PERSON; OR

17 (IV) AN ADULT NEAREST IN KINSHIP TO THE PROTECTED PERSON.

18 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (4),
19 "CLOSEST FAMILY MEMBER OF THE PROTECTED PERSON" DOES NOT
20 INCLUDE AN INDIVIDUAL WHO IS A GUARDIAN OF THE PROTECTED PERSON.

21 (c) IF MORE THAN ONE PERSON QUALIFIES AS THE CLOSEST FAMILY
22 MEMBER PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4), THEN:

23 (I) IF THERE ARE TWO SUCH PERSONS, THEN NOTICE MUST BE
24 PROVIDED TO BOTH PERSONS; AND

25 (II) IF THERE ARE MORE THAN TWO SUCH PERSONS, THEN NOTICE
26 MUST BE PROVIDED TO THE TWO OLDEST SUCH PERSONS.

27 **SECTION 3. In Colorado Revised Statutes, add 15-14-102.7 as**

1 follows:

2 **15-14-102.7. Personal rights of protected persons.**

3 **(1) Obligation of the courts.** THE COURT SHALL CONSTRUE AND APPLY
4 THIS PART 1 AND PARTS 3 AND 4 OF THIS ARTICLE, AND OTHER PROVISIONS
5 OF THIS CODE AS SUCH PROVISIONS RELATE TO A PROTECTED PERSON, IN
6 A MANNER THAT MAXIMIZES THE PROTECTION OF THE PERSONAL RIGHTS
7 OF EACH PROTECTED PERSON.

8 **(2) Declaration - uniform law comments.** THE GENERAL
9 ASSEMBLY DECLARES THAT THE COURTS SHOULD EMBRACE THE
10 COMMENTS OF THE UNIFORM LAW COMMISSION THAT ACCOMPANIED THE
11 REENACTMENT OF THIS ARTICLE IN 2000, WHICH ARE SUPPORTIVE OF THE
12 PERSONAL RIGHTS OF A PROTECTED PERSON.

13 **SECTION 4.** In Colorado Revised Statutes, 15-14-102, **amend**
14 **(11); and add (10.5)** as follows:

15 **15-14-102. Definitions.** In parts 1 to 4 of this article:

16 **(10.5) "PERSONAL RIGHTS OF A PROTECTED PERSON" MEANS THE**
17 RIGHT TO PERSONAL AUTONOMY AND OTHER RIGHTS THAT ALL
18 INDIVIDUALS ARE ENTITLED TO UNDER THE CONSTITUTION AND LAWS OF
19 THE UNITED STATES AND OF THIS STATE, WHICH RIGHTS INCLUDE, BUT ARE
20 NOT LIMITED TO, EQUALITY OF JUSTICE, FREEDOM OF SPEECH, FREEDOM OF
21 RELIGION, FREEDOM OF ASSOCIATION, RIGHT TO COUNSEL, RIGHT TO
22 PETITION, AND DUE PROCESS OF LAW FOR THE PROTECTION OF LIFE,
23 LIBERTY, AND PROPERTY.

24 **(11) "Protected person" means a minor or other individual for**
25 whom a conservator has been appointed or other protective order has
26 been made, AND, AS USED IN SECTIONS 15-14-102.7, 15-14-119.5, AND
27 15-14-119.7, INCLUDES A WARD.

1 **SECTION 5. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.
4 _____